

IN THE CONSTITUTIONAL COURT FOR ZAMBIA
AT LUSAKA

IN THE MATTER OF THE DECISION BY THE:

- (a) PRESIDENT PURSUANT TO ARTICLE 92(2)(I) OF THE CONSTITUTION TO ALTER THE CONSTITUTION OF ZAMBIA IN THE MANNER PROVIDED FOR IN THE CONSTITUTION OF ZAMBIA (AMENDMENT) BILL NO. 10 OF 2019;
- (b) ATTORNEY GENERAL TO SIGN THE CONSTITUTION OF ZAMBIA (AMENDMENT) BILL NO. 10 OF 2019 FOR PRESENTATION TO THE NATIONAL ASSEMBLY PURSUANT TO ARTICLE 177(5)(B) OF THE CONSTITUTION OF ZAMBIA;
- (c) NATIONAL ASSEMBLY TO PUBLISH THE CONSTITUTION OF ZAMBIA (AMENDMENT) BILL NO. 10 OF 2019 IN THE GOVERNMENT GAZETTE PURSUANT TO ARTICLE 79(2) OF THE CONSTITUTION; AND
- (d) NATIONAL ASSEMBLY OF 2ND AUGUST 2019 TO TABLE THE CONSTITUTION OF ZAMBIA (AMENDMENT) BILL NO. 10 OF 2019 FOR THE FIRST READING

IN THE MATTER OF THE PETITION PURSUANT TO ARTICLE 128(3) OF THE CONSTITUTION OF ZAMBIA

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF:

- (a) Article 1(2);
- (b) Article 8;
- (c) Article 9;
- (d) Article 61;
- (e) Article 90;
- (f) Article 91;
- (g) Article 92; and
- (h) Article 79 of the Constitution

IN THE MATTER OF THE PETITION PURSUANT TO SECTION 8(3) OF THE CONSTITUTIONAL COURT ACT NO. 8 OF 2016;

AND IN THE MATTER OF THE PETITION PURSUANT TO ORDER 4, RULE 1 OF THE CONSTITUTIONAL COURT RULES 2016.

BETWEEN:

THE LAW ASSOCIATION OF ZAMBIA
AND

THE PRESIDENT OF THE REPUBLIC
OF ZAMBIA

THE ATTORNEY GENERAL

THE NATIONAL ASSEMBLY

PETITIONER

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

PETITION

THE PETITION of the LAW ASSOCIATION OF ZAMBIA of No.: 1, Lagos Road, Next to the Old Cemetery, Rhodes Park, P. O. Box 35271, LUSAKA, email: info@laz.org.zm SHOWS that:

A. THE PETITIONER

[1] The Petitioner is a body corporate established by Section 3 of the Law Association of Zambia Act, Chapter 31 of the Laws of Zambia (hereinafter referred to as the "Act") with perpetual succession and capable of suing and being sued and, subject to the provisions of the Act, of doing or performing such acts or things as a body corporate may by law do or perform.

Statutory Duties of the Petitioner

[2] The Petitioner has a statutory duty under Section 4 of the Act, omitting the provisions not relevant to this Petition, to:

- (a) further the development of law as an instrument of social order and social justice and as an essential element in the growth of society;

- (b) provide a means by which all lawyers, whatever their particular field of activity, can participate together fully and effectively in the development of society and its institutions;
- (c) encourage lawyers as individuals to join actively in the life of, and identify themselves with, the people, and to utilise their skills and training in their service;
- (d) co-operate with the representative bodies of other professions and other institutions;
- (e) promote the reform of the law, both by the amendment of and the removal of imperfections in existing law, and by the reformulation, codification or restatement of particular branches of the law;
- (f) participate when called upon in drafting legislation, and to strengthen the machinery for the critical examination of its legal quality;
- (g) seek the advancement of the rule of law and of the rights and liberties of the individual; and
- (h) promote the improvement and reform of the judicial and administrative systems, including tribunals and their procedure.

[3] The Petitioner has taken out this Petition in furtherance of the objectives set out above.

B. THE RESPONDENTS AND THEIR CONSTITUTIONAL OBLIGATIONS

I. The First Respondent

[4] The First Respondent is a State Officer, occupying the State Office of President created by Article 91 of the Constitution, in which the Office Article 91(2) of the Constitution vests the executive authority of the Republic and which authority is, subject to the Constitution, exercised directly by the First Respondent or through public officers appointed by the First Respondent.

1. The First Respondent's Obligations Under Articles 8 and 9 of the Constitution

[5] The First Respondent is bound by Article 9 of the Constitution to apply the national values and principles set out in Article 8 of the Constitution of:

- (a) morality and ethics;
- (b) patriotism and national unity;
- (c) democracy and constitutionalism;
- (d) human dignity, equity, social justice, equality and non-discrimination;
- (e) good governance and integrity; and
- (f) sustainable development

in any decision to enact the law.

[6] The First Respondent equally has a constitutional obligation once in every year to report to the Third Respondent on the progress made in the application of the national values and principles set out in paragraph 5 above.

2. The First Respondent's Obligations Under Article 91 of the Constitution

[7] Under Article 91(3) of the Constitution, the First Respondent must, in the exercise of the executive authority of the State:

- (a) respect, uphold and safeguard the Constitution;
- (b) safeguard the sovereignty of the Republic;
- (c) promote democracy and enhance national unity;
- (d) respect the diversity of the different communities of Zambia;
- (e) promote and protect the rights and freedoms of a person; and
- (f) uphold the rule of law.

3. The First Respondent's Obligations Under Article 92 of the Constitution

[8] Under Article 92 of the Constitution, the First Respondent has the duty to perform with dignity, leadership and integrity, the acts that are necessary and expedient for, or reasonably incidental to, the exercise of the executive authority. Under Article 92(2) (i) of the Constitution, without limiting the other provisions of the Constitution, it is the First Respondent's responsibility to initiate Bills for submission to, and consideration by the Third Respondent.

4. The First Respondent's Obligations Under Article 79 of the Constitution

[9] Further in the exercise of the First Respondent's executive or legislative authority, the First Respondent has the obligation to ensure that the exercise of that authority does not offend Article 79 of the Constitution by altering the basic features of the Constitution namely, separation of powers, checks and balances, equality of powers among the three branches of government, constitutionalism, rule of law and democracy.

II. The Second Respondent

[10] The Second Respondent is a Constitutional office holder, holding the Constitutional office of Attorney General created by Article 177(1) of the Constitution.

1. Obligations of the Second Respondent Under Article 177(4) of the Constitution

[11] The Second Respondent is not subject to the direction or control of any person or authority in the performance of the Second Respondent's functions.

2. Functions of the Second Respondent Under Article 177(5) of the Constitution

[12] The Second Respondent is the chief legal adviser to the Government and:

- (a) head of the Attorney-General's Chambers;
- (b) signs Government Bills to be presented to the Third Respondent;
- (c) represents the Government in civil proceedings to which Government is a party;
- (d) gives advice on agreements, treaties or conventions to which Government intends to become a party or in respect of which the Government has an interest before they are concluded, except where the Third Respondent otherwise directs, and subject to conditions as set out in an Act of Parliament; and

(e) performs such other functions as are set out in Acts of Parliament.

III. The Third Respondent

[13] The Third Respondent is a State Organ established by Article 62 of the Constitution, and together with the First Respondent forms the Parliament of the Republic of Zambia, the State Organ in which the legislative authority of the Republic is vested.

1. The Third Respondent's Obligations Under Articles 8 and 9 of the Constitution

[14] Like the First Respondent, the Third Respondent is bound to give effect to the national values and principles referred to in paragraph 5 above, in the enactment of any law.

2. The Third Respondent's Obligations Under Article 63(2) of the Constitution

[15] The Third Respondent, in addition to exercising the legislative authority of the Republic, has the constitutional obligation to oversee the performance of the executive functions of the Republic by the First Respondent by:

- (a) ensuring equity in the distribution of national resources amongst the people of Zambia;
- (b) appropriating funds for expenditure by State organs, State institutions, provincial administration, local authorities and other bodies;
- (c) scrutinising public expenditure, including defence, constitutional and special expenditure;
- (d) approving public debt before it is contracted; and
- (e) approving international agreements and treaties before these are acceded to or ratified.

***3. The Respondents' Constitutional Obligations Under the Supremacy Clause:
Article 1 of the Constitution***

[16] The Respondents collectively are bound by Article 1(3) of the Constitution to exercise their respective powers within the Constitution and pursuant to Article 1(2) of the Constitution, any act or omission of the Respondents that offends the Constitution is illegal to the extent to which such an act or omission contravenes or is inconsistent with the Constitution.

C. THE FACTS RELIED UPON IN SUPPORT OF THE PETITION

I. Appointment of the Technical Committee on the Drafting of the Constitution

[17] In September 2011, Presidential, Parliamentary and Local Government elections were held, which resulted in the end of the twenty-year rule of the Movement for Multi-Party Democracy (MMD) and the beginning of the reign of the Patriotic Front Party (PF), which won the elections.

[18] On 16th November 2011, two months after assuming the office of President, the late President Michael Sata appointed a Technical Committee on Drafting the Zambian Constitution.

1. Mandate and Terms of Reference of the Committee

[19] The mandate of the Committee was to review the recommendations of all previous Constitution Review Commissions in order to draft and present a Constitution, which would reflect the will and aspirations of the people of Zambia. The Committee was specifically mandated to review the 1991 Constitution of Zambia; the Constitution Review Commission Report and Draft Constitution of 1993, prepared by the Mwanakatwe Constitution Review Commission; the Constitution Review Commission Report and Draft Constitution 2005, prepared by the Mung'omba Constitution Review Commission; the Electoral Technical Report 2005; and the National Constitutional Conference Report and draft Constitution of 2010, in order to establish whether they:

- (a) reflect the values and aspirations of the people of Zambia;

- (b) are relevant for the political, socio-economic, technological and scientific environment existing in Zambia; and
- (c) establish a constitutional democracy and a culture of constitutionalism for Zambia.

[20] The Committee was directed to draft a national Constitution incorporating principles and values:

- (a) guaranteeing peace, national unity and integrity of the Republic of Zambia in order to safeguard the well-being of the people of Zambia;
- (b) 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;
- (c) promoting the peoples' participation in the governance of the country through democratic, free and fair elections and the devolution and exercise of power;
- (d) respecting ethnic and regional diversity and communal rights, including the right of communities to organise and participate in cultural activities and the expression of their identities;
- (e) 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;
- (f) promoting and facilitating regional and international co-operation to ensure economic development, peace and stability and to support democracy and human rights;
- (g) strengthening national integration and unity;
- (h) creating conditions conducive for a free exchange of ideas;
- (i) ensuring the participation of people in the management of public affairs; and
- (j) ensuring a free, fair and responsible media.

[21] It was also the responsibility of the Committee to draft a national Constitution that:

- (a)** 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;
- (b)** 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;
- (c)** will ensure that excessive and unfettered powers are not given to any particular organ of the State, Commission or constitutional functionary;
- (d)** will incorporate social, economic, cultural, religious and environmental rights for all Zambians, (paying particular attention to the rights of the child, 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;
- (e)** incorporates 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 minimise electoral malpractices;
- (f)** provides 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; and
- (g)** 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 decentralisation, while maintaining effective reporting structures with Central Government.

[22] The Committee was required to identify key issues to be presented to the Provincial Constitutional Committees in all centres and facilitate debate on the issues in all ten provincial centres and administratively support the

ratification of the draft national Constitution by the Provincial Constitutional Conventions.

[23] It was also for the Committee to provide for any other constitutional or democratic issues that would promote and enhance democracy and good governance in Zambia.

[24] In the process of drafting the Constitution, facilitating debate at the provincial level, and the ratification of the draft national Constitution by the Provincial Constitution Conventions, the Committee was mandated:

- (a) to ensure that the national interest prevails over regional or sectoral interests;
- (b) to 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 to deny or interfere with anyone's right to attend the Provincial Constitutional Conventions and the right to personal liberty, the freedoms of expression and conscience during the deliberations;
- (e) to 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) to be guided by the principle of stewardship and responsible management;
- (g) to be guided by respect for the principles of human rights, equality, affirmative action, gender equity and democracy; and
- (h) to ensure that the outcome of the drafting and ratification 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.

[25] After several meetings, the Committee prepared the first draft Constitution based on the materials generated by previous Constitution Review

Commissions, which was submitted for discussions and adoption by all the ten Provincial Constitutional Conventions. The final draft Constitution was prepared taking into account the responses from the Provincial Constitutional Conventions.

[26] In November 2013, the Committee approved the final draft Constitution, the Constitution of Zambia Bill and the Final Report of the Technical Committee, which were presented to the Government. There was no immediate action on the Report by the Government. However, the enactment of a new constitution became an issue in the elections of 2016. There was national consensus that the 2016 elections ought to be held under a new constitution.

II. The Two-Stage Approach in Changing the Constitution

[27] Whilst the Technical Committee favoured the introduction of a completely new Constitution, in line with its mandate to draft a new Constitution for Zambia, the Government preferred to change the constitutional order in two phases.

1. Repeal and Re-Enactment of the Constitution Except for Chapter III and Article 79 of the Constitution

[28] The first phase was to involve the repeal and re-enactment of all the provisions in the Constitution except for Part III and Article 79 of the Constitution. All the provisions of the draft Constitution prepared by the Committee, except for those on matters or issues touching on or covered by the Bill of Rights and Article 79, were adopted by the Government and embodied in the Constitution of Zambia (Amendment) Bill No. 17 of 2015. The Bill sought, pursuant to Article 79(2) of the Constitution, to repeal and re-enact all the provisions of the Constitution of 1991, as amended in 1996, whose repeal and re-enactment did not require the people's approval through a national referendum.

[29] Part III and Article 79 of the Constitution were to be amended later and the bill for their amendment was to be subjected to a referendum at the same time as the general elections of 2016.

[30] As a result, on 15th October 2015, two Constitution (Amendment) Bills: No. 16, to amend the Constitution of Zambia Act and No. 17, to amend the

Constitution were presented in the National Assembly for the first reading. On Thursday 10th December 2015, both Bills, with bi-partisan support, passed through the third reading and on 5th January 2016, they received Presidential assent.

2. The Repeal and Re-enactment of the Bill of Rights and Article 79 of the Constitution

[31] In May 2016, the second phase to amend of the Constitution started with the publication of the Constitution of Zambia (Amendment) Bill No. 37 of 2016. The object of the Bill was to amend the Constitution of Zambia, as already amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016, so as to:

- (a) revise the Bill of Rights to include civil, political, economic, social, cultural, environmental, further and special rights;
- (b) entrench the supremacy of the Constitution, Articles 4 and 5 of the Constitution, the electoral systems for the election of a President and Members of Parliament, the tenure of office of a President and vacancy in the office of President, the election of a Vice-President as a running mate to a presidential candidate, the provisions on the appointment, responsibilities and tenure of Ministers and Provincial Ministers, and the provisions relating to the amendment of the Constitution;
- (c) revise the provisions relating to the declaration of war, state of public emergency, threatened state of public emergency and national disasters;
- (d) revise the provisions on amendment of the Constitution; and
- (e) provide for matters connected with, or incidental to, the foregoing.

[32] The referendum took place on the same day of the general elections: the voters cast their votes either in favour of or against the referendum question and the outcome was:

Description	Number of Votes	%
Votes in Favour of the Amendment/ Bill	1,852,559	71.9%
Votes Against the Amendments	753,549	28.91%
Eligible Votes	7,528,091	
Votes Cast	3,345,471	44.44%
Number of Votes required to pass the Bill	3,764,046	50+1%

[33] The referendum question failed to pass.

III. Introduction of the Constitution of Zambia (Amendment) Bill No. 10 of 2019

[34] In June 2019, that is 42 months after the First Respondent gave assent to the Constitution of Zambia (Amendment) Act No. 2 of 2016, and the Constitution of Zambia (Amendment) Act No. 1 of 2016, in exercise of the powers vested in the office of the President by Article 92(2)((i) of the Constitution, the First Respondent caused the Constitution of Zambia (Amendment) Bill No. 10 of 2019, to be issued which was signed by the Second Respondent pursuant to Article 177(5)(b) of the Constitution and published in the Government Gazette by the Third Respondent pursuant to the provisions of Article 79(2) of the Constitution seeking to amend:

- (a) the Preamble in order to reaffirm the Christian character of Zambia;
- (b) the principles and values of the Constitution;
- (c) the electoral system for elections to the National Assembly;
- (d) the period for dissolution of the National Assembly;
- (e) the period of hearing and determination of a presidential election petition;
- (f) the manner of election of mayor and council chairperson;
- (g) the provisions relating to the establishment of the office of deputy minister;
- (h) the composition of the Cabinet;
- (i) the provisions relating to the establishment of commissions;

- (j)** the provisions relating to the payment of pension benefits and retention on the payroll;
- (k)** the provisions relating to membership of Members of Parliament in councils;
- (l)** and establish the Drug Enforcement Commission as the Anti-Drugs, Economic and Financial Crimes Agency and redefine its function as a national security service;
- (m)** and revise the functions of the Public Protector;
- (n)** the functions of the Bank of Zambia;
- (o)** the functions of the Auditor-General; and
- (p)** for matters connected with, or incidental to, the foregoing.

[35] On 2nd August 2019, according to its own Rules, (the Standing Order) the Third Respondent tabled the Constitution of Zambia (Amendment) Bill No. 10 of 2019, for the First Reading.

**D. THE SUBJECT MATTER OF THE PETITION AND CONSTITUTIONAL
PROVISIONS RELIED UPON**

I. Subject Matter of the Petition

[36] The subject matter of this Petition, which has been made pursuant to Article 128(3)(b) of the Constitution, is the DECISION by the:

- (a) First Respondent, pursuant to Article 92(2) (i) of the Constitution, to amend the Constitution of Zambia in the manner set out in the Constitution of Zambia (Amendment) Bill No. 10 of 2019, (hereinafter referred to as the “First Respondent’s decision”);
- (b) Second Respondent pursuant to Article 177(5)(b) of the Constitution, to sign and present to the Third Respondent the Constitution of Zambia (Amendment) Bill No. 10 of 2019, to amend the Constitution of Zambia in the manner provided in the said Bill (hereinafter referred to as the “Second Respondent’s decision”);
- (c) Third Respondent, pursuant to Article 79(2)(a) of the Constitution, to publish in the Government Gazette the Constitution of Zambia (Amendment) Bill No. 10 of 2019, to amend the Constitution of Zambia, (hereinafter referred to as the “Third Respondent’s decision”); and
- (d) Third Respondent’s decision of 2nd August 2019, to table the Constitution of Zambia (Amendment) Bill No. 10 of 2019, for the First Reading.

[37] In this Petition, unless the context otherwise requires, the decisions of the Respondents will be collectively referred to as the DECISION.

II. Constitutional Provisions Alleged to Have Been Contravened by the Respondents’ Decision

[38] In support of this Petition the Petitioner relies on:

- (a) Article 1 of the Constitution, the Supremacy Clause (the parts relevant to this Petition) which reads:

1. (1) This Constitution is the supreme law of the Republic of Zambia and any other written law, customary law and customary practice that is inconsistent with its provisions is void to the extent of the inconsistency.

(2) An act or omission that contravenes this Constitution is illegal.

(3) This Constitution shall bind all persons in Zambia, State organs and State institutions.

(4) The validity or legality of this Constitution is not subject to challenge by or before a State organ or other forum.

(Emphasis ours)

(b) Article 2 of the Constitution, which reads:

2. Every person has the right and duty to —

(a) defend this Constitution; and

(b) resist or prevent a person from overthrowing, suspending or illegally abrogating this Constitution.

(Emphasis ours)

(c) Article 8 of the Constitution, on the national values and principles, which reads:

8. The national values and principles are—

(a) morality and ethics;

(b) patriotism and national unity;

(c) democracy and constitutionalism;

(d) human dignity, equity, social justice, equality and non-discrimination;

(e) good governance and integrity; and

(f) sustainable development.

(Emphasis ours)

(d) Article 9 of the Constitution, on application of national values and principles which reads:

9. (1) The national values and principles shall apply to the —

(a) interpretation of this Constitution;

(b) enactment and interpretation of the law; and

(c) development and implementation of State policy.

(2) The President shall, once in every year, report to the National Assembly the progress made in the application of the values and principles specified under this Part.

(Emphasis ours)

(e) Article 61 of the Constitution on the Principles of Legislative Authority contained in Article 61 of the Constitution, which reads:

61. The legislative authority of the Republic derives from the

people of Zambia and *shall be exercised in a manner that protects this Constitution and promotes the democratic governance of the Republic.*

(Emphasis ours)

- (f) Article 90 of the Constitution on the Principles of Executive Authority contained in Article 90 of the Constitution, which reads:

90. The Executive authority derives from the people of Zambia and *shall be exercised in a manner compatible with the principles of social justice and for the well-being and benefit of the people.*

(Emphasis ours)

- (g) Article 91 of the Constitution on the vesting of the Executive Authority of the Republic in the President, which reads:

91. (1) There shall be a President of the Republic who shall be the Head of State and Government and Commander-in-Chief of the Defence Force.

(2) The executive authority of the State vests in the President and, subject to this Constitution, shall be exercised directly by the President or through public officers or other persons appointed by the President.

(3) The President shall, in exercise of the executive authority of the State —

(a) respect, uphold and safeguard this Constitution;

(b) safeguard the sovereignty of the Republic;

(c) promote democracy and enhance national unity;

(d) respect the diversity of the different communities of Zambia;

(e) promote and protect the rights and freedoms of a person; and

(f) uphold the rule of law.

(Emphasis ours)

- (h) Article 92 of the Constitution on the functions of the President, which, omitting the parts not relevant to the Petition, reads:

Executive functions of President

92. (1) *The President shall perform, with dignity, leadership and integrity, the acts that are necessary and expedient for, or reasonably incidental to, the exercise of the executive authority.*

(2) Without limiting the other provisions of this Constitution, the President shall—

(a) ---;

(b) ---;

(c) ---;

(d) ---;

(e) ---;

(f) ---;

(g) ---;

(h) ---;

(i) *initiate Bills for submission to, and consideration by, the National Assembly; and*

(j) ---.

(Emphasis ours)

- (i) Article 79 of the Constitution on the alteration of the Constitution, which reads:

79. Alteration of Constitution

(1) Subject to the provisions of this Article, Parliament may alter this Constitution or the Constitution of Zambia Act, 1991.

(2) *Subject to clause (3) a bill for the alteration of this Constitution or The Constitution of Zambia Act, 1991 shall not be passed unless --*

(a) not less than thirty days before the first reading of the bill in the National Assembly the text of the bill is published in the Gazette; and

(b) the bill is supported on second and third readings by the votes of not less than two thirds of all the members of the Assembly.

(3) A bill for the alteration of Part III of this Constitution or of this Article shall not be passed unless before the first reading of the bill in the National Assembly it has been put to a National referendum with or without amendment by not less than fifty per cent of persons entitled to be registered as voters for the purposes of Presidential and parliamentary elections.

(4) Any referendum conducted for the purposes of clause (3) shall be so conducted and supervised in such manner as may be prescribed by or under an Act of Parliament.

(5) *In this Article --*

(a) references to this Constitution or the Constitution of Zambia Act, 1991 include reference to any law that amends or replaces any of the provisions of this Constitution or that Act; and

(b) references to the alteration of this Constitution or the Constitution of Zambia Act, 1991 or of any Part of Article include references to the amendment, modification or re-enactment with or without amendment or modification, of any provision for the time being contained in this Constitution, that Act, Part or Article, the suspension or repeal or any such provision and the making of different provision in lieu of such provision, and the addition of new provisions, to this Constitution, that Act, Part or Article.

(6) *Nothing in this Article shall be so construed as to require the publication of any amendment to any such bill as is referred to in clause (2) proposed to be moved in the National Assembly.*

(Emphasis ours)

- (j) Article 128(3)(c) of the Constitution, on the jurisdiction of the Constitutional Court, which reads:

Jurisdiction of the Constitutional Court

128. (1) Subject to Article 28, the Constitutional Court has original and final jurisdiction to hear—

- (a) a matter relating to the interpretation of this Constitution;
- (b) a matter relating to a violation or contravention of this Constitution;
- (c) a matter relating to the President, Vice-President or an election of a President;
- (d) appeals relating to election of Members of Parliament and councillors; and
- (e) whether or not a matter falls within the jurisdiction of the Constitutional Court.

(2) Subject to Article 28 (2), where a question relating to this Constitution arises in a court, the person presiding in that court shall refer the question to the Constitutional Court.

(3) Subject to Article 28, a person who alleges that—

- (a) an Act of Parliament or statutory instrument;*
- (b) an action, measure or decision taken under law; or*
- (c) an act, omission, measure or decision by a person or an authority;*

contravenes this Constitution, may petition the Constitutional Court for redress.

(4) A decision of the Constitutional Court is not appealable to the Supreme Court.

(Emphasis ours)

E. SPECIFIC DECISIONS THAT OFFEND THE CONSTITUTION

I. Decision to Alter the Constitution that Affect the Character of the Constitution and the Republic

[39] The Petitioner challenges the decision by the Respondents to alter the Constitution by:

1. *The Amendment of the Preamble*

(a) amending part of the Preamble to the Constitution, to read as set out in red:

RECOGNISE AND UPHOLD the multi-ethnic, multi-racial, *multi-religious* Christian and multi-cultural character of our Nation and our right to manage our affairs and resources sustainably in a devolved system of governance,

2. *Amendment of Article 4: the Character of the Constitution and the Republic*

(b) repealing and re-enacting Article 4(3) of the Constitution, to read as set out in red:

4. (1) Zambia is a sovereign Republic under a constitutional form of governance.

(2) The Republic consists of the territory defined in an Act of Parliament.

~~(3) The Republic is a unitary, indivisible, multi-ethnic, multi-racial, multi-religious, multi-cultural and multi-party democratic State.~~

(3) The Republic is a *Christian*, unitary, indivisible, multi-ethnic, multi-racial, multi-cultural and multi-party democratic State.

(4) The Republic shall not be ceded in whole or in part.

(5) The Republic may enter into a union or other form of inter-state organisation, which action shall not be construed as ceding the Republic

3. *Amendment of Article 8: the National Values and Principles*

(c) and repealing and re-enacting Article 8(a) of the Constitution on the national values and principles to read as set out in red:

National values and principles

8. The national values and principles are—

~~(a) morality and ethics;~~

(a) Christian morality and ethics;

(b) patriotism and national unity;

(c) democracy and constitutionalism;

- (d) human dignity, equity, social justice, equality and non-discrimination;
- (e) good governance and integrity; and
- (f) sustainable development.

[40] The Petitioner contends that the decision by the Respondents to repeal the phrase “multi-religious” and replace it with the word “Christian” in the Preamble; to repeal and re-enact Article 4(3) of the Constitution to read that “the Republic is a Christian --- State” in order to promote, protect and give constitutional recognition to Christianity above all other religions; and to repeal Article 8(a) of the Constitution which reads “morality and ethics” and re-enact it to read “Christian morality and ethics” so that Christian morality and ethics are applied in the: (a) interpretation of the Constitution; (b) enactment and interpretation of the law; and (c) development and implementation of State policy, is illegal in that it contravenes:

- (a) **Article 61 of the Constitution**, which requires the Respondents to exercise the legislative authority of the Republic in a manner that protects the Constitution and the democratic governance of the Republic;
- (b) **Article 90 of the Constitution**, which requires the First Respondent to exercise the executive authority of the Republic, in a manner consistent with the principles of social justice and for the well-being and benefit of the people; and
- (c) **Article 91(3)(c) of the Constitution**, which requires the First Respondent to exercise the executive authority of the State, in a manner that promotes democracy and national unity.

II. Decision to Alter the Constitution to Change the Electoral Process

1. Amendment of Article 47: the Electoral Systems

[41] The Petitioner challenges the decision by the Respondents to alter the Constitution by repealing and re-enacting Article 47(2) of the Constitution to read as set out in red:

Electoral systems

47. (1) Elections to the office of President shall be conducted directly, under a majoritarian electoral system, where the winning candidate must receive more than fifty per cent of the valid votes cast, and in accordance with Article 101.

~~(2) Elections to the National Assembly shall be conducted under a first-past-the-post electoral system in accordance with Article 68.~~

(2) Elections to the National Assembly shall be conducted under a mixed member electoral system, as prescribed.

(3) Elections to councils shall be conducted under a first-past-the-post electoral system, and in accordance with Articles 153 and 154.

(4) A constituency and a ward shall return only one member to the National Assembly and council, respectively.

[42] The Petitioner contends that to the extent that the Respondents, by their decision, want to repeal Article 47(2) of the Constitution so that Elections to the National Assembly are conducted under a mixed member electoral system, yet to be prescribed in an Act of Parliament as opposed to the current system where the elections are conducted pursuant to Articles 47(2) and 68 of the Constitution is illegal because it contravenes:

- (a)** Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes the democratic governance of the Republic; and
- (b)** Article 90 of the Constitution, which requires the executive authority derived from the people of Zambia to be exercised in a manner compatible with the principles of social justice and for the well-being and benefit of the people;
- (c)** Article 91(3)(a) of the Constitution, which requires the First Respondent to respect, uphold and safeguard the Constitution in the exercise of the executive authority of the State; and
- (d)** Article 91(3)(c) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to promote democracy.

2. Repeal and Re-Enactment of Article 51: Independent Candidates

[43] The Petitioner challenges the Respondent's decision to alter the Constitution by repealing and re-enacting Article 51 of the Constitution on Independent Candidates, to read as set out in red:

Independent Candidates

~~51. 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; and~~

~~(b) meets the qualifications specified in Article 70 for election as a Member of Parliament.~~

51. A person is eligible for election as an independent candidate for a National Assembly seat if the person meets the qualifications specified in Article 70 for election as a Member of Parliament.

[44] The Petitioner contends that the Respondents' decision to the extent to which it seeks to repeal and re-enact Article 51 of the Constitution to remove the restriction on eligibility to stand for election as an independent candidate for a National Assembly seat to a person who "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" is illegal in that the said decision contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promote the democratic governance of the Republic;
- (b) Article 91(3)(a) of the Constitution, which requires the First Respondent to respect, uphold and safeguard the Constitution; and
- (c) Article 91(3)(c) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to promote democracy.

3. Repeal of Article 56: Nominations

[45] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing Article 52 of the Constitution, which reads:

Nominations

52. (1) A candidate shall file that candidate's nomination paper to a returning officer, supported by an affidavit stating that the candidate is qualified for nomination as President, Member of Parliament or councillor, in the manner, on the day, and at the time and place set by the Electoral Commission by regulation.

(2) A returning officer shall, immediately on the filing of a nomination paper, in accordance with clause (1), duly reject the nomination paper if the candidate does not meet the qualifications or procedural requirements specified for election to that office.

(3) The information contained in a nomination paper and affidavit shall be published by the Electoral Commission, as prescribed.

(4) A person may challenge, before a court or tribunal, as prescribed, the nomination of a candidate within seven days of the close of nomination and the court shall hear the case within twenty- one days of its lodgement.

(5) The processes specified in clauses (1) to (4) shall be completed at least thirty days before a general election.

(6) 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.

[46] The Petitioner contends that the Respondents' decision, to the extent to which it seeks to abolish the constitutional requirement for a candidate to file that candidate's nomination paper with a returning officer, supported by an affidavit stating that the candidate is qualified for nomination as President, Member of Parliament or Councillor, in the manner, on the day, and at the time and place set by the Electoral Commission by regulation, is illegal because it contravenes Article 61 of the Constitution, which requires the legislative authority of the Republic, derived from the people of Zambia to be exercised in a manner that protects the Constitution and promotes the democratic governance of the Republic.

4. *Repeal of Parts of Article 60 of the Constitution: Political Parties*

[47] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing and re-enacting parts of Article 60 of the Constitution to read as shown in red:

Political Parties

60. (1) A political party has the right to —

- ~~(a) disseminate information on social and economic programmes of a national character and of its political ideology;~~
- ~~(b) sponsor candidates for election or nomination to a State office in respect of which elections are required to be held; and~~
- ~~(c) conduct primary elections for the selection of candidates.~~

60. (1) A political party shall be established as prescribed.

(2) A political party shall—

- (a) promote the values and principles specified in this Constitution;
- (b) have a national character;
- (c) promote and uphold national unity;
- (d) promote and practice democracy through regular, free and fair elections within the party; and
- ~~(e) respect the right of its members to participate in the affairs of the political party;~~
- (e) subscribe to and observe the code of conduct for political parties, as prescribed.
- ~~(f) respect the right of its members to seek redress from a court or tribunal when aggrieved by a decision of the political party; and~~
- ~~(g) subscribe to and observe the code of conduct for political parties, as prescribed.~~

(3) A political party shall not—

- (a) be founded on a religious, linguistic, racial, ethnic, tribal, gender, sectoral or provincial basis or engage in propaganda based on any of these factors;
- (b) engage in or encourage violence or intimidate its members, supporters, opponents or other persons;
- (c) engage in corrupt practices; and
- (d) except as prescribed, use public resources to promote its interest or that of its members;
- (e) except as prescribed, use public resources to promote its interest or that of its members.

(4) ~~The following shall be prescribed with regard to political parties:~~

- ~~(a) the establishment and management of a Political Parties' Fund to provide financial support to political parties with seats in the National Assembly;~~
- ~~(b) the accounts of political parties which are funded under the Political Parties' Fund and the submission of audited accounts by~~

- political parties;
- ~~(c) the sources of funds for political parties;~~
- ~~(d) the maximum amount of money to be used for campaigns during elections; and~~
- ~~(e) matters incidental to matters specified in this clause.~~

[48] The Petitioner contends that, to the extent that the Respondents' decision seeks to vest in the Respondents the authority to make legislation to provide for the establishment of political parties and abolish:

(a) the obligation of political parties to:

- (i) disseminate information on social and economic programmes of a national character and of their political ideology;
- (ii) sponsor candidates for election or nomination to State offices in respect of which elections are required to be held;
- (iii) conduct primary elections for the selection of candidates; respect the right of its members to participate in the affairs of the political party; and
- (iv) respect the right of its members to seek redress from a court or tribunal when aggrieved by a decision of the political party; and

(b) the Respondents' obligation to pass legislation to provide for:

- (a) the establishment and management of a Political Parties' Fund to provide financial support to political parties with seats in the National Assembly;
- (b) the accounts of political parties which are funded under the Political Parties' Fund and the submission of audited accounts by political parties;
- (c) the sources of funds for political parties;
- (d) the maximum amount of money to be used for campaigns during elections; and
- (e) matters incidental to matters specified in this clause,

it is illegal because it contravenes:

- (a) Article 61 of the Constitution, which requires the Respondents to exercise the legislative authority of the Republic in a manner that protects the Constitution and promotes the democratic governance of the Republic;
- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the principles of social justice and for the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (d) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights and freedoms of the persons; and
- (e) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

5. Amendment of Article 101: Election of the President

[49] The Petitioner challenges the Respondents' decision to alter the Constitution by the repeal and re-enactment of parts of Article 101 of the Constitution to read as set out in red:

Election of the President

101. (1) A President shall be elected by registered voters in accordance with Article 47 (1) and this Article.

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

~~(3) If at the initial ballot a presidential candidate does not receive more than fifty percent of the valid votes cast, a second ballot shall be held within thirty-seven days of the initial ballot, where the only candidates shall be the presidential candidates who obtained~~

~~(a) the highest and second highest number of valid votes cast in the initial ballot; or~~

~~(b) an equal number of the valid votes cast in the initial ballot, being the highest votes amongst the presidential candidates that~~

~~stood for election to the office of President.~~

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

~~(4) A person may within seven days of the declaration made under clause (2), petition the Constitutional Court to nullify the election of a presidential candidate who took part in the initial ballot on the ground that—~~

~~(a) the person was not validly elected; or (b) a provision of this Constitution or other law relating to presidential elections was not complied with.~~

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

(a) the highest and second highest number of valid votes cast in the initial ballot; or

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

~~(5) The Constitutional Court shall hear an election petition filed in accordance with clause (4) within fourteen days of the filing of the petition.~~

(5) The Returning Officer shall declare as President elect—

(a) the presidential candidate who obtains more than fifty per cent of the valid votes cast;

(b) in the event of the formation of a coalition, the presidential candidate who obtains the highest number of valid votes cast; and

(c) in the case of a second ballot, the presidential candidate who obtained the majority of the valid votes cast in the second ballot.

~~(6) The Constitutional Court may, after hearing an election petition—~~

~~(a) declare the election of the presidential candidate valid;~~

~~(b) nullify the election of the presidential candidate; or~~

~~(c) disqualify the presidential candidate from being a candidate in the second ballot.~~

(6) A losing candidate may petition a presidential election in accordance with Article 103.

(7) A decision of the Constitutional Court made in accordance with clause (6) is final.

~~(8) The presidential candidate who obtains the majority of the valid votes cast in the second ballot shall be declared President-elect.~~

[50] The Petitioner contends that to the extent that the Respondents' decision seeks to provide for a presidential candidate who has failed to secure more than fifty per cent of the votes cast to team up with another presidential candidate so that their combined votes exceed fifty per cent to form a coalition government instead of going for a second ballot is illegal because the said decision contravenes:

- (a) Article 61 of the Constitution, which requires the Respondents to exercise the legislative authority of the Republic in a manner that protects the Constitution and promotes the democratic governance of the Republic;
- (b) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (c) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights and freedoms of the persons; and
- (d) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

6. Amendment of Article 102: Disqualification for Run-Off

[51] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing and re-enacting parts of Article 102 of the Constitution, shown in red:

Disqualification for run-off

~~102. (1) If a presidential candidate—~~

~~(a) resigns for a reason other than health;~~

~~(b) becomes disqualified as specified in Article 100; or~~

~~(c) is disqualified by a decision of the Constitutional Court in accordance with Article 101;~~

~~the presidential candidate shall not take part in the second ballot and the candidate who scored the third highest number of valid~~

~~votes cast in the initial ballot shall be a presidential candidate in the second ballot, together with the remaining presidential candidate that had initially qualified for the second ballot.~~

102. (1) A presidential candidate shall not take part in the second ballot, if that presidential candidate—

(a) resigns for a reason other than ill-health;

(b) becomes disqualified as specified in Article 100;

(c) is disqualified by a decision of the Constitutional Court in accordance with Article 103;

~~(2) If a presidential candidate—~~

~~(a) dies; or~~

~~(b) resigns due to ill-health;~~

~~before the taking of a second ballot, the running mate to that presidential candidate in the initial ballot shall assume the place of that presidential candidate.~~

(2) Where a presidential candidate does not take part in a second ballot because of a reason specified in clause (1), a candidate who scored the third highest number of valid votes cast in the initial ballot, shall be a presidential candidate in the second ballot, together with the remaining presidential candidate that had initially qualified for the second ballot.

~~(3) The presidential candidate who assumed the place of the previous presidential candidate in accordance with clause (2) shall appoint a running mate.~~

(3) If a presidential candidate —

(a) dies; or

(b) resigns due to ill health; before the taking of a second ballot, the running mate to that presidential candidate in the initial ballot shall assume the place of that presidential candidate.

~~(4) Where both presidential candidates—~~

~~(a) resign;~~

~~(b) become disqualified under Article 100;~~

~~(c) become disqualified by a decision of the Constitutional Court under Article 101; or~~

~~(d) die;~~

~~before the taking of the second ballot, fresh nominations shall be filed with the Electoral Commission, as prescribed.~~

(4) The presidential candidate who assumes the place of the previous presidential candidate in accordance with clause (2) shall appoint a running mate.

(5) Where both presidential candidates—

(a) resign;

(b) become disqualified under Article 100;

(c) become disqualified by a decision of the Constitutional Court under Article 103; or

(d) die;

before the taking of the second ballot, fresh nominations shall be filed with the Electoral Commission, as prescribed.

(6) A losing candidate may petition a presidential election in accordance with Article 103.

[52] The Petitioner contends that the Respondents' decision to repeal and re-enact parts of Article 102 of the Constitution serves no purpose therefore it is illegal in that it contravenes:

- (a) Article 61 of the Constitution, which requires the Respondents to exercise the legislative authority of the Republic in a manner that protects the Constitution and promotes the democratic governance of the Republic;
- (b) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (c) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

7. Amendment of Article 104: Transition Period Before Assuming Office

[53] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing parts of Article 104 of the Constitution to read:

Transition period before assuming office

104. (1) The President-elect shall be sworn into office and assume office in accordance with Article 105.

(2) Subject to clauses (3) and (4), where the Returning Officer declares a presidential candidate as President-elect, the incumbent shall continue to perform the executive functions until the President-elect assumes office, except the power to—

- (a) make an appointment; or
- (b) dissolve the National Assembly.

~~(3) Where an election petition is filed against the incumbent, under Article 103 (1), or an election is nullified, under Article 103(3) (b), the Speaker shall perform the executive functions, except the power to—~~

- ~~(a) make an appointment; or~~
- ~~(b) dissolve the National Assembly.~~

(3) Subject to Article 105, and except where the incumbent is the President-elect, the incumbent President shall, on the assumption of office by the President-elect, begin and complete the procedural and administrative handing over of the executive functions, to the

President-elect, within fourteen days from the day the President-elect assumes office.

~~(4) Subject to Article 105 and except where the incumbent is the President-elect, the incumbent President shall, on the assumption of office by the President-elect, begin and complete the procedural and administrative handing over of the executive functions, to the President-elect, within fourteen days from the day the President-elect assumes office.~~

[54] The Petitioner contends that the Respondents' decision to the extent to which it seeks to repeal parts of Article 104(3) of the Constitution, which provides that where an election petition is filed against the incumbent, under Article 103 (1), or an election is nullified, under Article 103(3) (b), the Speaker shall perform the executive functions, except the power to (a) make an appointment; or (b) dissolve the National Assembly is illegal in that the said decision contravenes:

- (a)** Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b)** Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c)** Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (d)** Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights and freedoms of the persons;
- (e)** Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law; and
- (f)** Article 92 (1) of the Constitution, which requires the First Respondent to perform, with dignity, leadership and integrity, the

acts that are necessary and expedient for, or reasonably incidental to, the exercise of the executive authority.

8. Amendment of Article 111: Tenure of Office of the Vice-President and Vacancy

[55] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing parts of Article 111 of the Constitution to read:

Tenure of Office of the Vice-President and Vacancy

111. (1) The term of office for a Vice-President is five years.

2) A Vice-President shall hold office from the date the Vice-President-elect is sworn into office and ending on the date the next President-elect is sworn into office.

~~(3) A person who has twice held the office of Vice-President shall not be selected as a running mate.~~

(4) The office of Vice-President becomes vacant if the Vice-President—

(a) dies;

(b) resigns by notice in writing to the President;

(c) otherwise ceases to hold office under Article 81, 107 or 108; or

(d) assumes the office of President.

(5) Where a vacancy occurs in the office of Vice-President, except as provided under Article 81, the President shall appoint another person to be Vice-President and the National Assembly shall, by a resolution supported by the votes of not less than two-thirds of the Members of Parliament, approve the appointment of that person as Vice-President.

~~(6) The person who assumes office as Vice-President, in accordance with clause (5), shall serve for the unexpired term of office and be deemed for the purposes of clause (3)—~~

~~(a) to have served a full term as Vice-President if, at the date on which the Vice-President assumed office, more than three years remain before the date of the next general election; or~~

~~(b) not to have served a term of office as Vice-President if, at the date on which the Vice-President assumed office, less than three years remain before the date of the next general elections.~~

[56] The Petitioner contends that the Respondents' decision to the extent to which it seeks to repeal Article 111(3) of the Constitution, which provides that a person who has twice held the office of Vice-President shall not be selected as a running mate, and Article 111 (6) of the Constitution, which provides that the person who assumes office as Vice-President, in accordance with clause (5), shall serve for the unexpired term of office and be deemed for

the purposes of clause (3) to have served a full term as Vice-President if, at the date on which the Vice-President assumed office, more than three years remain before the date of the next general election; or not to have served a term of office as Vice-President if, at the date on which the Vice-President assumed office, less than three years remain before the date of the next general elections, is illegal in that the said decision contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (d) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law; and

9. Amendment of Article 116: Ministers

[57] The Petitioner challenges the decision by the Respondents to alter the Constitution by amending Article 116 of the Constitution, which reads as set out in red:

Ministers

116. (1) The President shall appoint a prescribed number of Members of Parliament as Ministers.

(2) A Minister shall be responsible, under the direction of the President, for the policy and strategic direction of a Ministry, department or other State institution, as assigned by the President.

(3) The office of Minister becomes vacant if—

- (a) the Minister is removed from office by the President;
- (b) the Minister resigns, by notice in writing to the President;
- (c) in the case of a nominated Member of Parliament, the nomination is revoked;
- (d) the Minister dies;
- (e) another person assumes the office of President; or

~~(f) the Minister has a mental or physical disability that makes the Minister incapable of performing the functions of that office.~~

(f) the Minister is legally disqualified from performing the functions of that office; and

(4) Subject to this Constitution, a Minister shall continue to hold office until the next general election.

[58] The Petitioner contends that to the extent that the Respondents' decision to amend Article 111 of the Constitution seeks to have Ministers continue to hold office until the next general election, the said decision is illegal because it contravenes:

- (a) Article 61 of the Constitution, which provides that the legislative authority of the Republic must be exercised in a manner that protects this Constitution and promotes the democratic governance of the Republic;
- (b) Article 91(1) of the Constitution, which requires the First Respondent to exercise the executive authority to respect, uphold and safeguard the Constitution; and
- (c) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

III. Decision to Alter the Constitution That Undermine the Judiciary and Increase the Powers of the President

1. Repeal of Articles 52, 60 and 67 of the Constitution

[59] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing Article 52 and Article 60, and by amending Article 67(3) and repealing Articles 67(4), (5) and (6) of the Constitution to read:

Statutory instruments

67. (1) Article 62 or 63 shall not prevent Parliament from conferring on a person or authority power to make statutory instruments.

(2) A statutory instrument shall be published in the Gazette —

(a) not later than twenty-eight days after it is made; or

(b) in the case of a statutory instrument which will not have the

force of law unless it is approved by a person or an authority, other than a person or an authority by which it was made, not later than twenty-eight days after it is so approved;

and if the statutory instrument is not so published, it is void from the date on which it was made.

(3) A person may challenge a statutory instrument, for its constitutionality, ~~within fourteen days of the publication of the statutory instrument in the Gazette.~~

~~(4) Where the Constitutional Court considers that a challenge of a statutory instrument is frivolous or vexatious, the Constitutional Court shall dismiss the action.~~

~~(5) Where the Constitutional Court decides that a provision of a statutory instrument is inconsistent with a provision of this Constitution, that statutory instrument is void from the date on which it was made.~~

~~(6) A Member of Parliament who intends to challenge a statutory instrument, on its constitutionality, shall follow the procedure laid down in the Standing Orders of the National Assembly.~~

[60] The Petitioner contends that the Respondents' decision to:

- (a) repeal Article 52 of the Constitution, to the extent to which it seeks to take away the Constitutional Court's jurisdiction or authority to examine and decide on the constitutionality of any Presidential, Parliamentary and Local Government election candidate's nomination;
- (b) repeal parts of Article 60 of the Constitution to the extent to which the said decision seeks to take away the Constitutional Court's jurisdiction concerning matters over the internal affairs of political parties; and
- (c) amend Article 67(3) and repealing Articles 67(4), (5) and (6) of the Constitution, to the extent to which the said decision seeks to limit the Constitutional Court's jurisdiction to decide on the constitutionality of Statutory Instruments

is illegal because it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes the democratic governance of the Republic;

- (b) Article 91(3)(a) of the Constitution, which requires the First Respondent to respect, uphold and safeguard the Constitution in the exercise of the executive authority of the State; and
- (c) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

2. Amendment of Article 94: Approval of Appointment and Measures by the National Assembly

[61] The Petitioner challenges the Respondent's decision to alter the Constitution by repealing and re-enacting parts of Article 94 of the Constitution to read as set out in red:

Approval of appointments and measures by National Assembly

~~94. (1) Where the performance of an executive function is expressed by this Constitution to be subject to approval by the National Assembly, the National Assembly shall, in the sitting next after receipt of the request for approval, give the approval within twenty-one days of the commencement of the sitting.~~

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

~~(2) Where an approval is not given within the period specified in clause (1) or the National Assembly unreasonably refuses to give an approval as requested, the President shall refer the matter to the Constitutional Court for hearing and the decision of the Constitutional Court is final.~~

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

~~(3) Where the Constitutional Court decides that the refusal or delay by the National Assembly was justified, the President shall comply with the order of the Court.~~

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

~~(4) Where the Constitutional Court decides that the refusal or~~

~~delay by the National Assembly was unreasonable, the National Assembly shall proceed to approve the matter.~~

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

[62] The Petitioner contends that the Respondents' decision to amend Article 94 of the Constitution is illegal to the extent to which it seeks to repeal the First Respondent's obligation, where an approval is not given within the period specified or the National Assembly unreasonably refuses to give an approval to the President's measure or appointment, to refer the matter to the Constitutional Court for hearing and the decision of the Constitutional Court being final, because it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (c) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

3. Amendment of Article 103: Election

[63] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing and re-enacting parts of Article 103 of the Constitution, to read as set out in red:

Election Petition

~~103. (1) A person may, within seven days of the declaration of a President-elect, petition the Constitutional Court to nullify the election of the President-elect on the ground that—~~

- ~~(a) the person was not validly elected; or~~
- ~~(b) a provision of this Constitution or other law relating to presidential elections was not complied with.~~

103. (1) A losing candidate may, within seven days of the

declaration made under Article 101(2) and (5), petition the Constitutional Court to nullify the election of a presidential candidate who took part in the initial ballot on the ground that —

- (a) the person was not validly elected; or
- (b) a provision of this Constitution or other written law relating to presidential elections was not complied with.

~~(2) The Constitutional Court shall hear an election petition relating to the President-elect within fourteen days of the filing of the petition.~~

(2) The Constitutional Court shall hear and determine an election petition filed in accordance with clause (1) within thirty days of the filing of the petition.

(3) The Constitutional Court may, after hearing an election petition—

(a) declare the election of the President-elect valid;

(b) nullify the election of the President-elect and Vice-President-elect

(b) nullify the election of the President-elect;

(c) disqualify the President-elect from being a candidate in the second ballot; or

(d) grant any other relief the court considers just.

(4) A decision of the Constitutional Court under clause (3) is final.

~~(5) Where the election of the President-elect and Vice-President-elect is nullified by the Constitutional Court, a presidential election shall be held within thirty days from the date of the nullification.~~

(5) A losing candidate may, within seven days of the declaration of President-elect, by the Returning Officer following the second ballot, petition the Constitutional Court to nullify the election of the President-elect on the ground that—

(a) the person was not validly elected; or

(b) a provision of this Constitution or other written law relating to presidential elections was not complied with.

(6) The Constitutional Court shall hear and determine an election petition relating to the President-elect within thirty days of the filing of the petition.

(7) Where the election of the President-elect and Vice President is nullified by the Constitutional Court, a presidential election shall be held within sixty days from the date of the nullification.

[64] The Petitioner contends, to the extent that the Respondents' decision to amend Article 103 of the Constitution seeks to change the time in which the Constitutional Court may hear and decide an election from 14 days to 30 days and the time within which a fresh election can be held where the

election of the President-elect has been nullified by the Constitutional Court from 30 days to 60 days from date of nullification, is illegal because it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (c) Article 91(3)(f) of the Constitution, which requires the First Respondent in exercise of the executive authority of the State, to uphold the rule of law.

4. Amendment of Article 124: Establishment and Composition of the Supreme Court

[65] The Petitioner challenges the decision of the Respondents to alter the Constitution by repealing and re-enacting Article 124(c) of the Constitution to read as set out in red:

Establishment and Composition of Supreme Court

124. There is established the Supreme Court, which consists of —

- (a) the Chief Justice;
- (b) the Deputy Chief Justice; and
- ~~(c) eleven other judges or a higher number of judges, as prescribed.~~
- (c) an uneven number of judges, as prescribed.

[66] The Petitioner contends that the decision by the Respondents to repeal Article 124(c) of the Constitution, which provides that the Supreme Court shall consist of eleven Judges or a higher number as prescribed and provide that the Supreme Court shall consist of an uneven number to be determined by the Respondents through an Act of Parliament is illegal because the said decision contravenes:

- (a) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;

- (b) Article 91(3)(a) of the Constitution, which mandates the First Respondent, in exercise of the executive authority of the Republic, to respect, uphold and safeguard the Constitution; and
- (c) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

5. Amendment of Article 127 of the Constitution: Establishment and Composition of Constitutional Court

[67] The Petitioner challenges the decision by the Respondents to alter the Constitution by repealing and re-enacting parts of Article 127 of the Constitution to read as set out in red:

Establishment and Composition of Constitutional Court

127. There is established the Constitutional Court which consists of —

- ~~(a) the President of the Constitutional Court;~~
- ~~(b) the Deputy President of the Constitutional Court; and~~
- ~~(c) eleven other judges or a higher number of judges, as prescribed.~~
- (a) the Chief Justice;
- (b) the President of the Constitutional Court; and
- (c) an uneven number of judges, as prescribed.

[68] The Petitioner contends that the Respondents' decision to change the composition of the Constitutional Court set out in Article 127 of the Constitution, which is currently made up of: (a) the President of the Constitutional Court; (b) the Deputy President of the Constitutional Court; and (c) eleven other judges or a higher number of judges, as prescribed to comprise (a) the Chief Justice; (b) the President of the Constitutional Court; and (c) an uneven number of judges, to be decided by the Respondents in an Act of Parliament is illegal because it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;

- (b) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (c) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

6. Amendment of Article 129 of the Constitution: Sittings of the Constitutional Court

[69] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing and re-enacting Article 129 of the Constitution, to read as set out in red:

Sittings of Constitutional Court

~~129. (1) The Constitutional Court shall be constituted by an uneven number of not less than three judges, except when hearing an interlocutory matter.~~

~~(2) The Constitutional Court shall be constituted by one judge when hearing an interlocutory matter.~~

~~(3) The full bench of the Constitutional Court shall be constituted by an uneven number of not less than five judges.~~

~~(4) The Constitutional Court shall be presided over by—~~

~~(a) the President of the Constitutional Court;~~

~~(b) in the absence of the President of the Constitutional Court, the Deputy-President of the Constitutional Court; and~~

~~(c) in the absence of the Deputy-President of the Constitutional Court, the most senior judge of the Constitutional Court, as constituted.~~

~~129. The sittings of the Constitutional Court shall be as prescribed.~~

[70] The Petitioner contends that the Respondents' decision to repeal Article 129 of the Constitution, which provides that the Constitutional Court shall be constituted by an uneven number of not less than three judges, except when hearing an interlocutory matter; the Constitutional Court shall be constituted by one judge when hearing an interlocutory matter; the full bench of the Constitutional Court shall be constituted by an uneven number of not less than five judges; the Constitutional Court shall be presided over by the President of the Constitutional Court, in the absence of the President of the Constitutional

Court, the Deputy-President of the Constitutional Court; and in the absence of the Deputy-President of the Constitutional Court, the most senior judge of the Constitutional Court, as constituted; and re-enact Article 129 of the Constitution to vest authority in the Respondents, through an Act of Parliament, to stipulate the sittings of the Constitution is illegal because it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (d) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights and freedoms of the persons;
- (e) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law; and
- (f) Article 92 (1) of the Constitution, which requires the First Respondent to perform, with dignity, leadership and integrity, the acts that are necessary and expedient for, or reasonably incidental to, the exercise of the executive authority.

7. Repeal of Articles 138, 139, 140(d) and 143(a) of the Constitution: President and Deputy President of the Constitutional Court and Removal of Judges

[71] The Petitioner challenges the Respondents' decision to alter the Constitution by:

- (a) repealing Article 138 of the Constitution, which reads:

President of Constitutional Court

~~138. (1) There shall be a President of the Constitutional Court who is the head of the Constitutional Court.~~

~~(2) The President of the Constitutional Court shall be responsible for the administration of the Constitutional Court under the direction of the Chief Justice.~~

(b) repealing Article 139 of the Constitution, which reads:

Deputy President of the Constitutional

~~139. (1) There shall be a Deputy President of the Constitutional Court who shall—~~

~~(a) perform the functions of the President of the Constitutional Court, when the President of the Constitutional Court is absent or there is a vacancy in the office of President of the Constitutional Court;~~

~~(b) assist the President of the Constitutional Court in the administration of the Constitutional Court; and~~

~~(c) perform the functions assigned by the President of the Constitutional Court.~~

~~(2) The President shall, in consultation with the Judicial Service Commission, designate a judge of the Constitutional Court to perform the functions of the Deputy President of the Constitutional Court where—~~

~~(a) the office of the Deputy President of the Constitutional Court is vacant;~~

~~(b) the Deputy President of the Constitutional Court is acting as President of the Constitutional Court; or~~

~~(c) the Deputy President of the Constitutional Court is for a reason unable to perform the functions of that office.~~

(c) repealing and re-enacting Article 140(d) of the Constitution to read as set out in red:

Appointment of Judges

140. The President shall, on the recommendation of the Judicial Service Commission and subject to ratification by the National Assembly, appoint the—

(a) Chief Justice;

(b) Deputy Chief Justice;

(c) President of the Constitutional Court;

(d) Deputy President of the Constitutional Court; and

(d) other judges.

[72] repealing Article 143(a) of the Constitution, which reads:

143. A judge shall be removed from office on the following grounds:

(a) a mental or physical disability that makes the judge incapable

- of performing judicial functions;
- (b) incompetence;
- (c) gross misconduct; or
- (d) bankruptcy.

[73] The Petitioner contends that the Respondents' decision is illegal, to the extent that it seeks to repeal: Article 138 of the Constitution, which provides for the office of the President of the Constitutional Court and that the President of the Constitutional Court is responsible for the administration of the Constitutional Court under the direction of the Chief Justice; Article 139 of the Constitution, which provides for the office of and appointment of the Deputy President of the Constitutional Court; Article 140(d) of the Constitution, which provides for the appointment of the Deputy President of the Constitution by the President subject to ratification of the National Assembly and Article 143(a) of the Constitution, which provides for the removal of a Judge on grounds of a mental or physical disability that makes the judge incapable of performing judicial functions, in that it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (c) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

8. Amendment of Article 144: Procedure for Removal of Judge

[74] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing and re-enacting parts of Article 144 of the Constitution to read as set out in red:

Procedure for removal Judge

~~144. (1) The removal of a judge may be initiated by the Judicial Complaints Commission or by a complaint made to the Judicial~~

~~Complaints Commission, based on the grounds specified in Article 143.~~

(1) The removal of a judge may be initiated by the Judicial Service Commission or by a complaint made to the Judicial Service Commission, based on the grounds specified in Article 143.

~~(2) The Judicial Complaints Commission shall, where it decides that a prima facie case has been established against a judge, submit a report to the President.~~

(2) The Judicial Service Commission shall, where it decides that a prima facie case has been established against a judge, submit a report to the President.

~~(3) The President shall, within seven days from the date of receiving the report, submitted in accordance with clause (2), suspend the judge from office and inform the Judicial Complaints Commission of the suspension.~~

(3) The President shall, within seven days from the date of receiving the report, submitted in accordance with clause (2), suspend the judge from office and appoint a Tribunal.

~~(4) The Judicial Complaints Commission shall, within thirty days of the judge being suspended from office, in accordance with clause (3)—~~

~~(a) hear the matter against the judge on the grounds specified in Article 143 (b), (c) and (d); or~~

~~(b) constitute a medical board, in consultation with the body responsible for regulating health practitioners, to inquire into the matter against the judge based on the ground specified in Article 143(a).~~

(4) The Tribunal shall consist of a Chairperson and at least two members, who all hold or have held the office of judge.

~~(5) Where the Judicial Complaints Commission decides that an allegation based on a ground specified in Article 143(b), (c) and (d) is—~~

~~(a) not substantiated, the Judicial Complaints Commission shall recommend, to the President, the revocation of the judge's suspension and the President shall immediately revoke the suspension; or~~

~~(b) substantiated, the Judicial Complaints Commission shall recommend, to the President, the removal of the judge from office and the President shall immediately remove the judge from office.~~

(5) The Tribunal shall, within thirty days of the judge being suspended from office, under clause (3)— (a) hear and determine the matter against the judge on the grounds specified in Article 143 (b), (c) or (d); or (b) constitute a medical board, in consultation with the body responsible for regulating health practitioners, to inquire into an allegation based on the ground specified in Article 143(a).

~~(6) The proceedings under clause (4) (a) shall be held in camera and the judge is entitled to appear, be heard and be represented by a legal practitioner or other person chosen by the judge.~~

(6) Where the Tribunal decides that an allegation based on a ground specified in Article 143 (b), (c) or (d) is — (a) not substantiated, the Tribunal shall recommend, to the President, the revocation of the judge's suspension and the President shall immediately revoke the suspension; or (b) substantiated, the Tribunal shall recommend, to the President, the removal of the judge from office and the President shall immediately remove the judge from office.

~~(7) The medical board, constituted in accordance with clause (4) (b), shall consist of not less than three registered health practitioners.~~

(7) The proceedings under clause (5) (a) shall be held in camera and the judge is entitled to appear, be heard and represented by a legal practitioner or other person chosen by the judge.

~~(8) The medical board shall, within thirty days of being constituted, examine the judge and report to the Judicial Complaints Commission on the judge's capacity to perform the judicial functions.~~

(8) The medical board, constituted in accordance with clause (5) (b), shall consist of not less than three registered health practitioners.

~~(9) Where the medical board recommends to the Judicial Complaints Commission that the judge is—~~

~~(a) physically or mentally capable of performing the judicial functions, the Judicial Complaints Commission shall recommend to the President the revocation of the judge's suspension and the President shall immediately revoke the suspension; or~~

~~(b) not physically or mentally capable of performing the judicial functions, the Judicial Complaints Commission shall recommend to the President the removal of the judge from office and the President shall immediately remove the judge from office.~~

(9) The medical board shall, within thirty days of being constituted, examine the judge and report to the Tribunal on the judge's capacity to perform the judicial functions.

~~(10) A judge who refuses to submit to an examination, in accordance with clause (8), shall immediately be removed from office by the President.~~

(10) Where the medical board recommends to the Tribunal that the judge is— (a) capable of performing the judicial functions, the Tribunal shall recommend to the President the revocation of the judge's suspension and the President shall immediately revoke the suspension; or (b) incapable of performing the judicial functions, the Tribunal shall recommend to the President the removal of the judge from office and the President shall immediately remove the judge from office.

(11) A judge who refuses to submit to an examination, in accordance with clause (9), shall immediately be removed from office by the President.

[75] The Petitioner contends that the decision by the Respondents to amend Article 144 of the Constitution is illegal to the extent to which it seeks to confer authority:

- (a)** in the Judicial Service Commission in its own right or on a complaint received by the Judicial Service Commission to initiate the process for the removal of a Judge on the grounds specified in Article 143;
- (b)** in the Judicial Service Commission, where it decides that a *prima facie* case has been established against a judge, to submit a report to the President;
- (c)** in the President, within seven days from the date of receiving the report that a *prima facie* case has been made against a Judge to suspend the judge from office and appoint a Tribunal consisting of a Chairperson and at least two members, who hold or have held the office of judge,

because it contravenes:

- (a)** Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b)** Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (c)** Article 91(3)(c) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to promote democracy;
- (d)** Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State, to promote and protect the rights and freedoms of the persons;
- (e)** Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in the manner that upholds the rule of law; and

- (f) Article 92 (1) of the Constitution, which requires the First Respondent to perform, with dignity, leadership and integrity, the acts that are necessary and expedient for, or reasonably incidental to, the exercise of the executive authority.

IV. Decision to Alter the Constitution to Increase the Powers of the President

1. Amendment of Article 92: Executive Functions of the President

[76] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing and re-enacting Article 92(c) of the Constitution to read as set out in red:

Executive functions of President

92. (1) The President shall perform, with dignity, leadership and integrity, the acts that are necessary and expedient for, or reasonably incidental to, the exercise of the executive authority.

(2) Without limiting the other provisions of this Constitution, the President shall—

(a) appoint ambassadors, high commissioners, plenipotentiaries, diplomatic representatives and ~~consuls~~ consuls general;

(b) receive and accredit foreign ambassadors, high commissioners, plenipotentiaries, diplomatic representatives, ~~consuls~~ consuls general and heads of international organisations;

~~(c) negotiate and sign international agreements and treaties and, subject to the approval of the National Assembly, ratify or accede to international agreements and treaties;~~

(c) negotiate and sign international agreements and treaties and, ratify or accede to, or withdraw from, international agreements and treaties;

(d) establish, merge and dissolve Government ministries, subject to the approval of the National Assembly;

(e) appoint persons as are required by this Constitution or any other law to be appointed by the President;

(f) appoint persons as are required to perform special duties for the Executive;

(g) confer honours;

(h) sign and promulgate proclamations as specified in this Constitution or as prescribed;

(i) initiate Bills for submission to, and consideration by, the National Assembly; and

(j) perform other functions specified by this Constitution.

[77] The Petitioner contends that the Respondents' decision to amend Article 92(2) (c) of the Constitution is illegal to the extent that it seeks to confer upon the First Respondent the authority to negotiate and sign international agreements and treaties and, ratify or accede to, or withdraw from, international agreements and treaties without the approval of the National Assembly in that it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people; and
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution.

2. Amendment of Article 94: Approval of Appointment and Measures by the National Assembly

[78] The Petitioner challenges the Respondent's decision to alter the Constitution by repealing and re-enacting Article 94 of the Constitution to read as set out in red:

Approval of appointments and measures by National Assembly

~~94. (1) Where the performance of an executive function is expressed by this Constitution to be subject to approval by the National Assembly, the National Assembly shall, in the sitting next after receipt of the request for approval, give the approval within twenty-one days of the commencement of the sitting.~~

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

~~(2) Where an approval is not given within the period specified in clause (1) or the National Assembly unreasonably refuses to give~~

~~an approval as requested, the President shall refer the matter to the Constitutional Court for hearing and the decision of the Constitutional Court is final.~~

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

~~(3) Where the Constitutional Court decides that the refusal or delay by the National Assembly was justified, the President shall comply with the order of the Court.~~

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

~~(4) Where the Constitutional Court decides that the refusal or delay by the National Assembly was unreasonable, the National Assembly shall proceed to approve the matter.~~

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

[79] The Petitioner contends that the Respondents' decision to amend Article 94 of the Constitution in order to empower the National Assembly to give approval to the President's request within thirty days instead of twenty-one days of the commencement of the sitting of the National Assembly and where the approval is not given within thirty days, for the President to propose another measure or appoint another person to that office and submit the new measure or appointment for approval by the National Assembly and for the President's measure or appointment to pass when made for the third time, notwithstanding the refusal or delay of approval by the National Assembly is illegal because contravenes:

(a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;

(b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people; and

- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution.

V. Decision to Alter the Constitution which Undermine Parliament and Increase the Powers of the President

1. Amendment of Article 63 of the Constitution: Functions of Parliament and National Assembly

[80] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing Articles 63(d) and (e), which read:

Functions of Parliament and National Assembly

63. (1) Parliament shall enact legislation through Bills passed by the National Assembly and assented to by the President.

(2) The National Assembly shall oversee the performance of executive functions by—

(a) ensuring equity in the distribution of national resources amongst the people of Zambia;

(b) appropriating funds for expenditure by State organs, State institutions, provincial administration, local authorities and other bodies;

(c) scrutinising public expenditure, including defence, constitutional and special expenditure;

~~(d) approving public debt before it is contracted; and~~

~~(e) approving international agreements and treaties before these are acceded to or ratified.~~

[81] The Petitioner contends that the Respondents' decision to the extent that it seeks to abolish the power of the National Assembly to approve public debt before it is contracted and approve international agreements and treaties before they are acceded to or ratified is illegal in that it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;

- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law; and
- (d) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution.

2. Amendment of Article 68 of the Constitution: Elections to National Assembly and Members of Parliament

[82] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing and re-enacting Article 68 of the Constitution to read as set out in red:

Elections to National Assembly and Members of Parliament

~~68. (1) A Member of Parliament shall be elected in accordance with Article 47 (2) and this Article.~~

~~(2) The National Assembly shall consist of—~~

~~(a) one hundred and fifty-six members directly elected on the basis of 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; and~~

~~(e) the First and Second Deputy Speakers.~~

68. Subject to Article 47, the election, nomination, qualification and vacation of office of a Member of Parliament shall be prescribed.

[83] The Petitioner contends that the Respondents' decision to repeal and re-enact Article 68 of the Constitution, to the extent that it seeks to vest authority in the Respondents, through an Act of Parliament to stipulate the procedure for election of Members of Parliament, nomination procedure, qualifications and instances when the office of Member of Parliament may be vacant is illegal in that the said decision contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (d) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

3. Amendment of Article 69 of the Constitution: Nominated Members of Parliament

[84] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing Article 69 of the Constitution which reads:

Nominated Members of Parliament

~~69. (1) The President may nominate a person referred to in Article 68~~

~~(2) (b) where the President considers it necessary to enhance the representation of special interests, skills or gender in the National Assembly.~~

~~(2) A person may be nominated as a Member of Parliament if the person qualifies to be elected as such under Article 70.~~

~~(3) A person who was a candidate for election in the last preceding general election or a subsequent by-election is not eligible to be nominated as a Member of Parliament.~~

[85] The Petitioner contends that the Respondents' decision is illegal to the extent that it seeks to repeal Article 69 of the Constitution and abolish the position of Nominated Members of Parliament, in that the said decision contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects

the Constitution and promotes democratic governance of the Republic;

- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people; and
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution.

4. Amendment of Article 70: Qualifications and Disqualification of Members of Parliament

[86] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing Article 70 of the Constitution, which reads:

Qualifications and Disqualifications of Members of Parliament

70. (1) Subject to clause

~~(2), a person is eligible to be elected as a Member of Parliament, 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.~~

~~(2) A person is disqualified from being elected as a Member of Parliament if that person—~~

~~(a) is validly nominated as a candidate in a presidential election;~~

~~(b) is a public officer or Constitutional office holder;~~

~~(c) is a judge or judicial officer;~~

~~(d) has a mental or physical disability that would make the person incapable of performing the legislative function;~~

~~(e) is an undischarged bankrupt;~~

~~(f) is serving a sentence of imprisonment for an offence under a written law;~~

~~(g) has, in the immediate preceding five years, served a term of imprisonment of at least three years;~~

~~(h) has, in the immediate preceding five years, been removed from public office on grounds of gross misconduct; or~~

~~(i) holds or is acting in an office, as prescribed, the functions of which involve or are connected with the conduct of elections.~~

[87] The Petitioner contends that the Respondents' decision to repeal Article 70 of the Constitution, which provides for the qualification and disqualification to stand for election as a Member of the National Assembly is illegal because it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (d) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State, to promote and protect the rights and freedoms of the persons.

5. Repeal of Article 71 of the Constitution: Nominations for election to National Assembly

[88] The Petitioner challenges the decision of the Respondents to alter the Constitution by repealing Article 71 of the Constitution, which reads:

~~Nominations for election to National Assembly~~

~~71. A nomination for election to the National Assembly is valid if the candidate—~~

~~(a) has paid a prescribed election fee to the Electoral Commission; and~~

~~(b) is supported by at least fifteen persons registered as voters in the constituency in which the candidate is standing for election.~~

[89] The Petitioner contends that the Respondents' decision to repeal Article 71 of the Constitution, which provides for the validity of the nomination for election to the National Assembly is illegal in that it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic; and
- (b) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution.

6. Repeal of Article 72 of the Constitution: Vacation of Office as Member of Parliament and Dissolution of Political Party

[90] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing Article 72 of the Constitution, which reads:

~~Vacation of Office as Member of Parliament and Dissolution of Political Party~~

~~72. (1) A Member of Parliament shall, except the Speaker and the First Deputy Speaker, vacate the seat in the National Assembly upon a dissolution of Parliament.~~

~~(2) The office of Member of Parliament becomes vacant if the member—~~

- ~~(a) resigns by notice, in writing, to the Speaker;~~
- ~~(b) becomes disqualified for election in accordance with Article 70;~~
- ~~(c) acts contrary to a prescribed code of conduct;~~
- ~~(d) resigns from the political party which sponsored the member for election to the National Assembly;~~
- ~~(e) is expelled from the political party which sponsored the member for election to the National Assembly;~~
- ~~(f) ceases to be a citizen;~~
- ~~(g) having been elected to the National Assembly, as an independent candidate, joins a political party;~~
- ~~(h) is disqualified as a result of a decision of the Constitutional Court; or~~
- ~~(i) dies.~~

~~(3) The office of a nominated Member of Parliament becomes vacant if the member—~~

- ~~(a) resigns by notice, in writing, to the speaker;~~
- ~~(b) is disqualified under Article 70;~~
- ~~(c) acts contrary to a prescribed code of conduct;~~
- ~~(d) ceases to be a citizen;~~
- ~~(e) dies; or~~
- ~~(f) has the member's nomination revoked by the President.~~

~~(4) A person who causes a vacancy in the National Assembly due to the reasons specified under clause (2) (a), (b), (c), (d), (g) and~~

~~(h) shall not, during the term of that Parliament —~~

~~(a) be eligible to contest an election; or~~

~~(b) hold public office.~~

~~(5) Where a Member of Parliament is expelled as provided in clause (2) (e), the member shall not lose the seat until the expulsion is confirmed by a court, except that where the member does not challenge the expulsion in court and the period prescribed for challenge lapses, the member shall vacate the seat in the National Assembly.~~

~~(6) Where a court determines that an expulsion of a member, as provided in clause (2) (e), was not justified, there shall be no by-election for that seat and the member shall opt to —~~

~~(a) remain a member of the political party and retain the seat; or~~

~~(b) resign from the political party and retain the seat as an independent member.~~

~~(7) Where a court determines that an expulsion of a member, as provided in clause (2) (e), was justified, the member shall vacate the seat in the National Assembly.~~

~~(8) Where a vacancy occurs in the National Assembly, the Speaker shall, within seven days of the occurrence of the vacancy, inform the Electoral Commission of the vacancy, in writing, and a by-election shall be held in accordance with Article 57.~~

~~(9) If a political party is dissolved, a Member of Parliament shall retain the member's seat as an independent member.~~

[91] The Petitioner contends that the Respondents' decision to repeal Article 72 of the Constitution, which provides for Members of the National Assembly, other than the Speaker and Deputy Speaker, to vacate their seats on the dissolution of the National Assembly; when the seat of a Member of the National Assembly can be said to be vacant during the life of the National Assembly; the effect of expulsion of a Member of the National Assembly by the political party that sponsored the Member of the National Assembly; and the effect on the Member of the National Assembly, in the event of the dissolution of the political party that sponsored that Member of Parliament, is illegal in that it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;

- (b) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (c) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights and freedoms of the persons.

7. Amendment of Article 78: Voting in the National Assembly

[92] The Petitioner challenges the decision by the Respondents to alter the Constitution by repealing and re-enacting Article 78(2)(b) and enacting Article 78(3) of the Constitution to read as set out in red:

Voting in National Assembly

78. (1) Except as otherwise provided in this Constitution, a question proposed for decision in the National Assembly shall be determined by a majority of the Members of Parliament present and voting.

(2) On a question proposed for decision in the National Assembly —

(a) the Speaker shall have no vote; and

~~(b) in the case of a tie, the question shall be lost.~~

(b) in the case of a tie, another vote shall be taken.

(3) If at the conclusion of a second vote, there is a tie, a third vote shall be taken, and in the event of a tie, the question shall be lost.

[93] The Petitioner contends that the Respondents' decision to repeal Article 78(2)(b) and re-enact the same to require another vote to be taken in the event of a tie and to enact Article 78(3) of the Constitution to require a second vote to be taken in the National Assembly, in the event of a tie, and for the vote to be lost only in the event of a tie on the third vote, is illegal because it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic; and

- (b) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution.

8. Amendment of Article 81 of the Constitution: Term and prorogation of Parliament

[94] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing and re-enacting parts of Article 81 of the Constitution, to read as set out in red:

Term and prorogation of Parliament

81. (1) 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.

(2) The National Assembly may, when the Republic is at war, by resolution supported by a simple majority vote of the Members of Parliament, extend the term of Parliament for not more than twelve months at a time.

~~(3) Parliament shall stand dissolved ninety days before the holding of the next general election.~~

(3) Subject to clauses (4), (5) and (6), the President may dissolve Parliament if the Executive cannot effectively govern the Republic due to the failure of the National Assembly to objectively and reasonably carry out its legislative function.

~~(4) Subject to clauses (5), (6) and (7), the President may dissolve Parliament if the Executive cannot effectively govern the Republic due to the failure of the National Assembly to objectively and reasonably carry out its legislative function.~~

(4) Where the President intends to dissolve Parliament in accordance with clause (3), the President shall inform the public and refer the matter, within seven days, to the Constitutional Court.

~~(5) Where the President intends to dissolve Parliament in accordance with clause (4), the President shall inform the public and refer the matter, within seven days, to the Constitutional Court.~~

(5) The Constitutional Court shall hear the matter, referred to it in accordance with clause (4), within seven days of receipt of the matter.

~~(6) The Constitutional Court shall hear the matter, referred to it in accordance with clause (5), within seven days of receipt of the matter.~~

(6) The Constitutional Court shall, where it decides that the situation in clause (3) exists, inform the President and the

President shall dissolve Parliament.

~~(7) The Constitutional Court shall, where it decides that the situation in clause (4) exists, inform the President and the President shall dissolve Parliament.~~

(7) Where Parliament is dissolved under clauses (3), the President shall, until the President-elect assumes office, continue to perform the executive functions, in accordance with Article 104.

~~(8) Where Parliament is dissolved under clauses (3) and (4), the President shall, until the President-elect assumes office, continue to perform the executive functions, in accordance with Article 104.~~

(8) Where Parliament is dissolved under clauses (3) and (4), general elections shall be held within ninety days of the dissolution.

~~(9) Where Parliament is dissolved under clauses (3) and (4), general elections shall be held within ninety days of the dissolution.~~

(9) The President may, due to a state of war, state of public emergency or threatened state of public emergency, after the dissolution of Parliament and before the holding of general elections, recall the National Assembly that was dissolved.

~~(10) The President may, due to a state of war, state of public emergency or threatened state of public emergency, after the dissolution of Parliament and before the holding of general elections, recall the National Assembly that was dissolved.~~

(10) The President may, in consultation with the Speaker, prorogue Parliament by proclamation.

[95] The Petitioner contends that the Respondents' decision to repeal Article 81(3) of the Constitution, which provides that "Parliament shall stand dissolved ninety days before the holding of the next general election"; and to repeal and re-enact Article 81(10) to empower the President in consultation with the Speaker to prorogue Parliament by Proclamation is illegal in that it contravenes:

(a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic; and

(b) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution.

9. Amendment of Article 83 of the Constitution: Removal of the Speaker on Specified Grounds

[96] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing and re-enacting parts of Article 83 of the Constitution to read as set out in red:

83. (1) A Member of Parliament, supported by at least one-third of the Members of Parliament, may move a motion for the removal of the Speaker or a Deputy Speaker, alleging that the Speaker or Deputy Speaker has—

(a) violated this Constitution;

~~(b) a mental or physical disability that makes the Speaker or Deputy Speaker incapable of performing the functions of the office of Speaker or Deputy Speaker; or~~

(b) been legally disqualified from performing the functions of the Office of Speaker or Deputy Speaker;

(c) committed gross misconduct.

(2) The motion shall specify the particulars of the allegation.

(3) Where a motion is supported by a resolution of two-thirds of the Members of Parliament, the Speaker or Deputy Speaker shall be suspended from office and the National Assembly shall refer the matter to a parliamentary committee.

(4) The parliamentary committee, to which the matter has been referred in accordance with clause (3), shall, within seven days of the reference—

(a) investigate the matter, and the Speaker or Deputy Speaker has the right to appear, be heard and be represented before the parliamentary committee; and

(b) report to the National Assembly whether or not the particulars of the allegations specified in the motion have been substantiated.

(5) Where the parliamentary committee reports that the particulars of the allegation against the Speaker or Deputy Speaker—

~~(a) are not substantiated, the National Assembly shall, on a motion supported by the votes of not less than two-thirds of the Members of Parliament, taken by secret ballot, resolve that the Speaker or Deputy Speaker—~~

~~(i) did not commit the violations specified in the motion; and~~

~~(ii) be reinstated; or~~

(a) are not substantiated, the National Assembly shall, reinstate the Speaker or Deputy Speaker; or

(b) are substantiated, the National Assembly shall, on a motion supported by the votes of not less than two-thirds of the Members of Parliament, taken by secret ballot, resolve that the Speaker or Deputy Speaker has committed the violations specified in the motion and that the Speaker or Deputy Speaker cease to hold

office forthwith.

(6) Where a resolution is made, in accordance with clause (5) (b), an election of Speaker or Deputy Speaker shall be conducted within seven days of the resolution, in accordance with Article 82.

[97] The Petitioner contends that the Respondents' decision to alter the Constitution by repealing Article 83(1)(b) of the Constitution, which vests authority in a Member of Parliament, supported by at least one- third of the Members of Parliament, to move a motion for the removal of the Speaker or a Deputy Speaker, alleging that the Speaker or Deputy Speaker has a mental or physical disability that makes the Speaker or Deputy Speaker incapable of performing the functions of the office of Speaker or Deputy Speaker; and re-enacting Article 83(1)(b) of the Constitution to vest authority in a Member of Parliament, supported by at least one- third of the Members of Parliament, to move a motion for the removal of the Speaker or a Deputy Speaker, alleging that the Speaker or Deputy Speaker has been legally disqualified from performing the functions of the Office of Speaker or Deputy Speaker"; and to repeal Article 83(5)(a) of the Constitution, which vests power in the National Assembly, based on a parliamentary committee report to resolve that the particulars of the allegation against the Speaker or Deputy Speaker on a motion supported by the votes of not less than two-thirds of the Members of Parliament, taken by secret ballot resolve that the Speaker or Deputy Speaker (i) did not commit the violations specified in the motion; and (ii) be reinstated; and the re-enactment of Article 83(5)(a) of the Constitution which requires the reinstatement of the Speaker or Deputy Speaker on the premise that the allegations are not substantiated, the National Assembly shall, reinstate the Speaker or Deputy Speaker, is illegal in that it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and

(c) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

10. Amendment of Article 84: Clerk of the National Assembly

[98] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing and re-enacting Article 84 of the Constitution to read as set out in red:

Clerk of National Assembly

~~84. (1) There shall be a Clerk of the National Assembly who shall be appointed by the Parliamentary Service Commission, subject to ratification by the National Assembly.~~

~~(2) A person shall not be appointed Clerk of the National Assembly unless that person has the academic qualifications, experience and skills prescribed.~~

~~(3) Subject to clause (5), the Clerk of the National Assembly shall retire on attaining the age of sixty-five years.~~

~~(4) The Clerk of the National Assembly may retire, with full benefits, on attaining the age of sixty years.~~

~~(5) The National Assembly may, by a resolution supported by the votes of not less than two-thirds of the Members of Parliament, remove the Clerk of the National Assembly on the same grounds and procedure that apply to the removal of a judge.~~

~~(6) The Clerk of the National Assembly may resign from office by three months' notice, in writing, to the Speaker.~~

84. (1) There shall be a Clerk of the National Assembly who shall be appointed as prescribed.

[99] The Petitioner contends that the Respondents' decision, to repeal Article 84 of the Constitution, which provides for a person with the academic qualifications, experience and skills set out in an Act of Parliament to be appointed Clerk of the National Assembly by the Parliamentary Service Commission, subject to ratification by the National Assembly; retirement of the Clerk of the National Assembly on attaining the age of sixty-five years; the option to retire, with full benefits, on attaining the age of sixty years; the National Assembly by a resolution supported by the votes of not less than two-thirds of the Members of Parliament, to remove the Clerk of the National Assembly on the same grounds and procedure that apply to the removal of a judge; and for the Clerk of the National Assembly to resign from office by three months' notice, in

writing, to the Speaker; and the decision to re-enact Article 84(1) of the Constitution, to provide for the appointment of the Clerk of the National Assembly pursuant to the provisions of an Act of Parliament yet to be enacted by the Respondents, is illegal because it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic; and
- (b) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution.

11. Amendment of Article 107 of the Constitution: Removal of President on grounds of incapacity

[100] The Petitioner challenges the Respondents' decision to alter the Constitution by amending Article 107 of the Constitution as set out in red:

Removal of President on grounds of incapacity

107. (1) A Member of Parliament, supported by at least one-third of the Members of Parliament, may move a motion for the investigation of the ~~physical or mental~~ capacity of the President to perform executive functions.

(2) The motion moved in accordance with clause (1) shall specify the particulars of the allegation.

(3) Where the motion is supported in the National Assembly by a resolution of two-thirds of the Members of Parliament—

(a) the Speaker shall, within forty-eight hours of the adoption of the resolution, inform the Chief Justice of the resolution; and

(b) the Chief Justice shall immediately inform the President of the resolution, whereupon the President shall cease to perform the executive functions and the Vice-President shall perform the executive functions, except the power to—

(i) make an appointment; or

(ii) dissolve the National Assembly.

(4) The Chief Justice shall, within seven days of being informed of the resolution of the National Assembly, constitute a medical board, in consultation with the body responsible for regulating health practitioners, to inquire into the ~~physical or mental~~ capacity of the President.

(5) A medical board shall consist of not less than three persons selected from among persons who are registered as health

practitioners.

(6) A medical board, constituted under clause (5), shall examine the President and report to the Chief Justice, within fourteen days of the constitution of the medical board, whether or not the President is capable of performing the executive functions.

(7) Where the medical board reports that the President is capable of performing the executive functions, the Chief Justice shall, within forty-eight hours of the receipt of the medical report, cause a copy of the report to be presented to the National Assembly which shall resolve that the President should resume performing the executive functions.

(8) Where the medical board reports that the President is not capable of performing the executive functions, the Chief Justice shall, within forty-eight hours of the receipt of the medical report, cause a copy of the report to be presented to the National Assembly which shall resolve that the President should cease to hold office and the Vice-President shall assume the office of President in accordance with Article 106 (5).

(9) This Article applies to the Vice-President.

[101] The Petitioner contends that the Respondents' decision, to amend Article 107(1) of the Constitution to remove investigation into the physical or mental capacity of the President to perform the executive functions; and Article 107(4) of the Constitution to take away the authority of the medical board to inquire into the physical or mental capacity of the President, is illegal in that it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (d) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights and freedoms of persons; and

- (e) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

12. Amendment of Article 113 of the Constitution: Cabinet Ministers

[102] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing and re-enacting Article 113(d) and enacting Article 113(e) of the Constitution to read as set out in red:

Cabinet Ministers

Cabinet

113. There shall be a Cabinet consisting of the—

- (a) President;
- (b) Vice-President;
- (c) Ministers; and
- ~~(d) Attorney-General, as ex-officio member.~~
- (d) Provincial Ministers; and
- (e) the Attorney-General and the Chief Whip, as ex-officio members.

[103] The Petitioner contends that the Respondents' decision to amend Article 113 of the Constitution to include the Provincial Ministers as members of Cabinet and the Chief Whip as an *ex-officio* member of Cabinet, is illegal because it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (d) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

13. Amendment of Article 114 of the Constitution: Functions of Cabinet

[104] The Petitioner contends that the Respondents' decision to alter the Constitution by repealing and re-enacting parts of Article 114, to read as set out in red:

Functions of Cabinet

114. (1) The functions of Cabinet are as follows:

(a) approve and cause to be implemented Government policy; (b) approve Government Bills for introduction to the National Assembly;

(c) approve and cause the national budget to be presented to the National Assembly;

~~(d) recommend the accession and ratification of international agreements and treaties to the National Assembly;~~

(d) accede or ratify or withdraw from international agreements and treaties; and

~~(e) recommend, for approval of the National Assembly—~~

~~(i) loans to be contracted by the State; and~~

~~(ii) guarantees on loans contracted by State institutions or other institutions; and~~

(e) approve —

(i) loans to be contracted by the state; and

(ii) guarantees on loans contracted by State institutions;

(f) advise the President on matters relating to the performance of executive functions.

(2) Cabinet shall take collective responsibility for Cabinet decision.

[105] The decision by the Respondents to repeal Article 114(d) of the Constitution which provides that the function of Cabinet is to recommend to the National Assembly the accession and ratification of international agreements and treaties and re-enact it to provide that the function of the Cabinet is to accede or ratify or withdraw from international agreements and treaties; and to repeal Article 114(e) of the Constitution, which provides that the function of Cabinet is to recommend, for the approval of the National Assembly loans to be contracted by the State and guarantees on loans contracted by State institutions or other institutions; and re-enact it to provide that the function of Cabinet is to approve loans to be contracted by the state and guarantees on loans contracted by State institutions, is illegal because it contravenes:

(a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects

the Constitution and promotes democratic governance of the Republic;

- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (d) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights and freedoms of the persons; and
- (e) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

14. Enactment of Article 117A: Deputy Ministers

[106] The Petitioner challenges the decision by the Respondents to alter the Constitution by introducing Article 117A of the Constitution, which reads:

Deputy Ministers

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

[107] The Petitioner contends that the Respondents' decision to re-introduce the position of Deputy Minister through Article 117A of the Constitution is illegal in that it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;

- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (d) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

15. Amendment of Article 199: Imposition of Tax

[108] The Petitioner contends that the decision by the Respondents to alter the Constitution by repealing and re-enacting Article 199 of the Constitution to read as set out in red:

Imposition of Tax

~~199. (1) A tax shall not be imposed, except as prescribed.~~

~~(2) Where legislation confers power on a person or an authority to waive or vary a prescribed tax the power shall be exercised through a statutory instrument.~~

~~(3) A report explaining the waiver or variation of a tax shall be submitted to the National Assembly within twenty-one days of the publication of the statutory instrument.~~

199. A tax shall not be imposed, waived or varied, except as prescribed.

[109] The Petitioner contends that the said decision to the extent to which it seeks to repeal the requirement that a tax shall not be imposed unless it is provided for in an Act of Parliament; that where legislation confers power on a person or an authority to waive or vary a prescribed tax the power shall be exercised through a statutory instrument; and that a report explaining the waiver or variation of a tax shall be submitted to the National Assembly within twenty-one days of the publication of the statutory instrument is illegal in that it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects

the Constitution and promotes democratic governance of the Republic;

- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (d) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

VI. Decision to Alter the Constitution that Undermine Devolved Government and Increase the Powers of the President

1. Amendment of Article 147 of the Constitution: System of Devolved Governance

[110] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing and re-enacting Article 147(2) of the Constitution to read as set out in red:

System of Devolved Governance

147. (1) The management and administration of the political, social, legal and economic affairs of the State shall be devolved from the national government level to the local government level.

~~(2) The concurrent and exclusive functions of the national, provincial and local government levels are as listed in the Annex and as prescribed.~~

(2) The concurrent and exclusive functions of the national, provincial and local government levels shall be as prescribed.

(3) The different levels of government shall observe and adhere to the following principles:

(a) good governance, through democratic, effective and coherent governance systems and institutions;

(b) respect for the constitutional jurisdiction of each level of government;

(c) autonomy of the sub-structures; and (d) equitable distribution and application of national resources to the sub-structures.

[111] The decision to repeal Article 147 (2) of the Constitution, which provides that “the concurrent and exclusive functions of the national, provincial and local government levels are as listed in the Annex and as prescribed”; and the re-enactment of Article 147(2) to provide that the “concurrent and exclusive functions of the national, provincial and local government levels shall be as prescribed,” is illegal in that it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (d) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights and freedoms of the persons; and
- (e) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

2. Amendment of Article 149 of the Constitution: Provinces, Districts and Wards

[112] The Petitioner challenges the decision by the Respondents to alter the Constitution by repealing and re-enacting Article 149 of the Constitution to read as set out in red:

Provinces, Districts and Wards

~~149. (1) The President may, subject to the approval of the National Assembly, create or divide a Province or merge two or more Provinces, as prescribed.~~

~~(2) A Province shall consist of such number of districts, as prescribed.~~

~~(3) A district shall consist of such number of wards, as prescribed.~~

~~(4) A Province, district and ward shall be delimited, as prescribed.~~

~~(5) Without prejudice to clause (1), sixty per cent or more of the registered voters in a Province may petition the President to—~~

~~(a) merge a Province with another Province; or~~

~~(b) divide a Province into two or more Provinces.~~

~~(6) Where the President receives a petition under clause (5), and after due inquiry, the President may, by statutory order, declare the merger of the Province with another Province or the division of the Province into two or more Provinces, subject to ratification by the National Assembly.~~

~~(7) Where the National Assembly ratifies the establishment of a new Province under this Article, the Electoral Commission shall delineate the boundaries of the Province created.~~

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

(2) A province shall consist of such number of districts, as prescribed.

[113] The Petitioner contends that the decision by the Respondents to repeal Article 149 of the Constitution, which gives power to the President subject to the approval of the National Assembly to create or divide a Province or merge two or more Provinces, gives the right to sixty per cent or more of the registered voters in a Province to petition the President to merge a Province with another Province; or divide a Province into two or more Provinces and power to the Electoral Commission to delineate the boundaries of the created Province where the National Assembly ratifies the establishment of a new Province, is illegal in that the said decision contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;

- (d) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights and freedoms of the persons; and
- (a) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

3. Amendment of Article 153: Elections of Councillors, Composition of Councils and Tenure

[114] The Petitioner challenges the decision by the Respondents to alter the Constitution by repealing and re-enacting parts of Article 153 of the Constitution to read as set out in red:

Election of councillors, composition of councils and tenure

153. (1) A councillor shall be elected in accordance with Article 47(3) by registered voters resident within the ~~district~~ ward

(2) A council shall consist of the following councillors—

(a) persons elected in accordance with clause (1);

~~(b) a mayor or council chairperson elected in accordance with Article 154; and~~

(b) a mayor or council chairperson;

~~(c) not more than three chiefs representing chiefs in the district, elected by the chiefs in the district.~~

(c) not more than three chiefs or three chief's representatives in the district, elected by the chiefs in the district, except that where a district has three or fewer number of chiefs, each chief may nominate a representative; and

(d) a Member of Parliament elected in accordance with Articles 47(2)

~~(3) The system of electing chiefs specified in clause (2) (b) shall be prescribed.~~

(4) A person qualifies to be elected as a councillor, ~~excluding councillors specified under clause (2) (b),~~ if that person—

~~(a) is not a Member of Parliament;~~

(a) is eighteen years of age or above;

(b) is not less than nineteen years of age;

~~(c) has obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent;~~

~~(d) is a citizen or a holder of a resident permit, resident in the district; and~~

(e) has a certificate of clearance showing the payment of council taxes, where applicable.

(a) is eighteen years of age or above;

- (b) has obtained, as a minimum academic qualification, a grade twelve school certificate or its equivalent;
- (c) is a citizen resident in the district;
- (d) declares that person's assets and liabilities, as prescribed; and
- (e) has paid that person's taxes or made arrangements satisfactory to the appropriate tax authority for the payment of the taxes

~~(5) A council may invite a person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the council but that person shall have no vote.~~

(5) A council may invite a person, whose presence is in the council's opinion desirable, to attend and participate in the deliberations of the council but that person shall have no vote.

~~(6) The term of a council shall be five years commencing from the date the councillors are sworn into office after a general election and ending on the date Parliament is dissolved.~~

(6) The term of a council shall be five years commencing from the date the councillors are sworn into office after a general election and ending on the date of the next general election.

[115] The Petitioner contends that the decision by the Respondents to amend Article 153 (1) of the Constitution to require councillors to be elected in accordance with Article 47(3) by registered voters resident within the ward as opposed to within the district; Article 153(2) of the Constitution to change the composition of the Council to include not more than three chiefs or three chiefs' representatives in the district, elected by the chiefs in the district, except that where a district has three or fewer number of chiefs, each chief may nominate a representative and a Member of Parliament; Article 153(4) of the Constitution to exclude resident permit holders, resident in the district from contesting for election as councillors; Article 153(6) of the Constitution to extend the life of the Council to end on the date of the next general election is illegal because it contravenes:

- (a)** Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b)** Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;

- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (d) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights and freedoms of the persons; and
- (e) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State in a manner that upholds the rule of law.

4. Amendment of Article 154; Mayor, Deputy Mayor, Council Chairperson and Deputy Council Chairperson

[116] The Petitioner challenges the decision by the Respondents to alter the Constitution by repealing and re-enacting parts of Article 154 of the Constitution to read as set out in red:

Mayor, deputy mayor, council chairperson and deputy council chairpersons

154. (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—~~

(2) A mayor and deputy mayor or a council chairperson and deputy council chairperson shall be elected

~~(a) directly, in accordance with Article 47 (3) during elections for councillors, as prescribed; and~~

(a) by councilors among themselves, as prescribed; and

~~(b) for a term of five years and may be re-elected for one further term of five years.~~

(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.~~

[117] The Petitioner contends that the Respondents' decision to amend Article 154(2) of the Constitution to require the Mayor, Deputy Mayor, Council Chairperson and Deputy Council Chairperson to be elected by and among councilors themselves, as prescribed and for a term of five years and with the

option to be re-elected for one further term of five years, is illegal because it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (d) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State, to promote and protect the rights and freedoms of the persons; and
- (e) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State, to uphold the rule of law.

5. Amendment of Article 157: Vacation of Office of Councillor and Vacancies

[118] The Petitioner challenges the decision by the Respondents to alter the Constitution by repealing and re-enacting Article 157 of the Constitution, which reads:

~~Vacation of office of Councillor and Vacancies~~

~~157. (1) A councillor shall vacate office on dissolution of a council.~~

~~(2) The office of councillor becomes vacant if—~~

~~(a) the councillor ceases to be a resident of the district;~~

~~(b) the councillor resigns by one month's notice, in writing, to the mayor or council chairperson;~~

~~(c) the councillor becomes disqualified for election under Article 153;~~

~~(d) the result of an election for that councillor is nullified by a local government elections tribunal established in accordance with Article 159;~~

~~(e) the councillor acts contrary to the code of ethics provided for in~~

Article 155;

~~(f) the councillor has a mental or physical disability that makes the councillor incapable of performing the functions of councillor; or
(g) the councillor dies.~~

~~(3) Where a councillor resigns in accordance with clause (2) (b), (c), (d) and (e) the councillor shall not be eligible for re-election as councillor for the duration of the term of that council.~~

Vacation of office of Councillor and Vacancies

157. (1) A councillor shall vacate office on dissolution of a council.

(2) The vacation of office of a councillor shall be as prescribed.

[119] The Petitioner contends that the decision by the Respondents to repeal Article 157 of the Constitution, which provides for the tenure of the office of councillor, when the office of councillor can be vacant during the life of the council and to re-enact it so as to vest power in the Respondents to prescribe, through an Act of Parliament when the office of councillor can be vacant is illegal as it contravenes:

- (a)** Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b)** Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c)** Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (d)** Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights and freedoms of the persons.

6. Amendment of Article 158: By-Election for Council

[120] The Petitioner challenges the decision by the Respondents to alter the Constitution by repealing Article 158 of the Constitution, which reads:

By-elections for council

~~158. (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; or~~

~~(b) 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.~~

[121] The Petitioner contends that the Respondents' decision to repeal Article 158 of the Constitution, which provides: for a by-election to be held in the event of a vacancy in the office of Mayor, Council Chairperson or Councillor; that 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 is illegal in that it contravenes:

- (a)** Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b)** Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c)** Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (d)** Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State, to promote and protect the rights and freedoms of the persons.

7. Amendment of Article 159: Local Government Elections, Tribunal and Petitions

[122] The Petitioner challenges the decision by the Respondents to alter the Constitution by repealing and re-enacting Article 159 of the Constitution to read as set out in red:

Local Government Elections Tribunals and Petitions

~~159. (1) The Chief Justice shall establish such number of *ad hoc* local government elections tribunals as are necessary to hear whether—~~

~~(a) a person has been validly elected as a councillor; or~~

~~(b) the office of a councillor has become vacant.~~

~~(2) A local government elections tribunal shall be presided over by a magistrate of competent jurisdiction sitting with two legal practitioners appointed by the Chief Justice.~~

~~(3) A person may file an election petition with a local government elections tribunal to challenge the election of a councillor.~~

~~(4) An election petition shall be heard within thirty days of the filing of the petition.~~

~~(5) A person may appeal a decision of a local government elections tribunal to the Constitutional Court.~~

~~(6) A councillor whose election is petitioned shall hold the seat in the council pending the determination of the election petition.~~

~~(7) The Chief Justice shall make rules for the functions, composition, appointment of members, tenure of office of members, procedures and jurisdiction of a local government elections tribunal.~~

159. The Chief Justice shall establish a number of *ad hoc* local government election tribunals for election petitions of a councillor as prescribed.

[123] The decision by the Respondents to repeal: Article 159 (1) of the Constitution, which provide that the Chief Justice shall establish such number of *ad hoc* local government elections tribunals as are necessary to hear whether (a) a person has been validly elected as a councillor; or (b) the office of a councillor has become vacant; Article 159 (2) of the Constitution which provides that a local government elections tribunal shall be presided over by a magistrate of competent jurisdiction sitting with two legal practitioners appointed by the Chief Justice; Article 159 (3) which provides that a person may file an election petition with a local government elections tribunal to challenge the election of a councillor; Article 159 (4) of the Constitution, which provides that an election

petition shall be heard within thirty days of the filing of the petition; Article 159 (5) a person may appeal a decision of a local government elections tribunal to the Constitutional Court; Article 159 (6) a councillor whose election is petitioned shall hold the seat in the council pending the determination of the election petition; and Article 159 (7) the Chief Justice shall make rules for the functions, composition, appointment of members, tenure of office of members, procedures and jurisdiction of a local government elections tribunal; the re-enactment of Article 159 of the Constitution, which provides that the Chief Justice shall establish a number of ad hoc local government election tribunals for election petitions of a councillor as prescribed, is illegal in that the said decision contravenes:

- (a)** Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b)** Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c)** Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (d)** Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State, to promote and protect the rights and freedoms of the persons; and
- (e)** Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State, in a manner that upholds the rule of law.

8. Amendment of Article 165: Institution of Chieftaincy and Traditional Institutions

[124] The Petitioner challenges the decision by the Respondents to alter the Constitution of Zambia by repealing and re-enacting parts of Article 165, to read as set out in red:

Institution of chieftaincy and traditional institutions

~~165. (1) The institution of chieftaincy and traditional institutions are guaranteed and shall exist in accordance with the culture, customs and traditions of the people to whom they apply.~~

165. (1) Subject to clause (2), the institution of chieftaincy and traditional institutions are guaranteed and shall exist in accordance with the culture, customs and traditions of the people to whom they apply.

~~(2) Parliament shall not enact legislation which—~~

~~(a) confers on a person or authority the right to recognise or withdraw the recognition of a chief; or~~

~~(b) derogates from the honour and dignity of the institution of chieftaincy.~~

(2) The recognition or withdrawal of a person as a chief shall be as prescribed.

(3) Where there is a dispute in respect of an appointment or election of a chief and the dispute is not resolved in accordance with the culture, customs and tradition of the people to whom it applies the dispute shall be resolved by the House of Chiefs.

[125] The Petitioner contends that the Respondents' decision to repeal Article 165 (1) of the Constitution, which provides that the institution of chieftaincy and traditional institutions are guaranteed and shall exist in accordance with the culture, customs and traditions of the people to whom they apply; and the re-enactment of Article 165(1) of the Constitution to provide that subject to clause (2), the institution of chieftaincy and traditional institutions are guaranteed and shall exist in accordance with the culture, customs and traditions of the people to whom they apply; Article 165(2) of the Constitution, which provides that Parliament shall not enact legislation which (a) confers on a person or authority the right to recognise or withdraw the recognition of a chief; or (b) derogates from the honour and dignity of the institution of chieftaincy and re-enactment of Article 165(2) of the Constitution, which provides that the recognition or withdrawal of a person as a chief shall be as prescribed and the enactment of Article 165(3) of the Constitution, which provides that where there

is a dispute in respect of an appointment or election of a chief and the dispute is not resolved in accordance with the culture, customs and tradition of the people to whom it applies the dispute shall be resolved by the House of Chiefs is illegal in that it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (d) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights and freedoms of the persons.

VII. Decision That Increase the President’s Control Over the Public Service

1. Amendment of Article 176: Secretary to the Cabinet

[126] The decision to alter the Constitution by repealing and re-enacting Article 176 (3) of the Constitution to read as set out in red:

Secretary to the Cabinet

176. (1) There shall be a Secretary to the Cabinet who shall be appointed by the President, ~~in consultation with the Civil Service Commission~~, subject to ratification by the National Assembly.

(2) The Secretary to the Cabinet shall—

- (a) be chief advisor to the President on the management of the public service;
- (b) be the head of the public service and responsible to the President for securing the general efficiency and effectiveness of the public service;
- (c) ensure that public services are delivered to the public efficiently;
- (d) in accordance with instructions of the President—
 - (i) arrange the affairs of Cabinet;

- (ii) attend meetings of Cabinet;
 - (iii) cause to be written and kept minutes of meetings of Cabinet; and
 - (iv) convey decision made by Cabinet to appropriate authorities;
 - (e) monitor the implementation of Government policies and Cabinet decision; and
 - (f) perform other functions as prescribed.
- ~~(3) 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.~~
- (3) A person qualifies to be appointed as Secretary to the Cabinet if that person has served in a senior management position in the public service for at least ten years.
- (4) The term of office of the Secretary to the Cabinet shall be five years, subject to renewal for further terms.
- (5) The Secretary to the Cabinet may resign from office by giving three months' notice, in writing, to the President.

[127] The Petitioner contends that the decision by the Respondents to the extent that it seeks to amend Article 176(1) of the Constitution to empower the President without consulting with the Civil Service Commission, to appoint the Secretary to the Cabinet, subject only to ratification by the National Assembly; and to repeal and re-enact Article 176(3) of the Constitution so as to limit appointments to the office of Secretary to the Cabinet to persons who have served in a senior management position in the public service for at least ten years, is illegal in that it contravenes:

- (a)** Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b)** Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c)** Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (d)** Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State, in a manner that upholds the rule of law.

2. Amendment of Article 183: Secretary to the Treasury

[128] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing parts of Article 183 of the Constitution which read:

Secretary to Treasury

183. (1) There shall be a Secretary to the Treasury who shall be appointed by the President, ~~in consultation with the Civil Service Commission~~, subject to ratification by the National Assembly.

(2) The Secretary to the Treasury shall be the chief controlling officer of the Government.

(3) The Secretary to the Treasury shall—

(a) be responsible and accountable for—

(i) the proper financial management and expenditure of public monies appropriated to a State organ, Province, local authority, State institution or other prescribed body; and

(ii) monies raised from sources within or outside Zambia by a ~~Province, local authority, State institution or other prescribed body;~~ public body and

~~(b) oversee the formulation and implementation of the macro-economic frameworks and socio-economic plans of the Republic;~~

(b) provide a regulatory framework for sound financial management;

(c) cause to be prepared annual estimates of revenue and expenditure, supplementary estimates of expenditure and the budget; and

(d) carry out other prescribed functions.

(4) A person qualifies to be appointed as Secretary to the Treasury if that person qualifies for appointment as Governor of the Bank of Zambia.

(5) The term of office of the Secretary to the Treasury shall be five years, subject to renewal for further terms.

(6) The Secretary to the Treasury may resign from office by three months' notice, in writing, to the President.

[129] The Petitioner contends that the decision by the Respondents to the extent that it seeks to amend Article 183(1) of the Constitution to empower the President without consulting with the Civil Service Commission, to appoint the Secretary to the Treasury, subject only to ratification by the National Assembly; to take away the Secretary to the Treasury's responsibility and accountability over monies raised from sources within or outside Zambia by a Province, local authority, State institution or other prescribed body; and oversee the formulation and implementation of the macro-economic frameworks and socio-economic plans of the Republic is illegal in that it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic; and
- (b) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution.

3. Amendment of Article 184: Permanent Secretaries

[130] The Petitioner challenges the decision by the Respondents to alter the Constitution by repealing parts of Article 184 of the Constitution to read:

Permanent Secretaries

184. (1) The President shall, on the advice of the Civil Service Commission, appoint a Permanent Secretary for a Province, ministry or department.

(2) A Permanent Secretary shall—

(a) carry out or cause to be carried out the portfolio functions of the provincial administration, ministry or department;

(b) advise the Minister or provincial Minister with respect to the activities, projects and programmes of the Province, ministry or department;

(c) cause to be implemented the policies of the Government and decision of Cabinet;

~~(d) be responsible and accountable for the proper financial management and expenditure of public monies appropriated to the Province, ministry or department; and~~

(e) be responsible and accountable for the management of human resources in the provincial secretariat, ministry or department.

[131] The Petitioner contends that the Respondents' decision to the extent to which it seeks to deny the Permanent Secretary responsibility and accountability for the proper financial management and expenditure of public monies appropriated to the Province, ministry or department is illegal because it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;

- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution; and
- (d) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights and freedoms of the persons.

4. Repeal and Re-Enactment of Part XIII: Services, Commissions and Other Independent Offices

[132] The Petitioner challenges the decision by the Respondents to alter the Constitution by repealing and re-enacting Part 18 of the Constitution resulting in the abolition of the:

- (a) Parliamentary Service created by Article 217 of the Constitution;
- (b) Parliamentary Service Commission created by Article 218;
- (c) Judicial Service created by Article 219;
- (d) Judicial Service Commission created by Article 220 of the Constitution;
- (e) the Civil Service created by Article 221 of the Constitution;
- (f) the Civil Service Commission created by Article 222 of the Constitution;
- (g) Teaching Service created by Article 223 of the Constitution
- (h) Teaching Service Commission created by Article 224 of the Constitution;
- (i) Zambia Correctional Service Commission created by Article 225 of the Constitution;
- (j) Zambia Police Service Commission created by Article 226 of the Constitution;
- (k) Local Government Service created by Article 227 of the Constitution;

- (l)** Local Government Service Commission created by Article 228 of the Constitution;
- (m)** Gender Equity and Equality Commission created by Article 231 of the Constitution;
- (n)** Emoluments Commission created by Article 232 of the Constitution;
- (o)** Lands Commission created by Article 233 of the Constitution;
- (p)** State Audit Commission created by Article 234 of the Constitution;
- (q)** the Drug Enforcement Commission and the Anti-Financial and Economic Crimes Commission created by Article 235(b) and (c) of the Constitution;
- (r)** Judicial Complaints Commission created by Article 236 of the Constitution; and
- (s)** Police Public Complaints Commission created by Article 237 of the Constitution.

[133] The Petitioner contends that the decision to repeal the independent institutions and commissions is illegal in that the said decision contravenes:

- (a)** Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b)** Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c)** Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (d)** Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State,

- to promote and protect the rights and freedoms of the persons;
- and
- (e) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State, in a manner that upholds the rule of law.

VIII. Decision to Alter the Constitution That Undermine the Rights of the People

1. Amendment of Article 103: Election Petition

[134] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing and re-enacting parts of Article 103 of the Constitution to read as set out in red:

Election Petition

~~103. (1) A person may, within seven days of the declaration of a President-elect, petition the Constitutional Court to nullify the election of the President-elect on the ground that—~~

- ~~(a) the person was not validly elected; or~~
- ~~(b) a provision of this Constitution or other law relating to presidential elections was not complied with.~~

103. (1) A losing candidate may, within seven days of the declaration made under Article 101(2) and (5), petition the Constitutional Court to nullify the election of a presidential candidate who took part in the initial ballot on the ground that—

- (a) the person was not validly elected; or
- (b) a provision of this Constitution or other written law relating to presidential elections was not complied with.

~~(2) The Constitutional Court shall hear an election petition relating to the President-elect within fourteen days of the filing of the petition.~~

(2) The Constitutional Court shall hear and determine an election petition filed in accordance with clause (1) within thirty days of the filing of the petition.

(3) The Constitutional Court may, after hearing an election petition—

- (a) declare the election of the President-elect valid;
- (b) nullify the election of the President-elect and Vice- President-elect
- (b) nullify the election of the President-elect;

(c) disqualify the President-elect from being a candidate in the second ballot; or

(d) grant any other relief the court considers just.

(4) A decision of the Constitutional Court under clause (3) is final.

~~(5) Where the election of the President-elect and Vice-President-elect is nullified by the Constitutional Court, a presidential election shall be held within thirty days from the date of the nullification.~~

(5) A losing candidate may, within seven days of the declaration of President-elect, by the Returning Officer following the second ballot, petition the Constitutional Court to nullify the election of the President-elect on the ground that—

(a) the person was not validly elected; or

(b) a provision of this Constitution or other written law relating to presidential elections was not complied with.

(6) The Constitutional Court shall hear and determine an election petition relating to the President-elect within thirty days of the filing of the petition.

(7) Where the election of the President-elect and Vice President is nullified by the Constitutional Court, a presidential election shall be held within sixty days from the date of the nullification.

[135] The Petitioner contends that the Respondents' decision to amend Article 103 of the Constitution to the extent to which it seeks to limit the right to challenge the outcome of the Presidential election to the losing candidates is illegal because it contravenes:

(a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;

(b) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;

(c) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State, to promote and protect the rights and freedoms of the persons; and

(d) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State, in a manner that upholds the rule of law; and

2. Amendment of Article 186: Participation in Politics

[136] The Petitioner challenges the decision by the Respondents to alter the Constitution by enacting Article 186(3) of the Constitution, which reads as set out in read:

Participation in Politics

186. (1) A public officer who seeks election, or is appointed, to a State office shall resign.

(2) Clause (1) applies to a Constitutional office holder.

(3) A public officer who seeks election under clause (1) shall resign at least two years before the date of election.

[137] The Petitioner contends that the decision to amend Article 186 of the Constitution, to the extent to which it seeks to provide that a public office holder and a Constitutional office holder who wants to contest an election must resign from office two years before the date of the election is illegal in that it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (d) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights and freedoms of the persons; and
- (e) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State, in a manner that upholds the rule of law.

3. Amendment of Article 189: Payment of Pension Benefits

[138] The Petitioner challenges the decision by the Respondent to alter the Constitution by repealing and re-enacting Article 189 of the Constitution, which reads as set out in red:

~~189. (1) A pension benefit shall be paid promptly and regularly.
(2) Where a pension benefit is not paid on a person's last working day, that person shall stop work but the person's name shall be retained on the payroll, until payment of the pension benefit based on the last salary received by that person while on the payroll.~~
189. A pension benefit shall be paid promptly and regularly.

[139] The Respondents' decision to the extent to which it seeks to take away the employee's right, where pension benefits are not paid on the employee's last working day, to stop work but for the employee to remain on the payroll, until payment of the pension benefit based on the last salary received by that person while on the payroll is illegal because it contravenes:

- (a)** Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b)** Article 90 of the Constitution, which requires the First Respondent to exercise the executive authority of the Republic in a manner compatible with the well-being and benefit of the people;
- (c)** Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (d)** Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State, to promote and protect the rights and freedoms of the persons; and
- (e)** Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State, in a manner that upholds the rule of law.

4. Amendment of Article 213: The Bank of Zambia

[140] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing and re-enacting Article 213(2) of the Constitution to read as set out in red:

Bank of Zambia

213. (1) There is established the Bank of Zambia which shall be the central bank of the Republic.

~~(2) The functions of the Bank of Zambia are to—~~

~~(a) issue the currency of the Republic;~~

~~(b) determine monetary policy; and~~

~~(c) regulate banking and financial services, banks, financial and non-banking institutions, as prescribed.~~

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

(3) There is constituted a Board of Directors for the Bank of Zambia whose composition shall be prescribed.

(4) The functions of the Bank of Zambia vest in the Board of Directors and shall be performed as prescribed.

(5) The Bank of Zambia shall not be subject to the direction or control of a person or an authority in the performance of its functions.

[141] The Petitioner contends that to the extent that the Respondents' decision seeks to repeal the functions of the Bank of Zambia to issue the currency of the Republic; determine monetary policy; and regulate banking and financial services, banks, financial and non-banking institutions, as set out in an Act of Parliament is illegal in that it contravenes:

- (a) Article 61 of the Constitution, which requires the legislative authority of the Republic to be exercised in a manner that protects the Constitution and promotes democratic governance of the Republic;
- (b) Article 91(3)(a) of the Constitution, which requires the First Respondent, in the exercise of the executive authority of the State to respect, uphold and safeguard the Constitution;
- (c) Article 91(3)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights and freedoms of the persons; and

(d) Article 91(3)(f) of the Constitution, which requires the First Respondent to exercise the executive authority of the State, in a manner that upholds the rule of law; and

5. The Amendment of Article 214 of the Constitution: Governor of the Bank of Zambia

[142] The Petitioner challenges the Respondents' decision to alter the Constitution by repealing and re-enacting Article 214(b) of the Constitution to as set out in red:

Governor of the Bank of Zambia

214. (1) There shall be a Governor of the Bank of Zambia who shall be appointed by the President, subject to ratification by the National Assembly, and who shall be—

(a) a citizen;

~~(b) a person who has specialised training and experience in economics, finance, accounting, banking, law or other field relevant to banking, as prescribed;~~

(b) a person who has specialised training and proven experience relevant to the functions of the central bank, as prescribed.

[143] The Petitioner contends that the Respondents' decision, to the extent to which it seeks to limit appointment to the office of Governor of the Central Bank to a person with "specialised training and proven experience relevant to the functions of the central bank, as prescribed" is illegal in that it contravenes Article 91(1)(e) of the Constitution, which requires the First Respondent, in the exercise the executive authority of the State, to promote and protect the rights of the people.

F. BREACH OF ARTICLES 8 AND 9 OF THE CONSTITUTION: THE NATIONAL VALUES AND PRINCIPLES

[144] The Petitioner contends that the decision by the Respondents to alter the Constitution **within a period of less than four years** after it was wholly repealed and re-enacted, except for Part III and Article 79 of the Constitution, is illegal because the said decision contravenes:

- (a) **Article 8(b) of the Constitution** in that by making the said decision, the Respondents failed to give effect to the national values and principles of patriotism and national unity;
- (b) **Article 8(c) of the Constitution** in that by making the said decision, the Respondents undermined the national values and principles of democracy and constitutionalism;
- (c) **Article 8(e) of the Constitution** because by making that decision, the Respondents undermined the national values and principles of good governance; and
- (d) **Articles 8(f) and 9 of the Constitution**, because by making that decision the Respondents undermined the national values and principles of sustainable development.

[145] The Petitioner contends that the decision by the Respondents to repeal the phrase “multi-religious” and replace it with the word “Christian” in the Preamble; to repeal and re-enact Article 4(3) of the Constitution to read that “the Republic is a Christian --- State” in order to promote, protect and give constitutional recognition to Christianity above all other religions; and to repeal Article 8(a) of the Constitution which reads “morality and ethics” and re-enacting it to read “Christian morality and ethics” so that Christian morality and ethics are applied in the interpretation of the Constitution enactment and interpretation of the law and development and implementation of State policy, is illegal because the said decision contravenes:

- (a) **Article 8(b) of the Constitution** in that by making the said decision, the Respondents ignored the national values and principles of national unity;
- (b) **Article 8(c) of the Constitution** in that by making the said decision, the Respondents undermined the national values and principles of democracy and constitutionalism;
- (c) **Article 8(d) of the Constitution** in that by making the said decision, the Respondents ignored the national values and principles of human dignity, equity, social justice, equality and non-discrimination; and

(d) Article 8(e) of the Constitution in that by making that decision the Respondents undermined the national values and principles of good governance.

[146] The Petitioner contends that the decision by the Respondents to alter the Constitution by repealing and re-enacting and repealing without re-enactment Articles:

- (a)** 47, 51, 56, 60, 101, 102, 104, 111 and 116 of the Constitution, to the extent that the said decision seeks to undermine the electoral system;
- (b)** 52, 60, 67, 94, 103, 124, 127, 129, 138, 139, 140(d) and 143(a) and 144 of the Constitution, to the extent that the said decision seeks to undermine the powers of the Judiciary and increase those of the First Respondent;
- (c)** 92 and 94 of the Constitution, to the extent that the said decision seeks to increase the powers of the First Respondent to exceed those of Parliament and the Judiciary;
- (d)** 63, 68, 69, 70, 71, 72, 78, 81, 83, 84, 107, 113, 114, 117A and 199 of the Constitution, to the extent that the said decision seeks to reduce the powers of the Parliament and increase those of the First Respondent;
- (e)** 147, 149, 153, 154, 157, 158, 159 and 165 of the Constitution, to the extent that it seeks to abolish the devolved government and vest full control of the government at the provincial and local levels in the First Respondent;
- (f)** 176, 183 and 184 of the Constitution and repealing and re-enacting of Part XIII of the Constitution resulting in the abolition of several independent service commissions, to the extent that the said decision seeks to increase the powers of the First Respondent on the public service; and
- (g)** 103, 186, 189, 213 and 214 of the Constitution to the extent that the said decision seeks to take away the benefits and rights vested in the people of Zambia,

is illegal in that it contravenes the national values and principles enshrined in:

- (a) **Article 8(c) of the Constitution** in that by making the said decision the Respondents undermined the national values and principles of democracy and constitutionalism;
- (b) **Article 8(e) of the Constitution** because by making that decision the Respondents undermined the national values and principles of good governance, and
- (c) **Article 8(e) of the Constitution** because by making that decision the Respondents undermined the national values and principles of good governance.

G. BREACH OF ARTICLE 79 OF THE CONSTITUTION

1. Stability and Durability of the Constitution as Basic Features of the Constitution

[147] The Petitioner contends that the decision by the Respondents to amend the Constitution **within a period of less than four years** after it was wholly repealed and re-enacted, except for Part III and Article 79 of the Constitution, is illegal in that the said decision contravenes Article 79 of the Constitution, because by the said decision the Respondents have undermined the stability and durability of the Constitution, the basic features of the Constitution.

2. Secularism as a Basic Feature of the Constitution

[148] The Petitioner contends that the Respondents' decision to repeal the phrase "multi-religious" and replace it with the word "Christian" in the Preamble; to repeal and re-enact Article 4(3) of the Constitution to read that "the Republic is a Christian --- State" in order to promote, protect and give constitutional recognition to Christianity above all other religions; and to repeal Article 8(a) of the Constitution which reads "morality and ethics" and re-enacting it to read "Christian morality and ethics" so that Christian morality and ethics are applied in the: (a) interpretation of the Constitution; (b) enactment and interpretation of the law; and (c) development and implementation of State policy, is illegal in that it contravenes Article 79 of the Constitution because by making the said decision, the Respondents seek to alter the secular character of the Constitution and the Republic.

Free and Fair Elections as a Basic Feature of the Constitution

[149] The Petitioner contends that the decision by the Respondents to alter the Constitution by repealing with re-enactment and repealing without re-enactment, Articles 47, 51, 56, 60, 101, 102, 104, 111 and 116 of the Constitution, to the extent that the said decision seek to undermine the electoral system is illegal in that it contravenes Article 79 of the Constitution because by the said decision the Respondents seek to undermine the holding of free and fair elections, a basic feature of the Constitution.

4. Independence of the Judiciary as a Basic Feature of the Constitution

[150] The Petitioner contends that the decision by the Respondents to alter the Constitution by repealing with re-enactment and repealing without re-enactment, Articles 52, 60, 67, 94, 103, 124, 127, 129, 138, 139, 140(d) and 143(a) and 144 of the Constitution, to the extent that the said decision seeks to undermine the powers of the Judiciary and increase those of the First Respondent is illegal in that it contravenes Article 79 of the Constitution because by making the said decision the Respondents seek to undermine the independence of the Judiciary, a basic feature of the Constitution.

5. Separation of Powers and Checks and Balances as Basic Features of the Constitution

[151] The Petitioner contends that the decision by the Respondents to alter the Constitution by repealing with re-enactment and repealing without re-enactment, Articles 92, and 94 of the Constitution, to the extent that the said decision seeks to increase the powers of the First Respondent, is illegal in that it contravenes Article 79 of the Constitution because by making the said decision the Respondents seek to undermine the concept of separation of powers and checks and balances, the basic features of the Constitution.

6. Independence of Judiciary as a Basic Feature of the Constitution

[152] The Petitioner contends that the decision by the Respondents to alter the Constitution by repealing with re-enactment and repealing without re-

enactment, Articles 63, 68, 69, 70, 71, 72, 78, 81, 83, 84, 107, 113, 114, 117A, and 199 of the Constitution, to the extent that the said decision seeks to undermine the powers of the Parliament and increase those of the First Respondent, is illegal in that it contravenes Article 79 of the Constitution because by making the said decision the Respondents want to undermine the ability of Parliament and the Judiciary to check on the First Respondent in the discharge of the executive functions of the Republic.

7. Devolved Government as a Basic Feature of the Constitution

[153] The Petitioner contends that the decision by the Respondents to alter the Constitution by repealing with re-enactment and repealing without re-enactment, Articles 147, 149, 153, 154, 157, 158, 159, and 165 of the Constitution, to the extent that the said decision seeks to undermine devolved government and vest full control of the government at the provincial and local levels in the First Respondent, is illegal in that the said decision contravenes Article 79 of the Constitution because by making the said decision the Respondent seek to abolish the concept of devolved government, a basic feature of the Constitution.

8. Good Governance as a Basic Feature of the Constitution

[154] The Petitioner contends that the decision by the Respondents to alter the Constitution by repealing with re-enactment and repealing without re-enactment, Articles 176, 183, 184 of the Constitution and repealing and re-enacting Part XIII of the Constitution to result in the abolition of several independent service commissions, to the extent that the said decision seeks to increase the powers of the First Respondent on the public service, it is illegal in that the said decision contravenes Article 79 of the Constitution because by making the said decision, the Respondents seek to undermine good governance, a basic feature of the Constitution.

9. Rule of Law and Constitutionalism as Basic Features of the Constitution

[155] The Petitioner contends that the decision by the Respondents to alter the Constitution by repealing with re-enactment and repealing without re-

enactment Articles 103, 186, 189, 213, and 214 of the Constitution, to the extent that the said decision seeks to take away the benefits and rights vested in the people, it is illegal in that it contravenes Article 79 of the Constitution because by making the said decision the Respondent seek to undermine the concept of rule of law and constitutionalism, the basic features of the Constitution.

H. RELIEF SOUGHT BY THE PETITIONERS

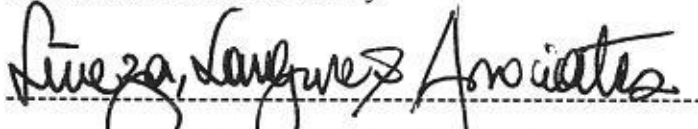
[156] Pursuant to Article 128(2) of the Constitution the Petitioner prays for relief in the form of:

- (a)** a declaration that the Respondents' decision to the extent to which it seeks to amend the Constitution in the manner set in the Constitution of Zambia (Amendment) Bill No. 10 of 2019, is illegal because it contravenes Articles 1(2), 8, 9, 61, 79, 90,91, 92 and 79 of the Constitution;
- (b)** an Order (of Certiorari) that this Petition be allowed and that the Constitution of Zambia (Amendment) Bill No. 10 of 2019, which evidences the Respondents' decision to amend the Constitution in the manner provided therein be removed forthwith into the Constitutional Court for purposes of quashing;
- (c)** Any other remedy the Court may consider just in order to defend the Constitution and resist or prevent its overthrow, suspension or illegal abrogation; and
- (d)** The costs of and occasioned by this Petition be borne by the Respondents.

And Your Humble Petitioner shall forever pray.

Dated this 12th day of August, 2019.

This Petition was settled by:

A handwritten signature in black ink, appearing to read 'Simeza Sangwa Associates', is written over a horizontal dashed line.

SIMEZA, SANGWA & ASSOCIATES, Advocates for the Petitioner, whose address for purpose of service is Suite C, The Coliseum, Bwinjimfumu Road, Rhodes Park, LUSAKA, Tel.: 211 227 484/227 574, Fax.: +260 211 220 568, Email: info@simezasangwa.com.

It is intended to serve this Petition and all other relevant materials on the Respondents by serving the same on the Third Respondent:

THE ATTORNEY GENERAL
Attorney General's Chambers
Ministry of Justice
Independence Avenue
LUSAKA