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Bill 10, if Enacted, Will Install a Constitutional Dictatorship and Undermine Democracy in Zambia

Muna Ndulo

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Zambia has made several attempts to elaborate a democratic constitution that promotes good governance, inclusiveness, citizen participation, accountability, and the separation of powers between the three arms of government-parliament, the judiciary, and the executive. Success has been elusive largely because the processes used have been inappropriate for consensus building. The latest attempt, the Constitution Amendment Bill No. 10 of 2019, which came out of a ruling party dominated constitutional conference, is presently before parliament. The constitutional conference excluded key stake holders such as the main opposition party and civil society. The paper critically examines the contents of Bill 10 and its constitutionality. It argues that Bill 10 removes parliamentary oversight over the executive and aims to create a constitutional dictatorship. The paper further argues that Bill 10 is unconstitutional as it seeks to alter the basic structure of the 2016 Zambian constitution. The fundamental basic structure of the 2016 constitution is the separation of powers between the three arms of government-parliament, the judiciary, and the executive. The paper argues that while parliament has wide powers to amend the constitution, that power does not include the power to destroy or emasculate the basic structure or fundamental features of the constitution.

1. Introduction

Most independent African constitutions, crafted by departing colonial powers, over-centralised power in the presidency to the detriment of governance and development without adequate checks and balances. With the advent of the world wide movement towards democratisation in Africa and elsewhere, the post-1998 constitution-making processes focus on promoting democratisation and participation in governance, institutionalising accountability, and establishing checks and balances in constitutional arrangements (Hatchard, 2004). This requires devising governmental arrangements that are meant to do away with old colonial undemocratic constitutional practices. Examples of successful constitutional processes include Benin, Namibia, South Africa, and Kenya while Tanzania and Zambia represent failed processes (Miller, 2010). The interrelationship

between good governance and development is widely recognised throughout the world. Without good governance, there can be no meaningful development (Ndulo, 2003).

After several attempts, Zambia has failed to develop a democratic constitution which ensures that its citizens fully participate in the governance of the state and that those in power are accountable to the people that elected them (Ndulo, 2019). This is because the processes adopted to develop a new constitution have been deeply flawed. In all the previous efforts, including the current one, there has been an attempt by the ruling party to manipulate the process and use it to achieve its own goals. The processes have been dominated by the ruling party, lack any philosophical approach to constitution making and are not guided by any constitutional principles. For a constitution-making process to be successful, it must be inclusive. That is, it must be representative of the people of the country, i.e. it must include all stakeholders. In constitution-making undertakings, the process is as important as the substance (Miller, 2010).

In 2019 the Patriotic Front (PF), the ruling party in Zambia, initiated a process to implement major amendments to the 2016 constitution on the pretext of addressing lacunas in the constitution. The process has culminated in the introduction in Parliament of the 2019 Constitution Amendment Bill No. 10 of 2019. The process that led to Bill 10 was deeply flawed. It was unrepresentative and was boycotted by several opposition parties including the main opposition party, United Party for National Development (UPND). In this article, it is argued that Bill 10 is manipulative and attempts to deceive the people of Zambia and create a dictatorship under the guise of constitutional reform. It is a ploy to seek legitimacy for the adoption of radical constitutional reforms aimed at destroying the basic structure of the 2016 Zambian constitution. Bill 10 is designed to remove parliamentary oversight over the presidency and thereby install a constitutional dictatorship. It attempts to manipulate the electoral system to ensure that the ruling party remains in power in perpetuity. Additionally, it is argued that Bill 10 is unconstitutional as it undermines the basic structure of the constitution based on the doctrine of the separations of powers. In a constitutional democracy, parliamentary power to legislate is not unlimited. It is given by the constitution and therefore subject to the constitution and it certainly does not include the power to subvert the constitution.

The article is organised into three sections. The first section examines the role of the constitution in a democratic society. The second section critically examines the proposed amendments and the third section examines the constitutionality of the proposed amendments in the context of the constitutional principle of the basic structure doctrine developed by the Indian Supreme Court and adopted in several other jurisdictions.

2. Constitution and the Rule of Law

The constitution of any state is a body of fundamental principles that constitute the legal basis on which a state is governed. It determines the powers and duties of the government

and guarantees certain rights to the people. It is the highest organising document of the state. It provides the cornerstone and framework upon which the edifice of the state is created. It is the basic law – the *grundnorm* – and as such the source of legitimate conferral of state powers and their exercise. As the Constitutional Court observed in its recent decision involving the Speaker of the National Assembly, all institutions and the high offices created by the constitution are themselves subservient to the constitution. All institutions and governance systems owe their being to the constitution and the powers conferred on them can only be exercised in line with the constitution (Kambwili v. Attorney General, 2019).

The constitution has a basic structure, and the separation of powers doctrine is a fundamental norm of the structure. It should be understood as part of the institutional balance between coordinate branches of government. The constitution is therefore a document of special character – subject only to the ultimate will of the people and not to the whimsical accumulation of powers and privileges of any individual. It is important to emphasise the point that the constitution is supreme over all institutions, including the parliament and the judiciary. That is what is meant by the concept of constitutionalism and the rule of law.

3. What is Wrong with the Proposed Amendments?

The objects of Bill 10 would seem innocuous to an untrained eye. But this is a deeply manipulative document that seeks to establish a constitutional dictatorship in Zambia. This should startle anybody who deeply cares about constitutionalism and democratic governance in Zambia. In this section the paper draws attention to some salient and far-reaching changes inherent in the proposed amendments. It is hoped that the discussion on the amendments will demonstrate that this effort has structure, purpose, and strategy behind it, which is to neutralise all levers of checks and install an unaccountable executive.

3.1 Amendments too Broad

There are numerous amendments – dealing with almost every aspect of state powers and public life in the country. It pertains not only to the principles and values of the Constitution of Zambia, but also deals with the National Assembly including its membership, dissolution, the period of hearing, determination of the hearing of presidential election petitions, creation of office of deputy minister, functions of public protector and banking and the Auditor General. Moreover, there is an omnibus clause which provides for the enactment of legislation and statutory instruments: “for matters connected with, or incidental to, the foregoing.” (See paragraph “p” of the AGs proposal attached to the bill as introduced in parliament.)

The proposed amendments are too broad and overreaching. Zambians might as well look for a new constitution instead of these broad sweeping amendments with no direct

gains for democracy. To really have a meaningful deliberation on all these provisions is doubtful, thus it is fair to assume that the government wants to sneak in changes to the constitution without the possibility of thorough examination. This may well explain the conflation of all manner of issues including banking and fiscal policy into this proposed amendment.

3.2 Time and Timing

It is apparent that the time and timing of this amendment is rather suspect. Elections are just around the corner and the attempt to hurry through some fundamental amendments to the electoral process is suspicious to put it mildly. It would seem that the aim is rather parochial. To avoid this possibility, issues that involve qualification and disqualification for participating at any level of the electoral process should not be hurriedly passed as a constitutional amendment.

3.3 Removal of President on Grounds of Incapacity

The instant provision in *Article 107* of the Constitution of Zambia provides that: “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.” (Emphasis supplied).

The proposed amendment says “*Article 107* of the Constitution is amended by the deletion of the words “**physical or mental**” wherever the words appear.” (See *Article 31, lines 5-9 of the proposed Amendment*, emphasis supplied). Zambians may well ask: what is the essence of stopping parliament from enquiring into the physical or mental health of the president even if such a president can no longer perform the duties of the high office of the president of Zambia? One thing is clear here, *the present government and her coterie are envisaging a Zambia where even a vegetative president would not and cannot be removed from office since parliament cannot inquire into the health status of such a president*. This applies *mutatis mutandis* to the Vice President as well. This is dangerous for democracy because nobody in the land and no organ of the state can investigate the health of the two principal officers of the state—the president and his or her vice.

3.4 Impeachment of the President/Vice-President

The extant provision in the Constitution of Zambia regarding impeachment of the president is as contained in Article 108. Article 108. (1) provides that “A Member of Parliament, supported by at least one third of the Members of Parliament, may move a motion for the impeachment of the President alleging that the President has committed – (a) a violation of a provision of this Constitution or other law; (b) a crime under international law; or (c) gross

misconduct. (2) The motion, moved in accordance with clause (1), shall specify the particulars of the allegation. (3) Where a motion, moved in accordance with clause (1), 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, appoint a tribunal, in consultation with the Judicial Service Commission, which shall consist of a chairperson and not less than two other members from among persons who hold, have held or qualify to hold, the office of judge. (5) The tribunal appointed under clause (4) shall, within thirty days of its appointment – (a) investigate the matter relating to the impeachment of the President; and (b) report to the Chief Justice as to whether or not the particulars of the allegations specified in the motion have been substantiated.”

Under Article 108 (6), The President has the right to appear and be represented before the tribunal during its investigation. (7) The Chief Justice shall, on receipt of the report referred to in clause (5) (b), immediately submit the report to the National Assembly. (8) Where the tribunal reports that the particulars of an allegation against the President – (a) is 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 – (i) the President did not commit the violations specified in the motion; and (ii) further proceedings shall not be taken with respect to the allegation; or (b) is 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 President has committed the violations specified in the motion and that the President should cease to hold office forthwith. (emphasis supplied). (9) The President shall, on the passing of a resolution in accordance with— (a) clause (7) (a), resume to perform the executive functions; or (b) clause (7) (b), cease to hold office and be amenable to prosecution without the need to lift the immunity under Article 98. (10) Where a motion is moved in accordance with clause (1), the President shall not dissolve Parliament. (11) This Article applies to the Vice-President.” (Impeachment of President Constitution of Zambia (Amendment) (No. 2 of 2016 47)).

The provision above by itself is tedious because, it is not easy to muster the number of parliamentarians required to impeach a president, it is therefore generally fair since it provides for many measures to guarantee fairness to any occupant of the office of President or Vice- President. The now proposed amendment seeks to make it impossible to even contemplate impeaching the president or vice president. Hence, it has whittled down the capacity of the constitution to check the powers of the Presidency or seek accountability from any occupier of that high office. Note particularly clause 7, 8(a) and 9 of Article 108 as they are very significant to the proposed amendment.

For the avoidance of doubt the proposed amendments states “Article 108 of the Constitution is amended by the deletion of – (a) clause (8)(a) and the substitution therefor of the following: (a) is not substantiated, the National Assembly shall not take further proceedings in respect of the allegation; or; and (b) by the deletion of clause (9) and the substitution therefor of the following: (9) The President shall, on the passing of the resolution in accordance with – (a) clause (8)(a), resume to perform the executive functions; or (b) clause (8)(b), cease to hold office and be amenable to prosecution without the need to lift the immunity under Article 98. ((emphasis supplied) see Article 32 (paragraph 10-24) of proposed amendment).

What this provision does is to remove the capacity of parliament to vote by secret ballot to resolve whether the findings of a tribunal brought before parliament substantiates the allegations against the president or otherwise. The legislative intention in the existing law is that parliament should have the final say via secret ballot as to whether the findings have made out the allegation or not. To remove this power is to make it possible for findings of a tribunal to have the air of finality. It removes the capacity of the peoples’ representative – the parliament to ratify or vary the outcome of such tribunals. I need not say how much this consolidates powers in the hands of the president and also puts pressure on any committee or tribunal that might be asked to investigate allegations of misconduct. Indeed, the president can manipulate, or intimidate both the constitution and findings of such a tribunal. Additionally, the members of parliament would no longer be protected from retaliation as the secret ballot is removed.

3.5 Tenure of Office of Vice-President and Vacancy

The conspiracy inherent in this proposed amendment is further highlighted in the examination of the proposed amendments regarding tenure of office and the vacancy in the office of president and vice-president respectively. Like the *Catiline* Conspiracy, there is an attempt by the ruling oligarchy to steal, expropriate, and personalise the high offices of the President and Vice-President of Zambia.

The existing Constitutional Provision in Article 111 states: “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.” (emphasis supplied).

The proposed amendment states “Article 111 of the Constitution is amended – (a) by the deletion of clauses (3) and (6); and (b) by the renumbering of clauses (4) and (5) as clauses (3) and (4), respectively” (See Article 33 of proposed Amendment).

Tragically, this proposed amendment seeks to eliminate tenure limits because the person who assumes office as Vice President will no longer be serving the unexpired term of office. Equally, a person who has served twice as Vice-President will no longer be disqualified from serving a third, fourth, fifth, or infinite term as Vice-President. The ramifications of this for multi-party democracy and public accountability are totally unbelievable. Is this in the public interest? Why all these sweeping appropriations and consolidation of powers in the presidency? Zambia aspires to consolidate democracy and not to install a dictatorship.

3.6 Functions of the Vice-President

As provided in Article 112 (1) of the Zambian Constitution, the Vice-President shall be answerable to the President in the Performance of the functions of Vice-President. “(2) The Vice-President shall – (a) perform the functions that are assigned to the Vice-President by the President; (b) perform the executive functions during the periods specified in this Constitution; and (c) assume the office of President as specified in Article 106 (5).” Bill 10 proposes that “The Constitution is amended by deletion of the subheading immediately after Article 112 and the substitution therefor of the following: “Cabinet, Minister, Provincial Minister and Deputy Minister”” (See article 34 – repeal and replacement of Article 112).

In effect, this provision renders the office of the Vice-President powerless and makes the occupant a mere puppet of the president. The Vice-President cannot take steps on behalf of the state or perform the duties of the president even in the president’s absence. This can be very dangerous in case of sudden death, impeachment or other human misfortune against the occupant of the office of the president – especially if that person is incapacitated by mental or bodily infirmity to perform the duties of that office. The political uncertainty which this might engender in a complex society like Zambia is unfathomable. Note that Article 106 of the Constitution of Zambia provides that “the term of office for a President is five years which shall run concurrently with the term of Parliament, except that the term of office of President shall expire when the President-elect assumes office in accordance with *Article 105.*”

More so, Article 106(5) provides that “When a vacancy occurs in the office of President, except under *Article 81* – (a) the Vice-President shall immediately assume the

office of President; or (b) if the Vice-President is unable for a reason to assume the office of President, the Speaker shall perform the executive functions, except the power to – (i) make an appointment; or (ii) dissolve the National Assembly; and a presidential election shall be held within sixty days after the occurrence of the vacancy.” A careful and combined reading of the juxtaposed provisions directly above reveals the uncanny intentions of the proponents of Bill 10. If this provision goes through successfully what it means is that we would have effectively turned Zambia into a serfdom; the private estate of the president and his coterie of courtiers. It will endanger the peace and prosperity of Zambia.

3.7 Mental and Physical Capacity of Ministers

Article 116 (3) (f) of the Constitution of Zambia is of the intendment that the office of a minister can become vacant by reason of the fact that “the Minister has a mental or physical disability that makes the Minister incapable of performing the functions of that office.” Now Article 116 (3) of the Constitution is amended – (a) by the deletion of paragraph (f) and the substitution therefor of the following: (f) the Minister is legally disqualified from performing the functions of that office...”

One is left wondering why the present administration seeks to legislate against health issues which are often beyond human control. If a minister by any stroke of fate loses mental or physical capacity to perform the functions of his/her office, is she/he expected to stay in office in perpetuity to the detriment of the Zambian state? It is beyond telling how the ardor of power and privilege can close the human mind to the fragility, frailty, and decay of human nature with time. This passionate embrace of power is an ill wind and Zambia cannot afford it at this period of her development.

3.8 Appointment of Deputy Ministers

Article 117 is amended to provide for the appointment of Deputy Ministers. The proposed amendment states “The Constitution is amended by the insertion of the following new Article immediately after *Article 117: 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 authorize in that behalf.”

Zambia is a poor state, thus the wisdom of enlarging the number of individuals who will be dependent on the state for their daily sustenance is doubtful. Putting it mildly, this seems like an opportunity to create jobs for political disciples who insult critics of the Government. Zambia’s limited resources need to be better invested towards the economic and social emancipation of the people. The hazardous health facilities, the poorly funded universities, and schools in general could do better with the resources that would be misdirected towards financing these acolytes of the president.

3.9 Parliamentary Oversight of Public Debt and Creation of Provinces

Bill 10 repeals article 62(2) (d) &(e) of the constitution which states that: (a) the National Assembly shall oversee the performance of executive functions; (b) Public debt before it is contracted; (approve Guarantees on loans contracted by the state institutions or other institutions) (c) Approving International Agreements and Treaties before these are acceded to or ratified. Instead the amendment provides that: "Cabinet shall accede or ratify or withdraw from international agreements and approve loans contracted by the state and guarantees on loans contracted by state institutions." Parliamentary oversight is removed. Given Zambia's debt crisis which is due to irresponsible borrowing, the removal of parliamentary oversight is incomprehensible.

A further proposed amendment which relates to National Assembly oversight, is Article 149 (1) which currently states that the president may, subject to the approval of the National Assembly create or divide a province or merge two or more provinces as prescribed. In the proposed amendment the phrase "subject to the approval of the National Assembly", is removed and the President under Bill 10 will be able to create provinces *without* any parliamentary or other oversight.

3.10 International Agreements

The proposed amendments repeal article 63 (2) (e) which currently gives the National Assembly oversight over approving international agreements and treaties before these are acceded to or ratified. Article 92 (2) (c) explains that the President has the power to negotiate and sign international agreements and the proposed amendment removes the requirement that his or her power be subject to approval by the National Assembly.

3.11 National Assembly Oversight over Appointments Made by the Executive

A proposed amendment of Article 94 of the Constitution also reduces the power of the National Assembly to effectively exercise oversight over appointments or measures taken by the President. The proposed amendments will allow the executive to act without seeking approval of the National Assembly. This is a deliberate attempt to remove parliamentary oversight on this important area. With the amendment, where the National Assembly rejects the appointment for the third time that measure or appointment shall take effect.

3.12 Disciplinary Actions against Judges and the Judiciary

International and regional standards establish that judges may only be dismissed on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring

objectivity and impartiality set out in the constitution. To ensure the independence of the judiciary, such disciplinary proceedings must be held by an institution independent of the executive. The current Article 143(a) provides that a judge may be removed from office on the following grounds: (a) mental or physical disability that makes the judge incapable of performing judicial functions; (b) incompetence; (c) gross misconduct; or (d) bankruptcy. The amendment Bill replaces “mental or physical disability that makes the judge incapable of performing judicial function”, with “legally disqualified from performing judicial function.” What does “legally disqualified” in this context mean? The provision is vague. It exists in no other constitution in the world. The vagueness of the provision increases the risk of judges being removed on politically motivated grounds and threatens the rule of law and separation of powers.

This development comes in combination with a proposed amendment to Article 114 transferring the ultimate decision to remove a judge from the judicial Complaints Commission to a Tribunal Appointed by the President (new article 44 (3)). Regarding the Constitutional Court, the amendment removes the positions of the President and Deputy President without clearly specifying where the powers of the two are to rest in their absence. In addition, the requirement of a sitting bench of at least 11 judges on the Supreme Court and constitutional court is replaced with the vague notion of simply requiring “an even number of judges, as prescribed.” This opens up an avenue through which the judiciary could be manipulated by the executive. To avoid the possibility of such an outcome, the number of judges in the highest courts should be “rigid” and should not be subject to change except through legislation. This is particularly important as an independent judiciary is indispensable to constitutional democracy.

3.13 Amendments Relating to Elections

Article 81 (3) provides that the President may dissolve parliament if the Executive cannot effectively govern the Republic of Zambia due to the failure of the National Assembly to objectively and reasonably carry out its legislative function. This is a most unusual provision and clearly sends the message that the Executive is superior to Parliament. How can the executive be the determinant as to whether parliament is performing its duties or not? What does “reasonable” in this context mean? This provision erodes the independence of parliament. The only control, in the exercise of this power, by the president is that he or she shall inform the public and refer the matter to the Constitutional Court for review.

In Article 9, Bill 10 provides that the constitution is amended to repeal Article 51 and the substitution thereof of the following: (2) Elections to the National Assembly shall be conducted under a mixed member electoral system as prescribed. This is an attempt to introduce proportional representation. No details are given as to how this complicated system of elections is going to be implemented. Countries that have proportional representation have detailed provisions in the constitution as to how lists of candidates are

to be made and the threshold for getting a seat. Article 9, gives the impression of an inadequately thought out provision.

Bill 10 proposes to amend the constitution by repealing the current Article 68 and the substitution of the following: “subject to Article 47, the election, nomination, qualification and vacation of office of a Member of Parliament shall be as prescribed.” These are matters which are so fundamental to constitutional democracy that they should be dealt with in the constitution. The qualifications for election to parliament and the presidency are important constitutional questions. They are never left to parliament to decide. It is quite clear that the intention of Bill 10 is to give the ruling party the power to determine who can stand for President and parliament. By leaving election matters to Parliament, they also seek to redraw the electoral map of Zambia so that constituencies are increased in areas where the ruling party has majority voters, thereby ensuring a permanent majority in parliament. This fits into the overall objective of Bill 10 to constitutionalise dictatorship and ensure the ruling party rule in perpetuity.

A further Amendment in Bill 10 states that “Article 116 (3) is amended so that a Minister will continue to hold office until the next general election.” This is clearly a reaction to the Constitutional Court judgment that held that Ministers who continued to hold on to office in the last election, violated the constitution and must pay back all emoluments earned during that period. This is clearly so that Ministers can use government resources to campaign for elections in the 2021 elections.

3.14 Coalition Government

Bill 10 proposes to introduce a coalition form of government to govern the country in situations provided by Bill 10. It provides that: “The candidate with the highest 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 candidate forming the coalition government meet the threshold of more than fifty percent of the valid votes cast.” The first observation to be made is that this sort of provision does not exist anywhere else in the world. Presidential candidates stand as individual candidates. Their votes cannot be transferred to another candidate at the behest of another candidate. The provision is ill conceived and is designed to undermine democratic elections. In presidential elections, citizens vote for an individual, not the party. The amendment does not deal with the issue of the Vice President, who under the constitution is a running mate. So, which of the running mates of the two presidential candidates gets to be Vice President?

4. Basic Structure Doctrine and Constitutional Amendments

In conclusion, the paper argues that the proposed amendments are unconstitutional and violate the basic structure of the constitution. Most of the amendments contained in Bill 10 are about removing parliamentary oversight over the executive and subjecting the judiciary to executive control, thereby seeking to alter the basic structure of the 2016 Zambian constitution and completely missing the objectives of the post 1998 constitutional project in Zambia. In addition, the reduction of Parliament's powers goes against Article 27 of the African Charter on Democracy, Elections and Governance which states that "in order to advance political, economic and social governance, state parties shall commit themselves to strengthening the capacity of parliaments and legally recognized political parties to perform their core functions." (2007)

The basic structure doctrine is a constitutional principle developed by the Indian Supreme Court and now followed in many parts of the world. It proceeds on the basis that a constitution has basic features that cannot be altered through amendment by parliament. It was first elaborated in 1964 by Justice J.R. Mudhoikar in his dissent in *Sajjan Singh v. State of Rajasthan* (1964). The basic structure of the 2016 Zambian constitution are the following principles: (a) supremacy of parliament; (b) republican and democratic form of government; (c) secular part of the constitution and (d) the separation of powers between the legislature, executive, and the judiciary.

In 1973 the basic structure doctrine triumphed in Justice Han's Khanna's judgment in the landmark case of *Kesavananda Bharati v. State of Kerala*, (1973) which held: "While Parliament has wide powers to amend the constitution, it did not have the power to destroy or emasculate the basic elements or fundamental features of the constitution." Subsequent cases have upheld the doctrine. See *Indira Nehru Gandhi v. Rajnarain* (1975). The basic structure doctrine has been adopted in Bangladesh, *Anwar Hussain v. Chowdhary* (1989). The article will end its discussion with a highly relevant quote from Nelson Mandela (1994) who I believe is the greatest democrat the world has ever seen. He said: "People come and Go. Customs, fashions and preferences change. Yet the web of fundamental rights and justice which a nation proclaims, must not be broken. It is the task of the court to ensure that the values of freedom and equality which underlie the Constitution are nurtured and protected so that they may endure. Constitutionalism means that no office and no institution can be higher than the law. The highest and the most humble in the land all, without exception, owe allegiance to the same document, the same principles. The authority of government comes from the people through the constitution. The people speak through the constitution."

Bill 10 is about reducing parliamentary oversight over the Presidency. It is about rendering the checks and balances and the other branches of government powerless. It is a stealth attempt to privatise the Zambian nation through the office of the Executive. This attempt has no redeeming feature because it is *prima facie mala fides* (in bad faith). The Constitution of Zambia has noted imperfections, but any attempt to amend it, should be in

the overall interest of democracy, justice, peace, accountability, and fundamental freedoms. To tinker it in order to expropriate the state or create a “democratic dictatorship” cannot be in the best interest of our beloved country. “History could not be any clearer: Rights given by fad and fashion are just as easily taken away. The Constitution matters” (Samaan).

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