

ACT

No. 33 of 1969.

I hereby signify my assent to the Bill.

Signed..........

President.

Date of Assent: 21/12/69.

An Act to amend the Zambia Independence Order, 1964, and the Constitution.

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ENACTED by the Parliament of Zambia.

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| | Enactment |
| 1. This Act may be cited as the Constitution (Amendment) (No. 5) Act, 1969. | Short title |
| 2. Section <i>twenty</i> of the Zambia Independence Order, 1964, is amended by the insertion after subsection (2) thereof of the following new subsection: | Amendment of section 20 of the Zambia Independence Order, 1964 |
| (3) This section shall not apply to the Barotseland Agreement, 1964 (that is to say, the agreement dated 18th May, 1964, between the Government of Northern Rhodesia and the Litunga of Barotseland which provides that it may be cited by that title), which agreement shall, on and after the commencement of the Constitution (Amendment) (No. 5) Act, 1969, cease to have effect, and all rights (whether vested or otherwise), liabilities and obligations thereunder shall thereupon lapse. | |
| 3. Section <i>ten</i> of the Constitution is repealed. | Repeal of section 10 of the Constitution |
| 4. Section <i>eighteen</i> of the Constitution is repealed and the following section substituted therefor: | Repeal and replacement of section 18 of the Constitution |
| 18. (1) Save as hereinafter provided, no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except under the authority of an Act of Parliament which provides for payment of compensation for the property or interest or right to be taken possession of or acquired. | Protection from deprivation of property |



(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that such law provides for the taking possession or acquisition of any property or interest therein or right thereover—

- (a) in satisfaction of any tax, rate or due;
- (b) by way of penalty for breach of any law, whether under civil process or after conviction of an offence;
- (c) in execution of judgments or orders of courts;
- (d) upon the attempted removal of the property in question out of or into Zambia in contravention of any law;
- (e) as an incident of a contract (including a lease, tenancy, mortgage, charge, pledge or bill of sale) or of a title deed to land;
- (f) for the purpose of its administration, care or custody on behalf of and for the benefit of the person entitled to the beneficial interest therein;
- (g) by way of the vesting of enemy property or for the purpose of the administration of such property;
- (h) for the purpose of—
 - (i) the administration of the property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the benefit of the persons entitled to the beneficial interest therein;
 - (ii) the administration of the property of a person adjudged bankrupt or a body corporate in liquidation, for the benefit of the creditors of such bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;
 - (iii) the administration of the property of a person who has entered into a deed of arrangement for the benefit of his creditors; or
 - (iv) vesting any property subject to a trust in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust;



- (i) in consequence of any law relating to the limitation of actions;
- (j) in terms of any law relating to abandoned, unoccupied, unutilised or undeveloped land, as defined in such law;
- (k) in terms of any law relating to absent or non-resident owners, as defined in such law, of any property;
- (l) in terms of any law relating to trusts or settlements;
- (m) by reason of the property in question being in a dangerous state or prejudicial to the health or safety of human beings, animals or plants;
- (n) as a condition in connection with the granting of permission for the utilisation of that or other property in any particular manner;
- (o) for the purpose of or in connection with the prospecting for or exploitation of minerals belonging to the Republic on terms which provide for the respective interests of the persons affected;
- (p) in pursuance of provision for the marketing of property of that description in the common interests of the various persons otherwise entitled to dispose of that property;
- (q) by way of the taking of a sample for the purposes of any law;
- (r) by way of the acquisition of the shares, or a class of shares, in a body corporate on terms agreed to by the holders of not less than nine-tenths in value of those shares or that class thereof;
- (s) where the property consists of an animal, upon its being found trespassing or straying;
- (t) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon—
 - (i) of work for the purpose of the conservation of natural resources of any description; or
 - (ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed, to carry out;

- (u) where the property consists of any licence or permit;
- (v) where the property consists of wild animals existing in their natural habitat or the carcasses or trophies of wild animals;
- (w) where the property is held by a body corporate established by law for public purposes and in which no moneys have been invested other than moneys provided by Parliament;
- (x) where the property is any mineral, mineral oil or natural gases or of any rights accruing by virtue of any title or licence for the purpose of searching for or mining any mineral, mineral oil or natural gases—
 - (i) upon failure to comply with any provision of such law relating to the title or licence or to the exercise of the rights accruing or to the development or exploitation of any mineral, mineral oil or natural gases; or
 - (ii) in terms of any law vesting any such property or rights in the President.

(3) An Act of Parliament such as is referred to in subsection (1) of this section shall, *inter alia*—

- (i) provide that compensation shall be paid in money;
- (ii) specify the principles on which the compensation is to be determined; and
- (iii) provide that the amount of the compensation shall in default of agreement be determined by resolution of the National Assembly.

(4) No compensation determined by the National Assembly in terms of any such law as is referred to in subsections (1) and (3) of this section shall be called in question in any court on the grounds that such compensation is not adequate.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that such law makes provision for the termination of the Barotseland Agreement, 1964 (that is to say, the agreement dated 18th May, 1964, between the Government of Northern Rhodesia and the Litunga of Barotseland which provides that it may be cited by that title) and the lapse of rights (whether vested or otherwise), liabilities and obligations thereunder.

5. Section *twenty-four* of the Constitution is amended by the deletion of subsections (4) and (5). Amendment of section 24 of the Constitution

6. Section *twenty-six* of the Constitution is repealed and the following section substituted therefor: Repeal and replacement of section 26 of the Constitution

26. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 15, 18, 19, 21, 22, 23, 24 or 25 of this Constitution to the extent that the law in question authorises the taking, during any period when the Republic is at war or when a declaration under section 29 of this Constitution is in force, of measures for the purpose of dealing with any situation existing or arising during that period; and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions unless it is shown that the measures taken exceeded anything which, having due regard to the circumstances prevailing at the time, could reasonably have been thought to be required for the purpose of dealing with the situation in question. Derogation from fundamental rights and freedoms

7. The Constitution is amended by the insertion after section *twenty-six* of the following new section: Insertion of new section after section 26 of the Constitution

26A. (1) Where a person's freedom of movement is restricted, or he is detained, under the authority of any such law as is referred to in section 24 or 26 of this Constitution as the case may be the following provisions shall apply: Provisions relating to restriction and detention

- (a) he shall, as soon as is reasonably practicable and in any case not more than fourteen days after the commencement of his detention or restriction, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is restricted or detained;
- (b) not more than one month after the commencement of his restriction or detention a notification shall be published in the *Gazette* stating that he has been restricted or detained and giving particulars of the provision of law under which his restriction or detention is authorised;

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- (c) if he so requests at any time during the period of such restriction or detention not earlier than one year after the commencement thereof or after he last made such a request during that period, as the case may be, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, appointed by the Chief Justice, who is or is qualified to be a judge of the High Court;
- (d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the authority by which the restriction or detention was ordered or to any tribunal established for the review of his case;
- (e) at the hearing of his case by such tribunal he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a restricted or detained person, the tribunal may make recommendations to the authority by which it was ordered concerning the necessity or expediency of continuing his restriction or detention but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1) (d) or (1) (e) of this section shall be construed as entitling a person to legal representation at the public expense.

(4) Parliament may make or provide for the making of rules to regulate the proceedings of any such tribunal including, but without derogating from the generality of the foregoing, rules as to evidence and the admissibility thereof, the receipt of evidence (including written reports) in the absence of the restricted or detained person and his legal representative, and the exclusion of the public from the whole or any portion of the proceedings.

(5) Subsections (10) and (11) of section 20 of this Constitution shall be read and construed subject to the provisions of this section.

8. (1) Section *twenty-nine* of the Constitution is repealed and the following section substituted therefor:

Repeal and replacement of section 29 of the Constitution

29. (1) The President may at any time by Proclamation published in the *Gazette* declare that—

Declarations relating to emergencies or threatened emergencies

(a) a state of public emergency exists; or

(b) a situation exists which, if it is allowed to continue, may lead to a state of public emergency.

(2) (i) A declaration made under this section shall cease to have effect on the expiration of a period of twenty-eight days commencing with the day on which the declaration is made unless before the expiration of such period it has been approved by a resolution of the National Assembly.

(ii) In reckoning any period of twenty-eight days for the purposes of this subsection no account shall be taken of any time during which Parliament is dissolved.

(3) A declaration made under this section may at any time before it has been approved by a resolution of the National Assembly be revoked by the President by a Proclamation published in the *Gazette*.

(4) A declaration made under this section and approved by a resolution of the National Assembly in terms of subsection (2) of this section may at any time be revoked by a resolution of such Assembly supported by a majority of all the members thereof.

(5) Whenever an election to the office of President results in a change in the holder of that office any declaration made under this section and in force immediately before the day on which the President assumes office shall cease to have effect on the expiration of seven days commencing with that day.

(6) The expiry or revocation of any declaration made under this section shall not affect the validity of anything previously done under such declaration.

(2) Any declaration under section *twenty-nine* of the Constitution in force immediately before the commencement of this Act shall continue in force and shall be deemed to be a declaration, approved by a resolution of the National Assembly in terms of subsection (2) thereof, under the section hereby substituted.

9. Section *forty-four* of the Constitution is amended in subsection (1) by the deletion of "sixteen" and the substitution therefor of "nineteen".

Amendment of section 44 of the Constitution