

**REPORT OF THE COMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS ON THE REVIEW OF THE DRAFT CONVENTION ON THE PROHIBITION OF NUCLEAR WEAPONS, FOR THE SECOND SESSION OF THE TWELFTH NATIONAL ASSEMBLY, APPOINTED ON 20<sup>TH</sup> SEPTEMBER, 2017, FOR PRESENTATION AT THE 137<sup>TH</sup> INTER-PARLIAMENTARY UNION TO BE HELD IN ST. PETERSBURG, RUSSIA ON 16<sup>TH</sup> OCTOBER 2017.**

Consisting of:

Dr M Malama, MP, (Chairperson); Ms A M Chisangano, MP, (Vice-Chairperson); Mr E J Muchima, MP; Brig Gen M Sitwala, MP; Mr K Mbangweta, MP; Mr L Nyirenda, MP; Ms M Miti, MP; Mr F N'gambi, MP; Mr A B Malama, MP; and Mr E K Belemu, MP.

The Honourable Mr Speaker  
National Assembly  
Parliament Buildings  
**LUSAKA**

Sir,

Your Committee has the honour to present its Report on the review of the Draft Convention on the Prohibition of Nuclear Weapons, for the Second Session of the Twelfth National Assembly, for presentation at the 137<sup>th</sup> Inter-Parliamentary Union (IPU), to be held in St. Petersburg, Russia on 16<sup>th</sup> October 2017.

**Functions of the Committee**

2.0 Pursuant to Article 63 of the Constitution of Zambia (Amendment) Act, No. 2 of 2016 and section 5 of the Ratification of International Agreements Act, No. 34 of 2016, the National Assembly is reposed with the power to oversee the performance of Executive functions by among other things approving international agreements and

treaties before they are acceded to or ratified. Your Committee was mandated to receive submissions and make recommendations to Inter-Parliamentary Union on the Draft Convention on the Prohibition of Nuclear Weapons.

## **Meetings of the Committee**

3.0 Your Committee held five meetings to review the Draft Convention on the Prohibition of Nuclear Weapons to enable the Zambian Government take a position on the proposed nuclear ban treaty.

## **Procedure adopted by the Committee**

4.0 In order to acquaint itself with the provisions and ramifications of the International Instruments under consideration, your Committee sought both written and oral submissions from stakeholders as listed at Appendix I.

## **5.0 General Background**

In May 2017, the United Nations General Assembly (the Assembly) convened a conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination. The Assembly encouraged all Member States to participate in the Conference which was held in New York from 27<sup>th</sup> to 31<sup>st</sup> March and from 15<sup>th</sup> June to 7<sup>th</sup> July, 2017. Resulting from the Conference was the Draft Convention which was adopted on 7<sup>th</sup> July, 2017. It was felt that the Treaty on Non-Proliferation of Nuclear Weapons did not adequately address issues of prohibition of nuclear weapons. For this reason, the need for, a legally binding instrument that would establish general prohibitions and obligations as well as a political commitment to achieve and maintain a nuclear weapon free world arose.

Pursuant to the above, the 130<sup>th</sup> IPU Assembly adopted a resolution entitled towards a nuclear-weapon-free world: The contribution of parliaments. It is against this

background, that parliamentarians are scheduled to discuss the Convention at the 137<sup>th</sup> IPU Assembly to be held in St Petersburg, Russia on 16<sup>th</sup> October, 2017.

### **Preamble to the Convention**

In the preamble, the Treaty acknowledges the catastrophic humanitarian consequences of nuclear weapon use, the value of international disarmament agreements including the Treaty on the Non-Proliferation of Nuclear Weapons, the Comprehensive Nuclear-Test-Ban Treaty and Nuclear Weapons Free Zone Agreements. Further, the Treaty declares that any use of nuclear weapons would be contrary to the rules of international law applicable in armed conflict, and, in particular, the principles and rules of humanitarian law.

### **Objective**

The objective of the Convention on the Prohibition of the Nuclear Weapons (the Convention) is to completely outlaw and declare the use of nuclear weapons illegal under international law.

## **6.0 Key Provisions**

### **Article 1 (General Obligations)**

Each State Party undertakes never to develop, produce, manufacture, acquire, possess, stockpile, transfer, use or threaten to use, nuclear weapons. Further, each State Party undertakes to prohibit and prevent in its territory or any place under its jurisdiction or control any stationing, installation, nuclear weapon test explosion or deployment of any nuclear weapons, or other nuclear explosive devices.

The import of Article 1 is that a State Party is obliged not to participate, or otherwise engage in activities that would promote the use of nuclear weapons. Any form of assistance, encouragement, or inducing another State to develop or use nuclear weapons would constitute a breach of Article 1.

## **Article 2 (Declarations)**

A State Party must submit to the Secretary-General of the United Nations not later than thirty (30) days after the Convention enters into force, a declaration whether it has manufactured, possessed or otherwise acquired any nuclear weapons or other nuclear devices after 5<sup>th</sup> December, 2001. This measure is intended to enable the United Nations take full inventory of nuclear weapons that have been manufactured or possessed, and by which States.

## **Article 7 (National Implementation)**

States Parties are required to adopt necessary measures to implement its obligations (under this Convention) including enactment of necessary legislation. The Convention obliges a State Party to take affirmative measures to ensure that its obligations under the Convention are met. In this regard, this measure may entail reviewing certain pieces of legislation, including the Constitution, if need be, to accommodate the requirements of the Convention.

## **Article 9 (Meetings of States Parties)**

States Parties shall meet regularly regarding implementation of the Convention. Further, States not Party to this Convention, or any international or regional organisation may be invited to attend meetings as observers. The deliberations are open to countries which are not States Parties. In this vein, a State that may not have initial intentions of becoming a State Party may attend meetings in an observer capacity.

## **Article 17 (Reservations)**

No provision of this Convention is subject to reservations. A reservation arises where a State Party to a Convention opts not to be bound by certain provisions or Article(s) of a Convention. This is only tenable where the Convention itself makes provision for reservations. However, where a Convention expressly provides that the no Article is subject to reservations, as is the case under this Convention, a State Party is bound by the Convention in its full entirety.

## **Article 18 (Duration)**

The Convention shall be of unlimited duration. Further, each State Party shall in exercising its national sovereignty have the right to withdraw from the Convention if extraordinary events related to the Convention have jeopardised its supreme interests. Such withdrawal shall only take effect three (03) months after the receipt of the instrument of withdrawal by the depositary.

## **7.0 Summary of submissions from stakeholders**

All the stakeholders who appeared before your Committee were in support of the Convention. They, however, submitted that the Convention on the Prohibition of Nuclear Weapons has both advantages and disadvantages.

### **Advantages of the Convention**

The following were identified tendered as benefits to Zambia:

- i.enhanced collaboration with other countries in the areas of sharing information, best practices on the peaceful application of nuclear energy and the maintenance of international peace and security;
- ii.formulation of policies and strategies that could support the fight against use of nuclear weapons;
- iii.technical assistance that included medical care, rehabilitation and psychological support, social and economic welfare as well as assistance towards the environmental decontamination of affected areas; and
- iv.enhanced cooperation with other State Parties to facilitate the implementation of the obligations of this Convention.

In general terms, the Convention would, to a large extent, close the “legal gap” that existed under the Treaty on the Non-Proliferation of Nuclear Weapons, which did not expressly outlaw the use of nuclear weapons. Article VI of the Non-Proliferation of Nuclear Weapons Treaty provided that each Party to the Treaty undertook to pursue negotiations in good faith on effective measures relating to cessation of the nuclear

arms race at an early date and to nuclear disarmament. In this regard, the Convention reinforced the Non-Proliferation of Nuclear Weapons Treaty as provided under Article VI.

The current Draft Convention has stringent provisions for withdrawal because it is prohibitive in nature as it is meant to prohibit the development, production, manufacture, acquisition, possession or stockpiling of nuclear weapons or other nuclear devices. Further, it has no provisions for reservations generally because this would give rise to stockpiling and other activities prohibited in Article 1.

### **Disadvantages**

Notwithstanding the advantages highlighted above, the following were the disadvantages:

The North Atlantic Treaty Organisation (NATO) and its allies had opposed the initiative from its inception. They contended that the Nuclear Prohibition Convention would distract attention from other disarmament and non proliferation initiatives. They had expressed concern that the Nuclear Prohibition Convention could undermine the Nuclear Non-Proliferation Treaty and the extensive safeguard provisions included therein, could give an option to “forum shop” or choose between the two treaties.

## **8.0 Committee’s Observations and recommendations**

While supporting the provisions of the Draft Convention, Zambia makes the observations and recommendations highlighted hereunder.

### **i. Definitions**

The Draft Convention does not have a section for definitions. Consequently, the meaning of terms ‘nuclear weapon’ and ‘nuclear explosive devices is not clear.’ It is therefore, recommended that a definition section be included in the Convention and that these terms be defined.

**ii. Article 4- Measures for States that have eliminated their nuclear weapons**

Your Committee observes that Article 4 does not make reference to information and/or data on environmental impacts arising from the development, testing, stockpiling of nuclear weapons or nuclear explosive devices and therefore, recommends that this be provided for.

**iii. Article 5- Measures for Situations not Covered by Article 4**

Article 5 provides measures for situations not covered by Article 4, which makes provisions for measures for States that have eliminated their nuclear weapons. Your Committee notes that Article 4 refers to States Parties that have manufactured, possessed or otherwise acquired nuclear weapons or other nuclear explosive devices after 5<sup>th</sup> December 2001. However, there could be some States Parties that have nuclear weapons that were manufactured, possessed or acquired before this date. Therefore, since Article 5 provides measures for situations not covered by Article 4, it should also provide for the disarmament of nuclear weapons that were manufactured, possessed or acquired before 5<sup>th</sup> December 2001.

**iv. Article 7- National Implementation**

Article 7 provides that each State Party shall, in accordance with its constitutional processes, adopt necessary measures to implement its obligations under this Convention. Your Committee recommends that instead of referring to “constitutional processes”, the Article should refer to “domestic legal processes”.

**v. Article 9- Meeting of States Parties**

In Article 9 (1) (b), there is reference to reports by States Parties on the implementation of their obligations under this Convention. However, the nature of information that should be provided in the reports is not prescribed. Your Committee recommends that the Convention should clearly stipulate the nature of information to be contained in the reports by States Parties, as well as reporting mechanisms.

**vi. Article 12-Settlement of Disputes**

Your Committee notes that Article 12 does not provide for handling of situations where a Party, even after going through dispute settlement is adamant on pursuing an activity that is a provision of the Convention. It is recommended therefore, that the Convention explicitly provides for the handling of such situations so as to minimise lacunas in the Convention that may jeopardise its implementation.

**vii. Efficacy of Ban**

Your Committee notes that States that opt not to sign the Convention cannot be compelled to abide by its provisions and therefore, wonders how effective the Draft Convention will be.

**9.0 Conclusion**

Your Committee wishes to express its gratitude to all stakeholders who appeared before it and tendered both oral and written submissions. Your Committee wishes to thank you Mr Speaker, for affording it an opportunity to review the Draft Convention on the Prohibition of Nuclear Weapons. Your Committee also appreciates the services rendered by the Office of the Clerk of the National Assembly.

We have the Honour to be, Sir, your Committee on National Security and Foreign Affairs, tasked to review the Draft Convention on the Prohibition of Nuclear Weapons for the Second Session of the Twelfth National Assembly.

Dr M Malama, MP,

**(Chairperson)**

Ms A M Chisangano, MP

**(Vice-Chairperson)**

Mr E J Muchima, MP;

**(Member)**



Brig Gen M Sitwala, MP;

**(Member)**

Mr K Mbangweta, MP;

**(Member)**

Mr L Nyirenda, MP;

**(Member)**

Ms M Miti, MP;

**(Member)**

Mr F N'gambi, MP; and

**(Member)**

Mr A B Malama, MP.

**(Member)**

Mr E K Belemu, MP

**(Member)**

**February 2017**

**LUSAKA**

**Appendix I**

**List of Witnesses**

**Dr M Malama, MP**

**CHAIRPERSON**

**Ministry of Justice**

Mr A Nkunya, Chief Parliamentary Counsel

MS I Kapeza, Counsel, International Law and Agreements

Ms M Mushabati Senior Counsel, International law and Agreements

Mr M Lukwasa, Director, International Law and Agreements

**Ministry of Defence**

Mr A Chilenga, Acting Permanent Secretary

Col B Sentala, Director  
Col V Chiboma, Deputy Air Secretary  
Lt Col C Musonda, Assistant ZNS Secretary  
Col M Mayaka, Director Research  
Mr M B Moonga, Acting Director Research  
Mr F Mwansa, Senior Research and Planning Officer

### **Ministry of Foreign Affairs**

Amb. Chalwe Lombe, Permanent Secretary  
Mrs Eunice Luambia, Director, Zambia Mine Action Centre  
Mr Lubasi Mungandi, Assistant Director, Regional Integration  
Mrs Kalumbu M Phiri, Principal Planner

### **Radiation Protection Authority**

Mr B Siwila, Chief Executive Officer  
Mr K Mushaukwa, Director Protection Services  
Mrs M Kapeya, Legal Officer

### **Zambia Environmental Management Agency**

Mr J Msimuko, Director General  
Mr H K Mwale, Director, Legal Services  
Mr M Nkoya, Director, Operations

### **The Law Association of Zambia**

Ms L Kasonde, President

## **Appendix II**

### **List of Officials**

#### **NATIONAL ASSEMBLY**

Ms C Musonda, Acting Principal Clerk of Committees

Mr F Nabulyato, Acting Deputy Principal Clerk of Committees (FC)

Mrs A M Banda, Committee Clerk

Mr C Chishimba, Committee Clerk

Mr D Mwinamo, Legal Officer

Mrs S Mwale, Personal Secretary II

Mr M Chikome, Committee Assistant

