



**REPUBLIC OF ZAMBIA**

**REPORT**

**OF THE**

**COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL  
GUIDANCE, GENDER MATTERS AND GOVERNANCE**

**ON THE**

**ZAMBIA LAW DEVELOPMENT COMMISSION (AMENDMENT) BILL, N.A.B  
NO. 17 OF 2021**

**FOR THE**

**FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY**

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# **REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL GUIDANCE, GENDER MATTERS AND GOVERNANCE ON THE ZAMBIA LAW DEVELOPMENT COMMISSION (AMENDMENT) BILL, N.A.B NO. 17 OF 2021 FOR THE FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY**

## **1.0 MEMBERSHIP OF THE COMMITTEE**

The Committee consisted of Mr M Jere, MP (Chairperson); Mrs P G M Jere, MP (Vice Chairperson); Mr C Nanjuwa, MP; Evg H Shabula, MP; Mr E Sing'ombe, MP; Mr R Bulaya, MP; Ms M P Langa, MP; Mr S Banda, MP; Mr S Chungu, MP; and Mr F M Fube, MP.

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

Sir,

The Committee has the honour to present its Report on the Zambia Law Development Commission (Amendment) Bill, N.A.B. No. 17 of 2021 for the Fifth Session of the Twelfth National Assembly referred to it by the House on 11<sup>th</sup> February, 2021.

## **2.0 FUNCTIONS OF THE COMMITTEE**

The functions of the Committee are as set out under Standing Order 157(2). Among other functions, the Committee is mandated to consider Bills that may be referred to it by the House.

## **3.0 MEETINGS OF THE COMMITTEE**

The Committee held five meetings to consider the Zambia Law Development Commission (Amendment) Bill, N.A.B. No. 17 of 2021.

## **4.0 PROCEDURE ADOPTED BY THE COMMITTEE**

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from the stakeholders listed at Appendix II.

## **5.0 OBJECT OF THE BILL**

The object of the Bill was to amend the *Zambia Law Development Commission Act, Chapter 32 of the Laws of Zambia* so as to revise the composition of the Commission.

## **6.0 BACKGROUND**

The *Zambia Law Development Commission Act, Chapter 32 of the Laws of Zambia* (hereinafter referred to as “the Principal Act”) was enacted in 1996. The objectives of its enactment were to, among others, establish the Zambia Law Development Commission and define its functions. Noteworthy in the *Zambia Law Development Commission Act, No. 4 of 2019*, as amended, was the fact that the Permanent Secretary responsible for legal matters in the ministry responsible for justice was a member of the Commission.

In an effort to enhance transparency and accountability and in adhering to international best practice in corporate governance, the Government undertook reforms in the composition of boards and governing councils or commissions of public institutions.

The introduction of the Zambia Law Development Commission (Amendment) Bill, N.A.B No. 17 of 2021, therefore, sought to revise the composition of the Commission by removing the Permanent Secretary from the membership of the Commission.

## **7.0 SALIENT PROVISIONS OF THE BILL**

The salient features of the Bill were set out below.

### **7.1 Clause 1: Short title**

Clause 1 provided for the short title of the Act and that the Act was to be read as one with the principal Act.

### **7.2 Clause 2: Amendment of section 4**

Clause 2 sought to amend section 4 of the principal Act by granting the minister responsible for justice the authority to provide general or specific directions to the Commission in the performance of its functions, and the power to enter into performance contracts with the Commission for a specified period and in accordance with the provisions of the Act.

### **7.3 Clause 3: Amendment of section 5**

Clause 3 sought to amend section 5(1) (b) of the principal Act so as to remove the Permanent Secretary from the membership of the Commission and replace him or her with a representative of the Ministry of Justice.

## **8.0 STAKEHOLDERS’ SUBMISSIONS AND CONCERNS**

While supporting the Bill, stakeholders raised the concerns set out hereunder.

### **8.1 Clause 1: Short title**

Stakeholders were concerned that clause 1 did not provide for a commencement date, which meant that the Act would come into force immediately it was assented to and published in the *Government Gazette*.

## 8.2 **Clause 2: Amendment of section 4**

While some stakeholders welcomed the proposed amendment of section 4, so as to provide the minister with powers to give the Commission general or specific directions relating to the performance of its functions, on the basis that an elected government should be given a say and provide direction for law reform that was done within the ambit of the law, some stakeholders were opposed to the amendment. They submitted that this amendment would simply give the minister unfettered powers and authority over the Commission with regard to its mandate.

The stakeholders submitted that the principal Act adequately provided for the functions of the Commission and, therefore, the proposed amendment would in effect render the rest of the provisions under section 4 nugatory. Stakeholders were of the view that the Commission, being a body corporate with perpetual succession and a common seal, capable of suing and of being sued, need not operate at the behest of the minister in its core functions of law review and development.

Another section of stakeholders submitted that pursuant to the current provisions of the *Zambia Law Development Commission Act*, the Commission, in exercise of its statutory mandate or functions, was already obligated to consider the minister's recommendations. They submitted that section 4(2)(c) of the provisions of the principal Act stated that "without prejudice to the generality of subsection (1) the functions of the Commission shall be to review and consider proposals for law reform referred to the Commission by the minister or the members of the public."

The stakeholders were of the view that section 4(2)(c) had been successfully implemented without any difficulty or mischief as quite a number of the law review projects that the Commission had undertaken had been at the instruction or proposal of the sitting Minister of Justice.

In addition, the stakeholders submitted that an essential feature of a law reform agency was its independence. This independence was critical in demonstrating that the views of a law reform agency were the result of rational enquiry based on meticulous research and consultation. In light of this, the stakeholders proposed that the status quo and practice should remain for members to exercise their free will, subject only to the law, and unhindered by outside forces, directives, or influence.

With regard to the insertion of subsection (4), which sought to provide the minister with authority to enter into performance contracts with the Commission for a specified period, stakeholders hastened to acknowledge that members of the Commission played an important role in pursuing the strategic direction and superintending over the affairs of the Zambia Law Development Commission with the highest level of personal and professional standard or conduct.

The stakeholders were of the view that in line with the principles of corporate governance which, *inter alia*, demanded for transparency, integrity, and accountability, members of the Commission, having been appointed to provide policy direction and leadership in a public institution, should be open to public scrutiny. In agreeing to this amendment, the stakeholders were concerned that the provision had some lacunae with regard to expected targets, how the assessments would be undertaken and whether or not they would apply to part-time members of the Commission. They proposed that these gaps be adequately addressed in subsidiary legislation so as not to create conflict. The stakeholders further submitted that performance contracts worked well in an environment where the subordinate institution was adequately funded and urged the Government to adequately fund the Commission so it could complete its outstanding assignments.

### **8.3 Clause 3: Amendment of section 5**

Stakeholders welcomed clause 3 which sought to amend section 5 of the principal Act by removing the Permanent Secretary from the membership of the Commission and replacing him or her with a representative of the Ministry of Justice. The stakeholders were of the view that the substitution of the Permanent Secretary responsible for legal matters in the Ministry of Justice, by a representative of the Ministry of Justice was a progressive amendment, provided the person to be nominated had the relevant knowledge and experience outlined under section 5(2) of the Act, as amended.

Other stakeholders were of the view that the amendment would be in line with the tenets of good corporate governance, and further strengthen the autonomous nature of the Commission.

Another section of stakeholders submitted that under the principal Act, the ministry responsible for justice was represented by the Attorney-General and the Permanent Secretary responsible for legal matters in the ministry. The stakeholders were of the view that a representative of a public institution, such as the National Arts Council, should be the one to replace the Permanent Secretary because a diverse representation will enhance the Commission's capacity to effectively carry out its functions.

## **9.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS**

The Committee notes that all the witnesses who virtually appeared before it were in support of the Bill. The Committee also supports the Bill. However, in supporting the Bill, the Committee makes the following observations and recommendations:-

- (i) The Committee wonders what mischief the insertion of subsection (3) is trying to cure since the Commission's mandate and functions are clearly prescribed in the principal Act. The Committee is of the view that the current provisions under the *Zambia Law Development Commission Act*,

already obligates the Commission to consider the minister's recommendations to review and consider proposals for law reform. In this regard, the Committee recommends that the proposed amendment should be dropped.

- (ii) The Committee agrees with the stakeholders that because of the principles of good corporate governance such as transparency, integrity and accountability, members of the Commission should be open to public scrutiny through performance contracts. The Committee, however, cautions that this amendment should be very clear with regard to the expected targets, how assessments will be undertaken and whether or not they will apply to part-time commissioners.

The Committee, therefore, recommends that in entering into the performance contracts with the members of the Commission, the above mentioned gaps should be adequately addressed in subsidiary legislation so as to avoid conflict.

The Committee further recommends that the Executive should adequately fund the Commission so that it effectively performs its obligations under performance contracts.

- (iii) The Committee welcomes the amendment in section 5 which seeks to remove the Permanent Secretary responsible for legal drafting in the Ministry of Justice from the membership of the Commission as it will enhance good corporate governance. The Committee is of the view that removing the Permanent Secretary will enhance the autonomous nature of the Commission. The Committee, however, recommends that a representative of a public institution, such as the National Arts Council, be the one to replace the Permanent Secretary on the Commission for diversity.

## **10.0 CONCLUSION**

The Committee wishes to express its gratitude to all stakeholders who virtually appeared before it and rendered both oral and written submissions. The Committee also wishes to thank you, Mr Speaker and the Office of the Clerk of the National Assembly for the guidance and services rendered to it throughout its deliberations.

We have the honour to be, Sir, the Committee on Legal Affairs, Human Rights, National Guidance, Gender Matters and Governance mandated to consider the Zambia Law Development Commission (Amendment) Bill, N.A.B. No. 17 of 2021 for the Fifth Session of the Twelfth National Assembly.

Mr M Jere, MP  
(Chairperson)



Mrs P G M Jere, MP  
(Vice Chairperson)

Mr C Nanjuwa, MP  
(Member)

Evg H Shabula, MP  
(Member)

Mr E Sing'ombe, MP  
(Member)

Mr R Bulaya, MP  
(Member)

Mr S Banda, MP  
(Member)

Ms M P Langa, MP  
(Member)

Mr S Chungu  
(Member)

Mr M F Fube  
(Member)

February, 2020  
**LUSAKA**

## **APPENDIX I - NATIONAL ASSEMBLY OFFICIALS**

Ms C Musonda, Principal Clerk of Committees  
Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)  
Mrs C K Mumba, Senior Committee Clerk (FC)  
Ms B P Zulu, Committee Clerk  
Mr A Himululi, Acting Committee Clerk  
Mrs R N Mwiinga, Typist  
Mr M Kantumoya, Parliamentary Messenger

## **APPENDIX II-LIST OF WITNESSES**

### **MINISTRY OF JUSTICE**

Hon G Lubinda – Minister of Justice

Ms M Siwialiondo – Senior Parliamentary Counsel

### **LAW ASSOCIATION OF ZAMBIA**

Mr D Chakoleka – Member

### **MAGISTRATES' AND JUDGES' ASSOCIATION OF ZAMBIA**

Mr N Samaubi – National Secretary

### **ZAMBIA LAW DEVELOPMENT COMMISSION**

Ms H C Ndhlovu – Commission Secretary/Director

Mr M Mwenda – Research Director