



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. 4 OF 2019**

FOR THE

THIRD 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. 4 OF 2019 FOR THE THIRD SESSION OF THE TWELFTH NATIONAL ASSEMBLY

MEMBERSHIP OF THE COMMITTEE

1. The Committee consists of Mr M Jere, MP (Chairperson); Mrs P G M Jere, MP (Vice Chairperson); Mr C L Bwalya, MP; Mr S Banda, MP; Mr C Nanjuwa, MP; Mr T S Ngulube, MP; Mr H Shabula, MP; Mr E Singombe, MP; Mr R Bulaya, MP and Ms M P Langa, 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. 4 of 2019 for the Third Session of the Twelfth National Assembly referred to it by the House on Thursday, 21st February, 2019.

FUNCTIONS OF THE COMMITTEE

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

MEETINGS OF THE COMMITTEE

3. The Committee held seven meetings to consider the Zambia Law Development Commission (Amendment) Bill, N.A.B. No. 4 of 2019.

PROCEDURE ADOPTED BY THE COMMITTEE

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

OBJECTS OF THE BILL

5. The Bill seeks to amend the *Zambia Law Development Commission Act, Chapter 32 of the Laws of Zambia* so as to ó

- (a) revise the composition of the Commission;
- (b) provide for the qualifications of the members of the Commission;
- (c) provide for the appointment of experts and assessors; and
- (d) provide for matters connected with, or incidental to, the foregoing.

BACKGROUND TO THE BILL

6. The Zambia Law Development Commission (ZLDC) is a semi-autonomous statutory body established by the *Zambia Law Development Commission Act, Chapter 32 of the Laws of Zambia* (hereinafter referred to as 'the principal Act'). The *Zambia Law Development Commission Act, Chapter 32 of the Laws of Zambia* was enacted to, among others, define the functions of the Zambia Law Development Commission.

One of the roles of the Commission is to regularly conduct research and consultations into areas of law for the purpose of making well-informed and appropriate recommendations to the Government. Based on the recommendations made by ZLDC, the Government makes informed decisions about law development and reform to keep the law relevant to the aspirations and needs of the Zambian society. Further, ZLDC organises and consolidates unwritten laws of Zambia in order to simplify and clarify various Zambian customs and provide comprehensive guidelines to reduce conflict with the written law.

In order to carry out its mandate, ZLDC should function with properly defined structures, appropriate personnel and *modus operandi* that ensure efficiency and efficacy in the operations of the Commission. It is against this background that the Government has introduced the Zambia Law Development Commission (Amendment) Bill No. 4 of 2019 (hereafter referred to as 'the Bill') to, among others, revise the composition of the Commission; provide for qualifications of the members of the Commission; and to provide for the appointment of experts and assessors.

SALIENT PROVISIONS OF THE BILL

7. The salient features of the Bill are as set out below.

PART I – SHORT TITLE AND INTERPRETATION

Clause 1: Short Title

The Clause provides for the short title of the Act and that once enacted, the Act shall be read as one with the principal Act.

Clause 2: Amendment to Section 2

The Clause provides for the amendment of section 2 of the principal Act by the insertion of new definitions for the following terms:

- (a) associate;
- (b) Emoluments Commission;
- (c) member;
- (d) private higher education institution;
- (e) public high education institution;
- (f) private university;
- (g) public university;
- (h) relative;
- (i) Vice- Chairperson; and
- (j) Zambia Qualifications Authority.

The clause additionally amends section 2 of the principal Act by the deletion of the definitions of Commissioner, Deputy Chairperson and Deputy Director.

PART II – FUNCTIONS, COMPOSITION, TENURE OF OFFICE AND DISCLOSURE OF INTEREST

Clause 3: Amendment of Section 4

The clause provides for the repeal and replacement of section 5 of the principal Act. The clause seeks to broaden the representation of the composition of the Board to include other relevant disciplines. The notable inclusions are representatives from a school of law at a public university and private university and a representative from the Ministry of National Guidance and Religious Affairs.

Clause 4: Repeal and replacement of Section 5

The clause provides for the amendment of section 6 of the principal Act. The clause provides for the insertion of new subsections (4) and (5). These new subsections provide for the transitional period of membership upon expiration of a member's tenure of office. Clause 4 also repeals and replaces section 5 of the principal Act by making changes to the composition of the Commission and the qualifications of the members.

Clause 5: Repeal and replacement of Sections 11, 12 and 13

The clause provides for the repeal and replacement of sections 11, 12 and 13 of the principal Act. Section 11 provides for disclosure of interest while section 12 provides for the appointment of the Director, Research officers and other staff, and repeals the sections relating to the appointment of Deputy Director. Section 13 on the other hand seeks to provide for the appointment of suitably qualified persons as experts or assessors to assist the Commission in the performance of its functions under the Act.

Clause 7: General Amendment

The clause provides for the general amendments to the Act as a consequence of the preceding amendments.

STAKEHOLDERS' SUBMISSIONS AND CONCERNS

Clause 2: Interpretation

8. Stakeholders submitted that clause 2 amends section 2 of the principal Act to provide for new definitions of, among others, "associate" and "relative". Stakeholders, therefore, submitted that the definition of the two words was necessary as the new section 11, on disclosure of interest, covered the terms. Stakeholders further submitted that it was noteworthy that most of the terms were defined by making a cross-reference to the definitions of the terms in other pieces of legislation such as the *Constitution of Zambia Act, Chapter 1 of the Laws of Zambia*, the *Anti-Corruption Act, No. 3 of 2012*, and the *Higher Education Act, No. 4 of 2013*.

Clause 4 Section 5(1): Composition of the Commission

Stakeholders submitted that section 5 of the *Zambia Law Development Commission Act, Chapter 32 of the Laws of Zambia*, provided the composition of the Commission that was not representative enough as some other relevant institutions were not members of the Commission. Stakeholders, therefore, supported the proposed amendment as it made provision for diversified representation on the Commission by including other relevant disciplines other than scientific research.

Some stakeholders, however, observed that the proposed amendment did not provide representation for gender, the youths and persons that were differently-abled. They submitted that practical steps be taken in the appointment of Commissioners to ensure equalization of opportunities for gender, the youths and persons that were differently-abled. They, in this regard, called for representatives of the Ministries of Gender, and Community Development and Social Services on the Commission.

Some stakeholders submitted that while the broadened composition may guarantee wider representation, they were concerned about the resultant increase in the budgetary cost for the Commission and the Country. They, therefore, submitted that there was need for a composition that was minimal but critical to the relevance of the Commission.

With regard to the inclusion on the Commission of two other persons with experience and knowledge in matters relevant to the Act, stakeholders submitted that it was too open ended and as such would be subject to abuse. They submitted that there was need for appointments of the two other persons to be strictly reserved for the Commission's emergence needs for such experience and knowledge in matters relevant to the Act.

Clause 4: Nomination of the Judge by the Chief Justice as Chairperson

With regard to the Chief Justice being the one to nominate the Judge to be appointed as the Chairperson of the Commission, stakeholders submitted that this was too much discretion

given to one office, to nominate who should be appointed as the Chairperson of the Commission. Stakeholders called for a Committee to make such nominations.

Clause 5: Appointment of a person to finish the term of a vacating member of the Commission

With respect to new appointments for the unexpired term of one vacating member, stakeholders submitted that the Act must expressly state that the new appointment for the unexpired term of one vacating Member should be made from the same organization from which the Member vacating office was initially appointed, as this would ensure continuity in the operations of the Commission.

Clause 4: Representation of private universities

With regard to the representation of private universities - School of Law, stakeholders submitted that it was a welcome move as the Country had seen a growth of private education which must be acknowledged in the legal reform processes.

Clause 6: Conditions of Service for the Director and Staff

With respect to the conditions of service of the Director and staff of the Commission to be determined by the Emoluments Commission, stakeholders submitted that currently the necessary legislation pertaining to the operations of the Emoluments Commission had not yet been enacted. Thus, this provision was almost impossible to implement.

Clause 6: Qualifications of the Director

Stakeholders submitted that the proposed amendment did not provide for the qualifications for the person to be appointment as the Director. They submitted that the Act should provide for the qualifications of persons to be appointed as Director of the Commission to guide the Commission in recruitment of the Director.

Clause 6: Removal of Deputy Director from the Act

With regard to the removal of the Deputy Director from the Act, stakeholders submitted that for an important institution such as the Zambia Law Development Commission, there was need for a Deputy Director to act in the absence of the Director. It was, therefore, strongly recommended that the office of Deputy Director be retained in the principal Act.

COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

9. The Committee is of the view that the Zambia Law Development Commission (Amendment) Bill, N.A.B No. 4 of 2019, once enacted into law, will enable the Zambia Law Development Commission enhance the performance of its functions as a semi-autonomous body. The Bill is, therefore, progressive.

Following the interactions with various stakeholders, the Committee's observations and recommendations are set out hereunder.

- (i) The Committee observes that hitherto, the *Zambia Law Development Commission Act* has had no diversified representation on the Commission. The Committee, therefore, supports the amendment under clause 4 which seeks to increase the composition of the Commission and the Committee welcomes the introduction of other relevant disciplines other than scientific research as members of the Commission. The Committee notes that the proposed increase in the composition of the Commission would guarantee wider representation.
- (ii) The Committee notes that according to the proposed amendment under clause 4, there will be inclusion on the Commission of a school of law from a private university and representative from the Ministry of National Guidance and Religious Affairs. The Committee, therefore, recommends that there should also be representation for gender, youth and persons that are differently-abled.
- (iii) The Committee observes that the proposed amendment under clause 5 provides for a new appointment, for the unexpired term of one vacating member, to the Commission. The Committee recommends that the Act must expressly state that the new appointment for the unexpired term of one vacating Member shall be made from the same organisation from which the Member vacating office was initially appointed from so as to ensure continuity in the operations of the Commission.
- (iv) The Committee observes that the proposed amendment under clause 6 removes the position of the Deputy Director from the Act. The Committee notes that there is need for the Deputy Director to be acting in the absence of the Director. The Committee, therefore, strongly recommends that the office of Deputy Director be retained in the principal Act.
- (v) The Committee observes that the proposed amendment under clause 6 makes no provision for qualifications for the person to be appointed as Director. The Committee recommends that the Act should provide for the qualifications of persons to be appointed as Director of the Commission to guide in the recruitment process of the Director.

CONCLUSION

10. The Committee wishes to express its gratitude to all stakeholders who appeared before it and rendered both oral and written submissions. The Committee also wishes to thank you, Mr Speaker, for affording it an opportunity to scrutinise the Bill. The Committee also appreciates the services rendered to it by the Office of the Clerk of the National Assembly and the permanent witnesses from the Ministry of Justice.

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. 4 of 2019 for the Third Session of the Twelfth National Assembly.

Mr M Jere, MP
(Chairperson)

Mrs P G M Jere, MP
(Vice Chairperson)

Mr C L Bwalya, MP
(Member)

Mr S Banda, MP
(Member)

Mr C Nanjuwa, MP
(Member)

Mr T S Ngulube, MP
(Member)

Mr H Shabula, MP
(Member)

Mr E Singøombe, MP
(Member)

Mr R Bulaya, MP
(Member)

Ms M P Langa, MP
(Member)

March, 2019
LUSAKA

APPENDIX I - NATIONAL ASSEMBLY OFFICIALS

Ms C Musonda, Principal Clerk of Committees
Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)
Mr S Chiwota, Senior Committee Clerk (SC)
Mr D Mwinamo, Acting Senior Legal Officer
Mr E Chilongu, Committee Clerk
Mrs M Mweele, Committee Clerk
Mr D Lupiya, Committee Assistant
Ms C Ndimba, Stenographer
Mr M Kantumoya, Parliamentary Messenger

APPENDIX II - THE WITNESSES

Ministry of Justice

Mr Given Muntengwa, Senior Parliamentary Counsel

Mr Mwase Kumwenda, Parliamentary Counsel

Ministry of National Guidance and Religious Affairs

Mrs Katongo Chifwepa, Permanent Secretary

Mrs Peggy Mwelwa, Director-Planning

Mr Yengwe Kakusa, Director-National Guidance

Mr Lenox Kalunde, Director-Human Resource and Administration

Mr Mumba Tembo, Chief Planner

Mr David Mwanza, Senior Planner

University of Zambia

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Dr Chungu Mwila, Acting-Deputy Vice Chancellor

Dr M Hamalengwe, Dean-School of Law

Mr Mulenga Besa, Assistant Dean-School of Law

Jesuit Centre for Theological Reflection

Mr Geoffrey Chongo, Head of Programmes

Zambia Law Development Commission

Mr Lazarus Chungu, Commissioner

Ms Inutu Akolwa, Acting Senior Research Officer

Women and Law in Southern Africa

Mr Warren Tresim, National Director

Mr Douglas Chiwama, Programme Officer