

MINISTERIAL STATEMENT

REPEAL OF LAW RELATING TO BIGAMY IN THE PENAL CODE, CHAPTER 87 OF THE LAWS OF ZAMBIA

Madam Speaker, I thank you for according me the opportunity to issue a ministerial statement on the recommendation by the Zambia Law Development Commission to repeal the provision relating to bigamy under the Penal Code, Chapter 87 of the Laws of Zambia.

Madam Speaker, this topic has garnered a lot of debate across the country and the discussions and comments on the matter have necessitated this ministerial statement as the Penal Code falls under the Ministry of Justice.

Madam Speaker, the crux of the matter is whether the law relating to bigamy will be proposed for repeal when the Penal Code is reviewed.

Madam Speaker, from the outset, it should be noted that the Zambia Law Development Commission is an independent corporate body established under the Zambia Law Development Commission Act, Chapter 32 of the Laws of Zambia. The functions of the Zambia Law Development Commission under Section 4 of the Act are, among others, as follows:

- (a) to recommend the revision and reform of the law in Zambia;
- (b) to recommend the codification of the unwritten laws in Zambia;
- (c) review and consider proposals for law reform referred to the Commission by the hon. Minister or members of the public;
- (d) hold seminars and conferences on legal issues;
- (e) translate any piece of legislation into local languages;

- (f) encourage international cooperation in the performance of its functions under the Act; and
- (g) do all such things incidental or conducive to the attainment of the functions of the Commission.

Madam Speaker, pursuant to the Commissions' functions, the Government, in 2011, appointed a Technical Committee led by Hon. Justice Chalwe Mchenga in collaboration with the Zambia Law Development Commission to review the Penal Code Act, Chapter 87 and the Criminal Procedure Code Act, Chapter 88 of the Laws of Zambia.

Madam Speaker, a report of the said Committee has since been submitted to the Ministry of Justice. The report has highlighted on page 35 that a person may be charged under Section 166 of the Penal Code for the same conduct and offence of bigamy, similar to that provided under Section 38 of the Marriage Act, Chapter 50 of the Laws of Zambia.

Madam Speaker, for clarity, Section 38 of the Marriage Act provides as follows:

Any person who –

- (a) contracts a marriage under this Act, being at the time married in accordance with African customary law to any person other than the person with whom such marriage is contracted;
- (b) having contracted a marriage under this Act, during the continuance of such marriage contracts a marriage in accordance with African customary law;
- (c) shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years:

(d) provided that this section shall not extend to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for a space of seven years, and shall not have been heard of by such person as being alive within that time.

Madam Speaker, for the sake of brevity, suffice it to say that Section 166 of the Penal Code has similar provisions.

Madam Speaker, it is on this premise that the Committee recommended on page 44 of the report that the offence of bigamy be repealed from the Penal Code to avoid duplicity of offences in the statute book as the statute book is read as one. Therefore, if the offence of bigamy was repealed under the penal code, it would remain an offence under the Marriage Act.

Madam Speaker, it will be seen, therefore, that rather than the speculation among members of the public and stakeholders in general that the New Dawn Government has taken a position on polygamy in Zambia, all that has been done is a recommendation to clear up the statute book. Even then, an appropriate Committee of the House will take views of all stakeholders, in the event that such an amendment comes before the House for consideration. Nothing is final, therefore, at this stage.

Madam Speaker, the above notwithstanding, the repeal of the provision relating to bigamy under the Penal Code remains a recommendation and this is to avoid duplicity on the statute book. The recommendation must be considered by Cabinet through the internal legislative processes before it is submitted to this House for enactment.

Madam Speaker, ultimately, the decision lies with the Zambian people through their representatives in this august House on whether to repeal the offence of bigamy under the Penal Code once all the legislative processes are conducted and a proposed amendment Bill is tabled before this honourable House.

I thank you, Madam Speaker.