



**The Jesuit Centre for Theological Reflection  
(JCTR)**

**Memorandum on**

**THE ZAMBIA LAW COMMISSION (AMENDMENT) BILL, 2019**

**Submitted to**

**THE NATIONAL ASSEMBLY COMMITTEE ON LEGAL AFFAIRS,  
HUMAN RIGHTS, NATIONAL GUIDANCE, GENDER MATTERS &  
GOVERNANCE**

**27<sup>th</sup> February 2019**

*“A just Zambian Society guided by faith, where everyone enjoys the fullness of life”*

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## 1. Introduction

The Zambia Law Development Commission is a semi-autonomous statutory body established in 1996 by the Zambia Law Development Commission Act Chapter 32 of the Laws of Zambia under exists to align laws to the ever evolving society. Society is always changing and therefore there is need to ensure that laws reflect societal values and needs. When the law is in harmony with societal values and needs, rule of law, peace and good governance prevails. The Zambia Law Development Commission therefore was established to facilitate this alignment. Zambia Law Development Commission functions includes the following as stated in the Act:

- Research and making recommendations on the following:
  - (a) the socio-political values of the Zambian people that should be incorporated into legislation;
  - (b) the anomalies that should be eliminated in the statute book;
  - (c) new and more effective methods of administration of the law and the dispensation of justice that should be adopted and legislated;
  - (d) new areas of the law that should be developed which are responsive to the changing needs of Zambian society; and
  - (e) the removal of archaic pieces of legislation from the statute book.
- Revise and reform the law in Zambia;
- Codify unwritten laws in Zambia;
- Review and consider proposals for law reform referred to the Commission by the Minister or the members of the public;
- Hold seminars and conferences on legal issues;
- Translate any piece of legislation into local languages;
- Encourage international co-operation in the performance of its functions under the Zambia Law Development Act

The Zambia Development Commission therefore has a very critical role in the governance of the Country by ensuring that the Laws that govern the country speaks to the values and needs of society.

## 2. Proposed Changes and their ramifications

The amendment of the Zambia Law Development Commission is proposed for the following objectives:

- a) Revise the composition of the Commission
- b) Provide for the qualification of the Commission
- c) Provide for the appointment of the experts and assessors and
- d) Provide for matters connected with, or incidental to, the foregoing

### 2. a) Section 4 of the Bill – Revision of the composition of the Commission

The Zambia Law Development Commission Act Chapter 32 Of The Laws Of Zambia	The Zambian Law Development Commission (Amendment) Bill, 2019
A Judge nominated by the Judiciary;	A Judge nominated by the Chief Justice, as Chairperson
A representative of any School of Law in a Public University	Representative of the Attorney General's office with expertise in legislative drafting
A representative of the Institute of African Studies at the University of Zambia;	Permanent Secretary responsible for legal matters in the Ministry responsible for Justice
The Chief Parliamentary Draftsman	Ministry responsible for Finance
A representative of the Law Association of Zambia;	Ministry Responsible for National Guidance
The Director of the Institute of Advanced Legal Education; and	Law Association of Zambia
Not more than four other persons appointed;	School of Law at a Public University
	School of Law at a Private University
	Three representatives of research institutions
	Two other persons with experience and knowledge in matters relevant to this Act

## Observations

- The proposed composition of the Zambia Law Development Commission has increased from ten to thirteen. While a bigger composition may guarantee wider representation, it comes at a higher budgetary cost to the commission. With an ever increasing budgetary deficit that the country has been experiencing in the last few years, care must be taken not to create unnecessary financial burden on government coffers.
- A representative of the Private Universities, School of Law is a welcome move as the Country has seen a growth of private education which must be acknowledged in our legal reform processes
- Removal of the Representative of the Institute of African Studies is also a welcome move as the institute is under the University of Zambia, a Public University which is already represented
- The inclusion of two other persons with experience and knowledge in matters relevant to this Act is too open ended and subject to abuse. Guidance as to which institutions they should be appointed from must be given. Otherwise we are likely to have a commission that is not well balanced and may be subjective in revision of laws.
- The composition is blind to gender, persons with disability and the youth. Practical steps must be taken in the appointment of Commissioners to ensure equalization of opportunities to gender, youth and persons with disability.

## **2. b) Section 5 of the Bill - Provides for the qualification of the Commission**

The qualification provided for the Commission in article 5, subsection (1) includes the following:

- A grade twelve school certificate or its equivalent
- Holds a degree or an equivalent qualification which is accredited or recognized and validated by the Zambia Qualifications Authority and
- Has a relevant knowledge and experience in the following:
  - Law
  - Social work
  - Finance
  - Administration
  - Economics

## **Observation**

For the revision of the law to be relevant and responsive to the needs and values of Zambians, competent people who appreciate issues must be appointed to the commission. Any revision to the law must be informed by objective research and analysis which can only be competently offered by learned people in the specific areas. In fact the Kenyan Law Reform Commission demands a Master's Degree qualification and experience of not less than ten years for one to be appointed to the commission. The area of knowledge and expertise should also include areas of science that are developing very fast and that need regulating such as information and communication technology.

### **2. c) Section 6 of the Bill – Provides for disclosure of interest, the appointment of director, research officers and other staff, assessors and experts**

The proposed amendment on disclosure of interest seeks to cast the net of interested persons wider beyond a spouse to encompassing the person's relatives and associates. This is a progressive move in that in safeguarding the integrity of the Commission, the legislative drafters have taken into account the Zambian context where we have a wider web close networks.

The proposed amendments relating to appointment to various positions of the Commission's directorate seek to make it clear that it is mandate of the Commission to appoint suitably qualified persons to fill these positions and to determine the terms and conditions for these positions. The proposed amendments introduce the aspect of subjecting all these appointments to the approval of the Emoluments Commission. This is a positive addition given that these are positions in the civil service and so there will be a need to have them harmonized with other positions in the civil service.

## **3. Conclusion**

Legal reform, a process of reviewing and examining existing laws to make them more efficient is an indispensable process in the delivery of justice. A number of laws requires reviewing and recommending ways to simplify and modernize the law. The proposed amendments are therefore welcome, taking into account the observations made.

## References

The Zambia Law Development Commission Act, Chapter 32 of the Laws of Zambia

The Kenya Law Reform Commission Act

The South African Law Reform Commission