

## LAW REFORM IN ZAMBIA: EXPERIENCES AND PERSPECTIVES

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### A. INTRODUCTION

The need for systematic law reform has been felt by many Governments in the Commonwealth, no less than ourselves in Zambia. Those older Members of the Commonwealth, who have had the resources, have long established permanent law reform agencies devoted to the work of reviewing and updating the laws to conform with contemporary needs and to be an effective instrument in the development of the country. These law reform agencies have done commendable work from which we have been drawing useful lessons for those of us who have somewhat made a belated beginning in the task of systematic law reform. The 1977 Meeting of the Law Reform Agencies in the Commonwealth held at Marlborough House in London during the period 2-3 August provided a unique opportunity at which various developments in the field of law reform emerged.

Conscious of the important role a law reform agency has in the country's legal system, this Paper attempts to exhibit the Zambian experience if only to evoke discussion of similar experiences throughout the Commonwealth. In this way it is hoped that comparison of notes is bound to augment our own efforts in the field of reform of the law. Indeed it is all the more important for us who share the British legacy in our laws, which in a number of situations still lags behind even when England has made significant strides in renovations of the same laws which still govern many forms of rights and interest in our national life.

### B. THE LAW DEVELOPMENT COMMISSION OF ZAMBIA

#### (i) Functions, structure and composition

The Law Development Commission of Zambia was established in 1974 by the enactment of the Law Development Commission and Institution of Legislative Drafting Act (No. 5 1974). Although the Act establishing the Commission was passed in 1974, the Commission only became functional in 1976.

Initially it was intended that the Institute of Legislative Drafting be established as an adjunct to the Commission. The aim was that although the Institute would be primarily concerned with the training of parliamentary draftsmen, it would make its drafting services available to the Commission. In this way the Commission would have been submitting its completed Projects with draft Bills presented by the Institute appended.

This arrangement would have been very ideal considering that the Attorney-General's Chambers has experienced serious constraints in its establishment of parliamentary draftsmen. This in turn has entailed that not all important legislation could be disposed of as expeditiously as would have been wished. On account of the lack of provision of draftsmen the Commission, until very recently, has also experienced this handicap in its functions. Unfortunately the Institute has remained a concept in the establishing Act and to date has not taken off.

On the functions of the Commission, the establishing Act has *inter alia* given the Commission this statutory mandate: ".....to take and keep under review all the law with a view of its systematic development and reform, including in particular the codification of such law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and organisation of the law".

In its operations the Commission works primarily under the directives of the Minister of Legal Affairs and Attorney-General. The Minister can and has directed the Commission to carry out specific assignments. Although a matter can be referred to the Commission by a Government Ministry or Department, this has to be approved by the Minister. Similarly although the Commission can and has initiated Projects, these have had to be approved by the Minister.

This arrangement has worked very satisfactorily particularly in the very recent past, because it has afforded the Minister the necessary facility in various law reform Projects. The Minister, as the Chief Legal Advisor to the Government, has increasingly been using the Commission in quite a number of urgent assignments, requiring a review and reform of the law. From the Commission's point of view the Minister has provided a useful linkage between legal research and legislation for it is the Minister who initiates the legislative process.

On the structure of the Commission, although the Commission is a statutory body, administratively it is a Department in the Ministry of Legal Affairs. The Ministry controls and supervises the Commission's budget and votes. The Commission also in turn relies for both financial and administrative servicing on the Ministry. The advantage in this arrangement is that the Commission has access to Government facilities. The disadvantages can, however, be that the Commission's functions can suffer and be retarded by the pace of Government bureaucracy.

On the composition, the Commission has a Council of Commissioners all of whom except for the Director are appointed by the Minister. There is provision for ten Commissioners including the Director, who is *ex officio* a member of the Council of Commissioners. All the Commissioners are part-time and include also laymen. The Council of Commissioners has also a Chairman appointed by the Minister. In recent years the Minister has appointed Chairman the Minister of State in the Ministry of Legal Affairs. This appointment has been influenced by the consideration that the Minister of State being within the Ministry responsible for the Commission, should be able to help the Commission in obtaining Government assistance in its functions.

Of the membership of the Council at this moment, there are nine Commissioners of whom five are lawyers and four are laymen. The Council is a policy making body but the day to day operations of the Commission are run by four full-time research fellows under the direction and supervision of the Director.

The effectiveness of a part-time Commission as revealed in the appointment of Commissioners continues to pose problems since the inception of the Commission. On a number of occasions it has been difficult to constitute a quorum. Indeed at the 1977 Meeting of the Commonwealth Law Reform Agencies the then Director of the Zambia Commission observed that "he could arrange for them (Commissioners) to meet together and it was very difficult to obtain a co-ordinated expression of views."

Ideally what we need is a full time Commission but in our situation this is a very expensive proposition. For a long time to come therefore it appears we will have to use the part-time model of a law reform commission. By contrast it is, however, interesting to note for example that the Australian Law Reform Commission has operated successfully with part-time Commissioners. The incentive for this success may very well be the remuneration given to these Commissioners which the other countries of the Commonwealth cannot afford.

## (ii) Projects of the Law Development Commission

### (a) Past Projects

Since the Commission became functional the following are some of the important Projects that have been concluded:-

- The Evidence Act
- The Local Government Elections Act
- The Sales Tax Act
- The Land (Conversion of Titles) Act 1975, Report
- The Law of Succession Report
- The Small Claims Courts Report
- The Jurisdictional Structure of Subordinate Courts Report

Legislative action has already been taken on the Local Government Elections Act and the Sales Tax Act. The Bill on the Evidence Act will be presented to Parliament very shortly. The remaining Reports that have been submitted by the Commission to the Minister are very recent and therefore it may be some time before legislative action is taken. The Report on the Land (Conversion of Titles) Act, 1975 has been referred by the Minister of Legal Affairs to the appropriate Ministry to initiate legislative action.

The Report on the Law of Succession submitted to the Minister in 1982 is currently still the subject of a public debate before a Bill is presented to the National Assembly. The Commission would like to take this opportunity to record its gratitude in some limited collaboration it received from the Government of Malawi when preparing the Report on the subject. A field study was made to Malawi to see how the Malawi Wills and Inheritance Act 1967 had been operating.

Useful lessons were drawn from the Malawi experience which are reflected in the Report. The Law Reform Commission of Sierra Leone had also contacted its Zambian counterpart on the subject as the Sierra Leone Commission had just commenced work on the subject in 1981. The Zambian Commission responded to the request from Sierra Leone.

The two last Reports on Small Claims Courts and Subordinate Courts are the very recent submissions by the Commission. But considering the importance attached to these Projects by the Ministry of Legal Affairs we are optimistic that legislative action will not take too long. The two Reports attempt to come out with recommendations in an effort to expedite the administration of justice. Congestion of cases in our courts, particularly the subordinate courts, is an experience which has invited grave concern on the matter.

On the Small Claims Courts Project, opportunity must be seized to record our gratitude to the Commonwealth Secretariat, Legal Division and the Law Reform Commission of Australia in making available to us very useful literature, including model statutes.

#### (b) Future Projects

We look forward to the future with our programme of work contained in the Five Years Law Development Programme. Our Programme of work covers the years January-December 1982 and January-December 1986. During this period the Commission intends to look at the following Projects:

- The Criminal Procedure and Penal Codes Amendments
- The Law of Defamation
- The Sentencing Policy and Treatment of Offenders
- The Companies Law
- The Affiliation and Maintenance Orders
- The Land Law Consolidation
- The Planning Law and Land Development
- The Commercial Law
- Civil Procedure

On the Criminal Procedure and Penal Codes, it is felt that there is need to constantly review this area of law to keep abreast of times when new forms and styles of crimes are emerging.

On the Law of Defamation, there have been persistent requests, particularly from the Press, to review this area of the law. It has been argued that the present state of the law prohibits investigative journalism which should uncover the rot of society. The Commission wants to assess whether there is any imbalance between public and private rights to justify any changes in the law.

The Sentencing Policy and Treatment of Offenders Project has been found immediately necessary in view of the rising prison population and competing theories on alternative forms of punishment. Considerable work has already been done on this project.

Review of the Company Law is long overdue, considering that our Company Law represents the United Kingdom Law in 1908. England has since continued updating its law up to as early as 1981. We have no choice but to conduct a review which should also take account of the post independence business reorganisations. Ghana's experiences as initiated by the Companies Code of Ghana, 1967 may be quite useful.

The Law relating to Affiliation and Maintenance Orders has also attracted attention on account of its state which is not in keeping with contemporary times. Hence the Affiliation and Maintenance Orders Project will attempt to come out with a review that should minimise the risk of an increasing number of destitute dependants.

The Land Law Consolidation Project will attempt to rationalise the various categories of interests in the land and the law relating thereto. Ultimately it is hoped

to have one consolidated source of law. At the moment the sources of law are local and English as found in the common law and English statutes of general application prior to the year 1911. Related to Land Law, is Planning Law which needs to be simplified and made local to facilitate land development.

On Commercial Law, the law in Zambia needs to be compared with other contemporary trends. Unfortunately the candid suggestion made at the 1977 Meeting of Law Reform Agencies in the Commonwealth that regional co-ordination say between East and Central African countries could achieve a uniform Commercial Code has never taken ground in practice. Perhaps the call could be made yet again, and the suggestion extended to other regions of the Commonwealth.

Civil procedure is yet another field of concern in as far as justice has been made cumbersome and unduly expensive to realise in civil litigation. The Commission intends to look for simplicity in this area of the law.

### C. CONCLUSION

These are the Zambian experiences and perspectives we have wanted to share with others in the Commonwealth. But perhaps a note to end on is to call for more active collaboration between law reform agencies in the Commonwealth. The older law reform agencies have obviously proved of much assistance. We have continued to be beneficiaries of their publications. This is particularly true of the Australian, Canadian, English and Papua New Guinea Law Reform Commissions. Collaboration should be extended beyond these Commissions and should be particularly active on a regional basis. This would make research easier and more enjoyable from which we could all benefit as the environment is generally similar in countries within the same region.

However, a recent visit by the Minister of Legal Affairs and Attorney-General to socialist countries has shown also that there are many areas which might provide useful sources for research and development of the law in general.

This opportunity should, however, be taken to emphasise the importance of regional co-operation in law reform. Perhaps it can here be said, at least for the East, Central and Southern Africa countries within the Preferential Trade Area (PTA) and the Southern African Development Co-ordinating Conference (SADCC) that regional co-operation in law reform can in the long run come out with uniform laws in the regional development context. This should not only be the objective but should be encouraged.

And to these areas of collaboration, we might add that an exchange of national statutes and law reports between Commissions is bound to enhance their libraries which should be well stocked for comparative research. To a good lot of the young Commissions the inadequacy of the Library has proved a serious handicap, forcing some of them to avoid research into the lawyer's law subjects.

And lastly another area of collaboration within the Commonwealth between the younger and older law reform agencies could be in secondment programmes. If permanent staff on the newly established Commissions could be seconded to work with the long established Commissions, this could greatly enhance the experience and expertise of the young researchers.