



REPUBLIC OF ZAMBIA

MINISTRY OF JUSTICE

LAW REFORM IN ZAMBIA

A PAPER PRESENTED TO THE LAW ASSOCIATION OF
ZAMBIA ANNUAL GENERAL MEETING HELD IN
LIVINGSTONE

MUBANGA M KONDOLO, S.C.
SOLICITOR GENERAL FOR THE REPUBLIC OF ZAMBIA

APRIL, 2011 THE LEARNED ATTORNEY GENERAL, S.C., STATE COUNSEL
PRESENT, THE PRESIDENT OF THE LAW ASSOCIATION OF ZAMBIA,
THE PRESIDENT OF THE SOUTH LONDON LAW SOCIETY, MEMBERS
OF THE LAW ASSOCIATION OF ZAMBIA, DISTINGUISHED
PARTICIPANTS, LADIES AND GENTLEMEN, ALL PROTOCOLS
OBSERVED

LAW REFORM IS A PROCESS BY WHICH GOVERNMENT POLICY IS
TRANSLATED INTO FORMAL LEGAL INSTRUMENTS. IT MAY BE
INITIATED BY THE GOVERNMENT AS WELL AS BY THE PUBLIC
THROUGH CIVIC INSTITUTIONS BY MEANS OF LOBBYING. LAW
REFORM IS UNDERTAKEN TO ADDRESS A SPECIFIC NEED IN
SOCIETY OR TO RESOLVE A SPECIFIC PROBLEM THAT MAY HAVE
BEEN IDENTIFIED.

LAW REVIEW BY THE GOVERNMENT IS GENERALLY UNDERTAKEN
THROUGH THE ZAMBIA LAW DEVELOPMENT COMMISSION (ZLDC),

WHICH IS ESTABLISHED UNDER THE ZAMBIA LAW DEVELOPMENT COMMISSION ACT, CAP. 32 OF THE LAWS OF ZAMBIA. THE COMMISSION IDENTIFIES AREAS OF LAW REFORM AND FACILITATES THE NECESSARY REFORM PROCESS.

IN ORDER TO FACILITATE THE PROCESS OF LAW REFORM, THE ATTORNEY-GENERAL PLAYS A VITAL ROLE AS AN EX-OFFICIO MEMBER OF THE EXECUTIVE THROUGH CABINET. THIS ROLE INVOLVES ADVISING THE EXECUTIVE ON THE LEGALITY AND CONSTITUTIONALITY OF PROPOSED POLICY MEASURES AND THE GENERAL GOVERNANCE OF THE NATION, AND CAUSING THE DRAFTING OF BILLS THAT ARE TABLED BEFORE THE NATIONAL ASSEMBLY.

LAW REFORM IS COMPLEMENTED THROUGH THE PARTICIPATION OF VARIOUS STAKEHOLDERS SUCH AS CIVIL SOCIETY ORGANISATIONS AND THE LAW ASSOCIATION OF ZAMBIA (LAZ), WHICH HAS A PIVOTAL AND CONSTRUCTIVE ROLE TO PLAY IN THE LAW REFORM PROCESS.

MR. CHAIRMAN, OVER THE LAST FIVE YEARS, THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA HAS UNDERTAKEN AN EXTENSIVE LAW REFORM PROGRAMME IN ORDER TO-

- (A) STRENGTHEN INSTITUTIONS OF GOVERNANCE;
- (B) CREATE AN ENABLING ENVIRONMENT TO FACILITATE SOCIO-ECONOMIC DEVELOPMENT;
- (C) CREATE A DYNAMIC LEGAL SYSTEM WHICH IS ANTICIPATORY OF, AND RESPONSIVE TO, THE RAPID SOCIAL AND ECONOMIC CHANGES; AND
- (D) COMPLY WITH INTERNATIONAL STANDARDS AND BEST PRACTICES.

THE POLICY OF THE GOVERNMENT SINCE 1991 HAS FOCUSED ON LONG TERM STRENGTHENING OF INSTITUTIONS OF GOVERNANCE TO BE ACHIEVED THROUGH LAW REFORMS COUPLED WITH PRACTICAL MEASURES FOR IMPLEMENTATION.

CHIEF AMONG THESE REFORMS HAS BEEN THE CONSTITUTIONAL REFORM PROCESS, WHICH IS MEANT TO ENSURE THAT THE PEOPLE

OF ZAMBIA WILL HAVE A CONSTITUTION THAT WILL STAND THE TEST OF TIME. A MAJOR CONSTITUTIONAL REFORM THAT OCCURRED RECENTLY REVIEWED THE FISCAL CYCLE OF GOVERNMENT IN ORDER TO ENSURE THAT PUBLIC FUNDS ARE EXPENDED ON DEVELOPMENTAL PROJECTS IN A MORE EFFICIENT MANNER. FUTURE REFORM IS INTENDED TO MAKE COMPREHENSIVE CHANGES TO THE CONSTITUTION IN LINE WITH THE ASPIRATIONS OF THE PEOPLE. AS THE FAILURE TO ENACT THE DRAFT CONSTITUTION IN THE LAST SITTING OF PARLIAMENT DEMONSTRATED, CONSTITUTION-MAKING IS NOT AN EASY PROCESS. THE GOVERNMENT REMAINS COMMITTED TO ENSURING THAT MEANINGFUL CONSTITUTIONAL REFORM TAKES PLACE, DESPITE THE CHALLENGES THAT LIE AHEAD.

IN THE AREA OF HUMAN RIGHTS, IN ORDER ENSURE GENDER EQUALITY AND PROTECTION AGAINST VIOLENCE THE ANTI-GENDER BASED VIOLENCE ACT, NO. 1 OF 2011, WAS ENACTED IN ORDER TO PROVIDE FOR THE EFFECTIVE PROTECTION OF VICTIMS OF ANTI-GENDER BASED VIOLENCE. THE ACT WILL HELP COMBAT GENDER-BASED VIOLENCE, WHETHER IT IS COMMITTED IN PRIVATE OR PUBLIC LIFE.

GOVERNANCE REQUIRES NOT ONLY APPROPRIATE INSTITUTIONS BUT ALSO PERSONS WHO ARE ABLE TO ENSURE THAT THE INSTITUTIONS OPERATE IN ACCORDANCE WITH DEMOCRATIC PRINCIPLES SUCH AS THE SEPARATION OF POWERS AND TRANSPARENCY AND ACCOUNTABILITY. IN ORDER TO ENHANCE THE CAPACITY OF SOCIETY TO POLICE THE INSTITUTIONS OF GOVERNANCE, THE GOVERNMENT AMENDED THE LEGAL PRACTITIONERS ACT CAP. 30 IN ORDER TO EXPAND THE ELIGIBILITY OF LEGAL PROFESSIONALS WHO QUALIFY TO PRACTICE LAW IN ZAMBIA BY OPENING UP THE APPLICATION OF THE ACT TO LAW GRADUATES FROM PRIVATE UNIVERSITIES AS WELL AS ESTABLISHING AN ACCREDITATION COMMITTEE.

MR. CHAIRMAN, THERE HAVE BEEN WIDE RANGING REFORMS IN THE AREA OF PRIVATE SECTOR DEVELOPMENT WHICH INCLUDE THE BUSINESS LICENSING REFORMS. THIS PROCESS HAS CULMINATED INTO THE REVIEW OF SEVERAL PIECES OF

LEGISLATION IN ORDER TO REDUCE THE COST OF DOING BUSINESS THROUGH ELIMINATION OF LICENCES AND PROCESSES THAT CAUSE AN UNNECESSARY IMPEDIMENT TO THE DEVELOPMENT OF COMMERCE IN ZAMBIA. RELATED TO THIS, THE GOVERNMENT IS IN THE PROCESS OF CREATING AN ELECTRONIC REGISTRY OF ALL LICENSES IN THE COUNTRY AND ONCE FULLY IMPLEMENTED, THIS REGISTRY WILL FACILITATE THE REGISTRATION OF BUSINESSES AND APPLICATIONS FOR LICENSES BY MEANS OF INFORMATION AND COMMUNICATIONS TECHNOLOGY, THUS ELIMINATING THE NEED FOR PHYSICAL INTERACTION WITH PUBLIC OFFICIALS AND ASSOCIATED EXPENSES.

UNDER THESE REFORMS THE FOLLOWING LEGISLATION IS INDICATIVE OF THE REVIEW THAT HAS TAKEN PLACE SO FAR:

THE ZAMBIA DEVELOPMENT AGENCY (AMENDMENT) ACT, NO. 1 OF 2010, REVISED THE PROVISIONS RELATING TO LICENSING AND EFFECTIVELY REDUCED THE NUMBER OF INVESTMENT LICENSES AND PERMITS FROM FIVE TO THREE, AND PROVIDES FOR ELECTRONIC FILING OF DOCUMENTS.

THE IMMIGRATION AND DEPORTATION ACT, NO. 18 OF 2010, REPEALED AND REPLACED THE IMMIGRATION AND DEPORTATION ACT BY REVISING THE PROVISIONS RELATING TO THE ACQUISITION OF PERMITS IN ORDER TO FACILITATE INVESTMENT AND STREAMLINE THE PROCESS OF APPROVALS RELATED TO IMMIGRATION THEREBY REDUCING THE TIME TAKEN FOR PROCESSING APPROVALS.

IN THE AGRICULTURAL SECTOR, THE DAIRY INDUSTRY DEVELOPMENT ACT, NO. 22 OF 2010, REPEALED THE DAIRY PRODUCE BOARD (ESTABLISHMENT) ACT AND THE DAIRY PRODUCE MARKET AND LEVY ACT IN ORDER TO COMPREHENSIVELY REFORM THE REGULATION OF THE DAIRY INDUSTRY AND MAKE IT MORE EFFICIENT. IN ADDITION, THE ANIMAL HEALTH ACT, NO. 27 OF 2010, WHICH REPEALED THE STOCK DISEASES ACT PROVIDES A COMPREHENSIVE REGULATORY FRAMEWORK ON ANIMAL HEALTH THROUGH THE PREVENTION AND CONTROL OF ANIMAL DISEASES,

QUARANTINE OF ANIMALS AND REGULATION OF THE IMPORTATION AND EXPORTATION OF ANIMALS AND ANIMAL FEED, AMONG OTHER THINGS.

FURTHER, THE ANIMAL IDENTIFICATION ACT, NO. 28 OF 2010 REPEALED THE BRANDS ACT AND PROVIDES A COMPREHENSIVE REGULATORY FRAMEWORK FOR ANIMAL IDENTIFICATION TO COMPLEMENT THE LEGISLATION ON ANIMAL HEALTH AND ENSURE GREATER MARKET FOR ACCESS OF ZAMBIAN LIVESTOCK TO INTERNATIONAL MARKETS THROUGH THE PROPER IDENTIFICATION OF LIVESTOCK TO ADHERE TO INTERNATIONAL STANDARDS.

THE AGRICULTURAL CREDITS ACT, NO. 35 OF 2010 WAS ALSO ENACTED AND PROVIDES FOR THE USE OF AGRICULTURAL CHARGES AS WELL AS WAREHOUSE RECEIPTS AS A FORM OF FINANCING SECURITY. THIS HAS BROADENED THE SCOPE OF ACCESS TO CREDIT BY FARMERS WHO DO NOT HAVE TO RELY ON THE FORMAL BANKING SYSTEM.

IN ORDER FOR BUSINESS FACILITATION TO BE FULLY UTILISED EFFECTIVELY, THERE WAS NEED TO DRAW QUALITY DELIVERY OF GOODS AND SERVICES AS WELL AS PROTECTION OF THE CONSUMER. TO ACHIEVE THIS, THE COMPETITION AND CONSUMER PROTECTION ACT, NO. 24 OF 2010, WAS ENACTED AND REPLACED THE COMPETITION AND FAIR TRADING ACT. THIS ACT PROVIDES FOR GREATER PROTECTION OF CONSUMERS FROM EXPLOITATION BY SUPPLIERS OF GOODS AND SERVICES AND NOW ALLOWS FOR RETURN OF DEFECTIVE GOODS AND OBTAINING OF REFUNDS AS A CONSEQUENCE. THE ACT HAS FURTHER ESTABLISHED THE COMPETITION AND CONSUMER PROTECTION TRIBUNAL WHERE COMPLAINTS MAY BE MADE BY CONSUMERS.

ONE OF THE MAJOR CONSTRAINTS AND UNNECESSARY REQUIREMENT IN THE ESTABLISHMENT OF A BUSINESS WAS THE ADDITIONAL REGISTRATION OF BUSINESSES THAT WERE ALREADY EXISTING, AS LONG AS THE BUSINESSES WERE OPERATED IN THE AREA OF THE COUNCIL. THIS REGISTRATION WAS REMOVED BY THE TRADES LICENSING (REPEAL) ACT, 2011, IN ORDER TO ELIMINATE DUPLICATION IN THE PROCESS OF REGISTERING

BUSINESSES.

IN ORDER TO IMPROVE COMMERCE FURTHER, THE GOVERNMENT HAS ACCORDED PRIORITY TO INFRASTRUCTURE DEVELOPMENT. THE TOLLS ACT, NO. 14 OF 2011, WAS ENACTED TO ESTABLISH AND PROVIDE FOR THE OPERATION OF TOLL ROADS, PROVIDE FOR THE CHARGING AND COLLECTION OF TOLLS AND FOR PRIVATE SECTOR PARTICIPATION IN THE TOLLING OF ROADS. FURTHER, THE ACT PROVIDES THAT THE TOLL FEE OR ANY OTHER CHARGES COLLECTED BY THE ROAD DEVELOPMENT AGENCY FORM PART OF THE ROAD FUND AND ARE REQUIRED TO BE USED EXCLUSIVELY FOR THE CONSTRUCTION, MAINTENANCE AND REHABILITATION OF ROADS.

FURTHER THE URBAN AND REGIONAL PLANNERS ACT, NO. 4 OF 2011, WAS ENACTED TO PROVIDE FOR THE REGISTRATION OF PLANNERS AND PLANNING FIRMS AND TO REGULATE THEIR PROFESSIONAL CONDUCT. BEFORE THE ENACTMENT OF THIS ACT, THERE WAS NO REGULATION OF PLANNERS AND PLANNING FIRMS WHICH RESULTED IN POOR QUALITY CONSTRUCTION WORKS. THE ACT THEREFORE, WILL ENSURE THAT PLANNING IS UNDERTAKEN BY QUALIFIED PERSONS SO AS TO IMPROVE THE QUALITY OF CONSTRUCTION WORKS.

DEVELOPMENT CANNOT OCCUR WITHOUT THE CONSERVATION OF NATURAL RESOURCES AS THESE FORM THE BEDROCK OF ANY SUSTAINABLE DEVELOPMENT. TO THIS END, THE WATER RESOURCES MANAGEMENT ACT, NO. 21 OF 2011, WAS ENACTED AND REPEALED THE WATER ACT, CAP 198, AND REVISED THE PROVISIONS RELATING TO THE ACQUISITION OF WATER RIGHTS AND PERMITS FOR THE SUSTAINABLE UTILISATION OF WATER RESOURCES. THE ACT ALSO PROVIDES FOR THE DOMESTICATION AND IMPLEMENTATION OF THE BASIC PRINCIPLES AND RULES OF INTERNATIONAL LAW RELATING TO THE ENVIRONMENT AND SHARED WATER RESOURCES.

ADDITIONALLY, THE ENVIRONMENTAL MANAGEMENT ACT, NO. 12 OF 2011 WAS ENACTED TO PROTECT ECOLOGICALLY SENSITIVE AREAS ESPECIALLY IN THE LIGHT OF PHENOMENA SUCH AS

GLOBAL WARMING. THE ACT PROVIDES FOR SUSTAINABLE MANAGEMENT AND USE OF NATURAL RESOURCES AND ALSO PROVIDES FOR THE PREVENTION AND CONTROL OF ENVIRONMENTAL POLLUTION IN LINE WITH ENVIRONMENTAL PRACTICES PERTAINING WORLDWIDE. FURTHER, THE ACT PROVIDES FOR AN INTEGRATED ENVIRONMENTAL MANAGEMENT APPROACH SO AS TO ENSURE EFFICIENCY IN CONSERVATION MEASURES DEALING WITH ALL NATURAL RESOURCES.

THE GOVERNMENT HAS OVER THE YEARS, TAKEN DECISIVE REVIEW MEASURES TO STRENGTHEN LEGISLATIVE AND INSTITUTIONAL CAPACITY TO FIGHT CORRUPTION. THE RESULTS OF THESE REFORMS ARE BEGINNING TO BEAR FRUIT AND HAVE HAD A CASCADING EFFECT ON OTHER AREAS SUCH AS GOVERNANCE. THE REVIEW PROCESS RELATED TO THE FIGHT AGAINST CORRUPTION HAS LED TO THE ENACTMENT OF NEW LEGISLATION AGAINST CORRUPTION, WHICH TAKES INTO ACCOUNT INTERNATIONAL BEST PRACTICES. FURTHER, FOR THE FIRST TIME IN ITS HISTORY, ZAMBIA HAS COMPREHENSIVE PROVISIONS RELATING TO FORFEITURE OF PROCEEDS OF CRIME, INCLUDING CIVIL FORFEITURE, AS WELL AS PROTECTION OF WHISTLE BLOWERS AND ENHANCED PROVISIONS FOR PREVENTION AND COMBATING OF MONEY LAUNDERING THROUGH THE ESTABLISHMENT OF THE FINANCIAL INTELLIGENCE CENTRE, WHICH OBLIGES LAWYERS TO REPORT SUSPICIOUS TRANSACTIONS RELATING TO MATTERS WHERE LEGAL PROFESSIONAL PRIVILEGE IS NOT APPLICABLE.

MR CHAIRMAN, THE LAW REFORM PROCESS HAS TAKEN COGNIZANCE OF THE FACT THAT SOCIETY HAS BEEN DEVELOPING AT A RAPID RATE AS A RESULT OF THE INFLUENCE OF TECHNOLOGY. AS A RESULT OF THESE DEVELOPMENTS, IT HAS BECOME IMPERATIVE FOR GOVERNMENTS TO GENERALLY RE-DESIGN THEIR APPROACHES TO SERVICE DELIVERY IN ORDER TO FULLY UTILISE AND DERIVE BENEFITS FROM INFORMATION AND COMMUNICATIONS TECHNOLOGIES. GOVERNMENT HAS ACCORDINGLY EMBARKED ON LARGE SCALE LEGISLATIVE REFORMS IN ORDER TO ENSURE THAT ELECTRONIC SERVICE DELIVERY BECOMES AN INTEGRAL PART OF THE GOVERNANCE

SYSTEMS WITHIN THE NATION. BECAUSE OF THE REFORMS THAT HAVE THUS FAR TAKEN PLACE, IT IS NOW POSSIBLE TO HAVE PUBLIC SERVICE DELIVERY AND ADMINISTRATION OF JUSTICE THROUGH THE USE OF INFORMATION AND COMMUNICATIONS TECHNOLOGIES BECAUSE OF THE LEGAL RECOGNITION OF ELECTRONIC DOCUMENTS AND TRANSACTIONS THROUGH THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT, NO. 21 OF 2009.

MR CHAIRMAN, THE VOLUME OF WORK BEING UNDERTAKEN SIDE BY SIDE WITH OTHER COMPETING NATIONAL ASSIGNMENTS HAS BEEN A CHALLENGE. THE LARGE VOLUME OF LEGISLATION AND SUBSIDIARY LEGISLATION TO BE REVIEWED REMAINS A SIGNIFICANT CHALLENGE WHICH THE GOVERNMENT CONTINUES TO GRAPPLE WITH. THIS IS EXACERBATED BY CHALLENGES RELATING TO HUMAN CAPACITY. THE DELAYS IN OBTAINING ADEQUATE INSTRUCTIONS FROM CLIENT MINISTRIES AND OTHER RELEVANT STAKEHOLDERS, IN SOME INSTANCES HAS BEEN A CHALLENGE AND CONTINUES TO BE AN IMPEDIMENT TO LAW REFORM.

THE POLITICISATION OF LEGISLATIVE REFORMS IN SOME CASES HAS RESULTED IN THE COUNTRY LOSING OUT ON VARIOUS PIECES OF PROGRESSIVE LEGISLATION. FURTHER THE TECHNICAL NATURE OF SUCH LEGISLATIONS CONTINUES TO BE A CHALLENGE FOR VARIOUS STAKEHOLDERS INVOLVED IN THE LEGISLATIVE PROCESS.

IN SPITE OF ALL THESE CHALLENGES HOWEVER, THE GOVERNMENT REMAINS COMMITTED TO DRIVING THE REFORM PROCESS FORWARD AND ENSURING THAT ZAMBIA BECOMES A MODEL OF GOOD GOVERNANCE AND ECONOMIC DEVELOPMENT FOR THE BENEFIT OF ITS CITIZENS FOR PRESENT AND FUTURE GENERATIONS.

MR CHAIRMAN, IN CONCLUSION, LAZ PLAYS A CRITICAL ROLE IN LAW REFORM AND IS THEREFORE A PARTNER TO THE GOVERNMENT IN ENSURING THAT FUTURE LAW REFORM IS UNDERTAKEN IN ACCORDANCE WITH THE PRINCIPLES OF GOOD

GOVERNANCE FOR THE BENEFIT OF THE PEOPLE OF ZAMBIA IN LINE WITH THE ROLE OF THE ASSOCIATION AS PROVIDED UNDER THE LAW ASSOCIATION OF ZAMBIA ACT, CAP. 31. MR CHAIRMAN, LAZ CONTINUES TO FURTHER THE DEVELOPMENT OF LAW AS AN INSTRUMENT OF SOCIAL ORDER AND SOCIAL JUSTICE AND TO ADVANCE THE RULE OF LAW AND UPHOLD THE RIGHTS AND LIBERTIES OF THE INDIVIDUAL BECAUSE THIS IS AN ESSENTIAL ELEMENT IN THE GROWTH OF SOCIETY.

LAZ SHOULD REMAIN THE FORUM THROUGH WHICH ALL LAWYERS CAN PARTICIPATE TOGETHER FULLY AND EFFECTIVELY IN THE DEVELOPMENT OF SOCIETY AND ITS INSTITUTIONS. I URGE LAZ TO CONTINUE PROMOTING RESEARCH IN THE DEVELOPMENT OF THE LAW, TO PROMOTE THE REFORM OF THE LAW, AND TO PARTICIPATE IN LAW REFORM WHEN CALLED UPON BECAUSE LAW REFORM IS NOT THE SOLE PRESERVE OF THE GOVERNMENT AND WOULD BE MEANINGLESS WITHOUT THE VALUABLE CONTRIBUTION FROM THE LEGAL PROFESSION. GOING AHEAD, GOVERNMENT LOOKS FORWARD TO DEVELOPING LAWS THAT WILL ENDURE AND SERVE THE NEEDS OF SOCIETY IN A JUST MANNER, IN PARTNERSHIP WITH THE NOBLE MEN AND WOMEN OF THE LEGAL PROFESSION IN ZAMBIA.

THANK YOU

