

SOUTHERN AFRICA LITIGATION CENTRE

STATEMENT

Zambia: Organisations warn of potential negative impact of proposed changes to Constitution on judicial independence

We, the undersigned organisations, are deeply concerned about the impact the Zambian Constitutional Amendment Bill 2019 (the ‘Amendment Bill’) may have on the independence and impartiality of the judiciary, if adopted. Of particular concern are the amendments made to the disciplinary proceedings against judges and the composition of the Supreme and Constitutional Courts.

International and regional standards establish that individual judges ‘may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law’,¹ including ‘incapacity or behaviour that renders them unfit to discharge their duties’² and ‘physical or mental incapacity that prevents them from undertaking their judicial duties.’³ To ensure the independence of the judiciary, such disciplinary proceedings must be held by an institution independent of the Executive.⁴

Article 143 (a) of the Zambia Constitution currently provides that ‘a judge shall be removed from office on the following grounds: (a) a mental or physical disability that makes the judge incapable of performing judicial functions; (b) incompetence; (c) gross misconduct; or (d) bankruptcy.’ The Amendment Bill replaces ‘mental or physical disability that makes the judge incapable of performing judicial functions’, with ‘legally disqualified from performing judicial functions.’ The Bill does not set out the circumstances or specific infractions that could lead to a judge being legally disqualified as required by United Nations human rights bodies and

¹ Human Rights Committee, General comment No 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para 20.

² Basic Principles on the Independence of the Judiciary, Principle 18.

³ African Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle A, para 4 (p).

⁴ A/HRC/11/41, paras. 60–61; and A/HRC/26/32, paras. 91–93. IBA Minimum Standards of Judicial Independence, 4(a).

mechanisms,⁵ and thus violates the principle of legal certainty. The vagueness of the provision increases the risk of judges being removed on politically motivated grounds and threatens the rule of law and separation of powers.

This development comes in combination with a proposed amendment to Article 144, transferring the ultimate decision to remove a judge from the Judicial Complaints Commission to a Tribunal appointed by the President of the Republic (New Article 144 (3)). The Amendment Bill provides that ‘the Tribunal is composed of a Chairperson and at least two members, who all hold or have held the office of judge’ (New Art. 144 (4)). The Bill does not specify the current position of any former judge on the Tribunal. This opens up the possibility of the Tribunal being composed of members of the executive and or legislature, which would be incompatible with the principle of the independence of the judiciary. To comply with international standards, the authorities must ensure that this tribunal is primarily composed of judges, that none of the members are from the legislative or executive branches of the State,⁶ and that decisions in disciplinary, suspension or removal proceedings should be subject to an independent review.⁷

Regarding the Constitutional Court, we are concerned about the proposed removal of the positions of the President and Deputy President of the Constitutional Court, without clearly specifying where the powers of the two are to vest in their absence. In addition, the requirement for a sitting bench of at least 11 judges on the Supreme Court and the Constitutional Court is replaced with the significantly vaguer notion of simply requiring ‘an uneven number of judges, as prescribed’. The IBA Minimum Standards of Judicial Independence provides that the number of the members of the highest court should ‘be rigid and should not be subject to change except by legislation’.⁸

We therefore call upon the President of Zambia and the legislature to ensure that the proposed Constitutional changes are in line with international human rights standards on the independence of the judiciary and the separation of powers.

⁵ ‘Member States adopt legislation giving detailed guidance on the infractions by judges triggering disciplinary measures, including the gravity of the infraction which determines the kind of disciplinary measure. Disciplinary measures must be proportional to the gravity of the infraction.’ Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy on guarantees of judicial independence, A/HRC/11/41, para 98, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/125/63/PDF/G0912563.pdf?OpenElement>.

⁶ A/HRC/38/38, para 61.

⁷ Basic Principles on the Independence of the Judiciary, Principle 20.

⁸ IBA Minimum Standards of Judicial Independence, para 24.

The Signatories:

[Commonwealth Lawyers Association](#) (CLA)

[Commonwealth Magistrates' and Judges' Association](#) (CMJA)

[International Bar Association's Human Rights Institute](#) (IBAHRI)

[International Commission of Jurists](#) (ICJ)

[Judges for Judges](#) (J4J)

[Lawyers' Rights Watch Canada](#) (LRWC)

[Southern Africa Litigation Centre](#) (SALC)



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