



**REPORT ON THE ALRAESA EXECUTIVE COMMITTEE
MEETING AND THE ALRAESA ANNUAL CONFERENCE**

**HELD BETWEEN THE 14TH AND 18TH OF APRIL 2008 IN
LIVINGSTONE, THE REPUBLIC OF ZAMBIA.**

**Prepared by:
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**REPORT ON THE ALRAESA EXECUTIVE COMMITTEE MEETING HELD ON
14TH APRIL 2008 AND THE ALRAESA ANNUAL CONFERENCE HELD
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1.0 Introduction:

1.1 The Association of Eastern and Southern African Law Reform Commissions (ALRAESA) held its Fourth Executive Committee Meeting on the 14th of April, 2008 and its Second Conference between the 15th and 18th of April, 2008 in Livingstone, Zambia.

1.2 It may be noted at the outset that, ALRAESA is an association of about twelve (12) Law Reform Agencies of the Eastern and Southern African Region, whose founding Members were :-Tanzania Mainland, Tanzania -Zanzibar, Kenya, Uganda, Malawi, Zambia, Zimbabwe, Namibia, Lesotho and South Africa. Zanzibar has not been an active member in the past, but it is expected that it will take an active role in the near future, after the staffing position of that Commission has been strengthened.

1.4 This Association, it may be noted, was formed in October 2000, to promote best practices in law reform activities, and was established at the initiative of Tanzania, which has since then held the position of the Secretary General of the Association. Another election of office bearers of the Association is due to be held in 2009.

1.5 This Report is divided into two Parts. Part A covers the Constitution of the Association and the consideration of the Executive Committee Meeting, while Part B deals with the consideration of the ALRAESA Conference.

PART A:

2.0 Purpose and Objectives of the Association:

2.1 According to the provisions of Article 2 of the Association's Constitution, the Association has been established for the following purposes:-

- (a) To exchange and share ideas on best practices in law reform;
- (b) To exchange and share ideas on the development of law , within the countries of the member agencies in accordance with the principles of human rights, good governance and rule of law, and
- (c) To collectively contribute to the attainment of the objectives of member agencies.

2.2 The objectives of the Association are on the other hand, set out in Article 4 of the Constitution, which are to undertake, on behalf of its members, all or any of the listed nineteen activities, among which are the following :-

- (a) To facilitate regional co-operation in the reform and development of the law;
- (b) To foster co-operation among the members in the acquisition of knowledge and skills in through reciprocal exchange of publications,

- pooling together research findings, regional conferences and attachment of members of staff of one member to another;
- (c) To propose regional measures on legislative and administrative action to combat international crimes;
 - (d) To publish a journal or a bulletin and to encourage members to contribute to it for a wider and more effective dissemination of the work of the Association;
 - (e) To promote approximation of and harmonization of laws within the region;
 - (f) To draft model laws for adaptation in the enactment of domestic law;
 - (g) To assist in strengthening existing Law Reform Agencies in the Region;
 - (h) To contribute to protection of human rights, maintenance of the rule of law, constitutionalism and good governance in the region in particular, and in the whole of the African continent in general, through publications and or conferences and any other means as the Association may from time to time determine;
 - (i) To observe and contribute to the realisation of gender equality in all processes and generally to promote laws that promote gender equality;
 - (j) To promote meaningful and effective approaches to the integration of customary law, common law and civil law and bring them in line with international norms and practices;
 - (k) To constantly scrutinize the impact of international influences in all their manifestations and recommend legal safeguards against the detrimental side effects in the African Milieu;
 - (l) To undertake regional legislative action in adapting to the emerging technological and business developments;
 - (s) To establish effective methods of cooperating with legal education institutions or any other institutions that can contribute to the law reform process.

2.3 A number of the objectives and the activities of the Association will be reported upon in the Minutes of the Executive Committee and the record of proceedings of the Conference, especially in regard to the goal of exchange of best practices in law reform process.

3.0 Office Bearers and Organs of the Association:

3.1 Office Bearers of the Association as set out in Article 10 of the Constitution, comprise of the Chairperson; Two Vice –Chairpersons designated as the first and the second Vice-Chairpersons; the Secretary General, (the office which Tanzania has held consecutively since the inception of the Association); the Treasurer; and [..two persons from each of two member agencies not represented as Office Bearers,..a matter which needs to be clarified].

3.2 The duties of the Secretary General, a post currently being held by Tanzania, are set out in Article 13 of the Constitution, which include the following:-

- (a) To keep minutes of the Executive Committee Meeting and of the General Meeting of the Association;
- (b) To manage the affairs of the Association on a daily basis and to promote the activities of the Association as may be directed by the Chairperson acting on behalf of the Executive Committee;
- (c) To manage the funds of the Association in accordance with the Financial Regulations of the Association and the directions of the Executive Committee [...we need to ascertain whether Financial Regulations are in place, and if not, to consult with the Treasurer to ensure that they are drafted and approved by Executive Committee, which is responsible for policy formulation and general management of the Association..];
- (d) To discharge other duties as may be directed by the Executive Committee.

3.3 An issue arose as to whether office bearers elected after every two years, serve the Association in their personal capacities or as representatives of their agencies. This matter was briefly discussed at the recent Exco Meeting, but requires further examination in order to have it finally settled.

3.4 One view is that, since membership of the Association is conferred to the respective law reform agencies as set out in the third preamble to the Constitution, and more specifically in Article 5, persons who are elected to hold offices in the Association, hold such offices on behalf of their respective agencies; which means that, when they retire from their official positions in their agencies, the incoming officials of their agencies continue to hold the office of the Association on behalf of their law reform agencies, until the next election.

3.5 This view is partly supported by the terms of Article 9 on termination of membership, which provides that termination may occur if an Associate member defaults in payment of subscription or is voted out by a two-thirds majority. Further more, Article 14 (b) of the Constitution allows for representation in the Exco “of two member agencies not represented as Office Bearers.” It should be noted that in this Article, there is no reference to individual persons but to agencies.

3.6 However, the other view which is held by some members is that, an office bearer, while s/he must be working for or with a law reform agency in order to be elected, s/he holds office in the Association in her/his personal capacity; and when s/he relinquishes her/his post or resigns from her/his agency, s/he may continue to serve on an honorary basis or loses her/his position in the Association (which automatically falls vacant and an election has to take place, if the post has no vice or deputy).

3.7 This latter view is simply supported by what appeared to be practical examples of the retirement of Willie Henegan from the South African Law Reform Commission, who nevertheless continues to serve as honorary Treasurer, and the resignation of Hon. Nujoma of the Namibia Law Reform Commission, on being appointed as Minister of Justice for Namibia, which necessitated his resignation from the Namibia Law Reform Commission.

Following his resignation, a representative of the Namibia Law Reform Commission did not take the Chair of the Association, which was instead taken over by Prof. Kakooza, from the Uganda Law Reform Commission, who was then holding the post of Vice-Chairperson.

3.8 The view supporting the idea that Office Bearers of the Association hold offices in their personal capacity, is remotely supported by the terms of Article 15(b) which provides that the Executive Committee may “fill a vacancy resulting from resignation by or removal from office of an Office Bearer: Provided that **any person** filling such vacancy will do so until the next General Meeting where the election will be carried out to fill in such a vacancy for the remainder of the term.” [Unlike in Article 14, the terms used here are “any person” and not “agency.” This view appears to have been remotely shared by our Commission in the past, but appears to be out of step with reality.

3.9 As one of the initiators of the Association and the current Secretariat to this organisation, Tanzania Law Reform Commission has the responsibility of providing clarity on the correct interpretation of the Constitution, both in regard to the apparent omission in Article 10 (see paragraph 3.1 above) and in regard to the status of the Office Bearers of the Association, whether they hold office in their personal capacities or on behalf of the agencies to which they belong, based on the provisions of the ALRAESA Constitution.

Recommendation/Resolution:

3.10 It is proposed that the Tanzania Law Reform Commission which acts as the Association’s Secretariat should prepare a short paper that seeks to give clarity to this matter, and which will also recommend appropriate amendments to the Constitution as observed and suggested above.

4.0 Consideration of the Executive Committee [Exco] Meeting:

4.1 The Tentative Agenda which initially contained ten (10), items was slightly amended to include twelve (12) items as under:

- (i) Opening of the Meeting;
- (ii) Adoption of the Agenda;
- (iii) Confirmation of the Minutes of the previous Meeting held on 25th and 26th, April 2006 and 27th March, 2007;
- (iv) Matters arising from previous Meetings;
- (v) Accreditation of ALRAESA to International bodies- ECA, AU, Commonwealth Secretariat;
- (vi) Publication of the ALRAESA News Letter/Bulletin;
- (vii) Networking among Member Agencies-(e.g. specialised training, attachment of staff, exchange of publications, and operationalisation and updating of the ALRAESA website);
- (viii) Consideration and approval of proposed amendments to the ALRAESA Constitution;
- (ix) Host, Venue and Theme for the next ALRAESA Conference;

- (x) Whether Members of Exco hold offices on individual capacity or as representatives of their Country's Law reform Agencies;
- (xi) Date and venue for the next Exco Meeting;
- (xii) AOB

Opening of the Exco Meeting:

4.2 The Chairperson opened the Meeting at 2:30 pm. And thereafter, members introduced themselves. The requisite Quorum having been reached, the Chairperson called the meeting to order and thanked the host agency for having agreed to host the meeting and for the warm reception and excellent arrangements. He informed the meeting that the outgoing Chairperson, Prof. Kakooza, had been invited so that he could throw some highlight on issues that were discussed and agreed upon during his term as Chairperson.

4.3 The Draft Agenda having been presented for consideration was slightly revised before approval. The Minutes of the previous Meetings held in Pretoria on the 25 and 26th of April 2006, and those for the Meeting held on 25th March 2007, were concurrently read. The Minutes for the earlier Meetings in April 2006 were approved; however, those for the meeting of March 2007 were approved after deletion of the entry of South Africa as being absent, and by inserting the name of Willie Henegan as having represented South Africa. Copies of the Minutes of the Exco Meetings were distributed to Delegates at the start of the Meeting.

4.4 The correction in the Minutes of the Meeting held in March 2007 was made after a brief discussion on the issue whether members elected to the Exco serve in that organ on their individual capacities, or represent their organisations. A clarification was made to the effect that, members elected to the Exco represent their agencies and that, they do not serve in their individual capacities. As such, while Willie Henegan had retired from the South African Law Reform Commission, he nevertheless attended the meeting representing that Commission, and more so, when he was still serving as honorary Treasurer.

4.5 A short Paper on Matters arising from the Minutes of the Meetings held on the 25th and 26th of April was circulated, however, Matters arising from the Minutes of the Meeting held in March 2007 were not recorded but were considered following the issues reflected in the Minutes.

4.6 Concerning the issue of Accreditation of ALRAESA to international bodies, a brief report was presented orally about the action taken by the Secretariat to inquire on the possibilities of ALRAESA being accredited to AU and the unsatisfactory response received. It was agreed that more work needs to be done to identify the organisations to which ALRAESA could be accredited, the cost and benefit of such accreditation and the procedure by which accreditation could be achieved.

Recommendation/Resolution:

4.7 It is proposed that the Tanzania Law Reform Commission in its capacity as the Association's Secretariat, should actively pursue this matter in order to be able to report progress at the next Exco Meeting due to be held in September/November, 2008.

Publication of Electronic Bulletin

4.8 Concerning publication of the Association's Electronic Bulletin, it was reported that the Bulletin could not be published as only three agencies had submitted their reports. It was proposed and agreed that a uniform reporting template should be developed during the current session in order to ensure that there is uniformity in the structure of the reports. A Template for reporting the highlights of activities being undertaken in the respective agencies was developed and distributed to delegates. It was further agreed that since the next publication was expected in September, 2008, members should submit their reports two months before that date, which means that reports should reach KLRC by July 2008.

Networking

4.9 With regard to networking, it was noted that exchange visits were taking place among Staff Members and Commissioners of respective Commissions. A proposition was made that the exchange could be broadened to include exchange of Draft Bills and Reports in order to facilitate assimilation of best practices. It was further agreed that this exchange could be further enriched if such Reports were routed through the Association's website which South African Law Reform Commission had offered to maintain.

Amendments to the Constitution

4.10 The proposed amendments to the ALRAESA Constitution were considered on the basis of the proposal submitted by the Secretariat. The text of the amendments as set out in pages 2 and 3 of the submission were approved; however, the explanatory note to those amendments were found to be inadequate, to the extent that there was an omission about the status of Associate Members who apply, and who would be required to pay membership subscriptions.

Proceedings of Past Conferences

4.11 The Meeting briefly considered the proceedings of the past Commonwealth Law Reform Agencies (CALRAS) Conferences held in Australia in 2006 and in Kenya, between the 7th and 9th September 2007. A short brief was also given about the up-coming conference due to commence on 15th and ending on 18th April 2008 in Zambia. It was agreed that summaries of Papers presented at the Entebbe ALRAESA Conference, the Nairobi CALRAS Conference and the current ALRAESA Conference in Livingstone, Zambia would be posted at the ALRAESA website.

4.12 In that regard, it was pointed out that it had been agreed in the past that the South African Law Reform Commission would take on the responsibility of managing the site on behalf of the Association. South Africa reported that it had not updated the website because it was not aware that the responsibility to manage the site had been conferred on that Commission and especially because Minutes of Meetings have not been produced in time. It was proposed and agreed that the Minutes of the current meeting should be prepared and

circulated as quickly as possible so that the South African Law Reform Commission will have the basis of assuming the responsibility of managing the website.

Recommendation/Resolution:

4.13 The Tanzania Law Reform Commission which acts as Secretary General of ALRAESA has to speed up preparation of the Minutes and to circulate the same before end of May 2008, in order to provide desired record for the South African Law Reform Commission to take on the responsibility of updating the Association's website.

5.0 Host, Venue and Themes for the next ALRAESA Conference:

5.1 Members inquired whether Malawi would be willing to host the conference based on the agreed scheme for rotating meetings between member states. Malawi stated that due to the upcoming general elections, it might not be possible for the country to host the conference. Lesotho which would have been the second logical candidate for hosting the conference declined on account of lack of budgetary preparations. Tanzania also expressed similar sentiments when requested to consider the possibility of hosting the conference.

5.2 In the circumstances, South Africa and Kenya offered to consult their agencies to see if any one of them could host the conference. Kenya in particular, offered to make its stand known during the next Exco Meeting in Nairobi, Kenya due to be held in September/November 2008.

5.3 With regard to the proposed theme of the Conference, the following suggestions were made:-

- (i) Accountability and Good Governance (corruption);
- (ii) Democracy and the Rule of Law (managing fare and free elections)

5.4 It was agreed that the theme, date and venue for the next conference would be decided at the next Exco Meeting.

6.0 Venue and date for the next Exco Meeting:

6.1 Kenya offered to host the next Exco Meeting in Nairobi, in November 2008 and undertook to confirm exact date and place of meeting in due course, after necessary consultations.

7.0 AOB:

7.1 The issue of membership to the Exco, whether held by the member agency or by individuals elected to the office, was again discussed briefly. A view was expressed that while those to be elected must be serving in the member agency, office bearer of Exco should attach to the agency from which the member is elected.

7.2 It was agreed that the Secretariat should re-examine the Constitution and provide a clarification on the matter with a suggested amendment of the Constitution if this was felt to be necessary.

Recommendation/Resolution:

7.3 That the Secretariat should study the Constitution and prepare necessary clarification dossier for circulation to Association's Members by September/November 2008.

8.0 Numbering of Exco, AGM and the Association's Conferences:

8.1 The Secretariat proposed, and members agreed that it would be appropriate to number meetings of the Executive Committee, the Annual General Meeting and Conferences of the Association for proper record keeping and ease of reference.

8.2 After a brief exchange, it came to light that the sequence of meetings has been under the following pattern:

| Type of Meeting | Date | Place held |
|-------------------------|-------------|-------------------------|
| (i) Preparatory Meeting | Sept. 2000 | Dar-es-Salaam, Tanzania |
| (ii) Launch of Ass/AGM | 2003 | Windhoek, Namibia |
| (iii) Exco | 2004 | Cape Town, South Africa |
| (iv) Conference | 2004 | Cape Town, South Africa |
| (v) Conference | 2005 | Entebbe, Uganda |
| (vi) Exco | 2005 | Entebbe, Uganda |
| (vii) AGM | 2006 | Pretoria, South Africa |
| (viii) Exco | 2007 | Pretoria South Africa |
| (ix) Exco | 2008 | Livingstone, Zambia |
| (x) Conference | 2008 | Livingstone, Zambia |

8.3 It was agreed that numbering of future meeting could follow the sequence of meetings as recorded above.

8.4 Based in the sequencing of Meetings, the recent and current meetings and conferences could be numbered as follows:-

| | | |
|----------------------------------|------|------------------------|
| (i) 4 th Eco Meeting | 2008 | Livingstone, Zambia |
| (ii) 2 ^{dn} AGM | 2006 | Pretoria, South Africa |
| (iii) 2 nd Conference | 2005 | Entebbe, Uganda |

8.5 There being no other matter to consider, the meeting was closed at 4:50 p.m.

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PART B

Proceedings of the ALRAESA Conference held in Livingstone, Zamia between the 15th to the 18th April, 2008

Preliminaries:

1. The Programme of the Conference was circulated to Delegates immediately on their arrival.
2. The Conference was officially opened by the Permanent Secretary of the Ministry of Justice as guest of honour, and was graced by the presence of the High Court Judge of the Southern (Livingstone) Province and the Permanent Secretary of Copper Belt Province.
3. The guest of honour highlighted on the importance of cooperation among the region's law reform agencies in order to strengthen capabilities to face the challenges of unfair trade systems, ever-expanding technologies and globalisation.

Conference Participants, Key note Address and Conference Papers:

4. As the main theme of the Conference was Law Reform and Economic Development, it was fitting that the key note address was delivered by the Deputy Governor of the Bank of Zambia, Dr. Tukiya Mabula.
5. In her key note address, Dr. Mabula emphasised that the current reforms being carried out in Zambia were aimed at poverty alleviation, and were thus supported by a number of interventions, including the Financial Sector Development Plan.
6. In that regard, she said that the Law Reform Agenda under the Financial Sector Development Plan was anchored in reforming existing legislation to change the stance of the economic orientation from a central command position to a market oriented economy; and to develop new legislation intended to support implementation of the new dispensation.
7. In implementing these changes, she said that while there was a need for the law to be home grown, it was imperative that best international practices are encouraged.
8. In his paper titled "**Functional Illiteracy in Mother Tongue**" Prof. Mibanga E. Kashoki, who is also a Commissioner in the Zambia Law Reform Commission, argues that social economic development can be attained through the use of indigenous African languages. In that regard, he echoes the catch words of Prof. Kwesi Kwaa Prah, who subscribes to the thought that "If Africa is to move forward educationally and developmentally, the culture of the masses would need to be brought in from the cold. Education must reach the urban and rural millions in ways which culturally speak to them; in form which do not dismiss their historical heritage. But rather recognizing this, constructs education and knowledge on the basis of what the people already know.....If we can take knowledge and science to the masses in their own languages, then in all likelihood the developmental transformation of Africa will be within grasp"

9. The above views are in consonant with the OAU's 1986 Language Plan of Action for Africa, which directs that in order to achieve the objectives of the plan, countries should subscribe to the following programme of action..... "(d)At national level, the imperative need for each OAU Member State to consider it necessary and primary that it formulates with the minimum delay a language policy that places an indigenous language, or languages spoken and in active use by its peoples at the centre of its socio-economic development"
10. He concludes that, for law reform to achieve economic development, it has to design a long term strategy to utilise indigenous language in its processes. Law Reform Commissions may wish to draw plans of action that would enhance their capacity to widen and deepen participation of the public in law reform by translating many of their Reports into national/indigenous languages.
11. A Paper on "**Windfall Profits Tax**" was presented by Dr. N. Simbyakula of the Institute of Advanced Legal Education of Zambia.
12. In this Paper, Dr. Simbyakula briefly analyses "windfall profits" as an unexpected gift or stream of money realised when economic circumstances allow realisation of above expected economic out-turns. He distinguishes Windfall Profits Tax from Capital Gains Tax and asserts that the tax is usually levied in targeted industries benefiting from the unexpected out-turn of an economic situation, not as a result investment or management techniques inputs.
13. He argues that the sudden increase in profits arises due to unprecedented high commodity prices, as it occurred for oil in the USA in the 1980s; and for metals, which is the current phenomenon as is the case in Zambia and Mongolia; or in the case of initial privatization, when public utility enterprises are sold at purportedly ridiculously low prices because their profitability was rated low, but which suddenly make huge profits immediately after privatization, without any significant new investment by the new owners, as was the case in the UK.
14. In the case of Zambia, its copper mines were privatized between 1997 and 1998 when copper prices were \$ 0.60/\$70 per pound as opposed to the current price of \$3.00 per pound, recording an increase of nearly 330%.
15. Following this unprecedented price increase in copper prices and the pressure of the public that the people of Zambia in general have the right to gain from their exhaustible resources, the Government in January 2008 decided to introduce a new fiscal regime that would ensure equitable sharing of the mineral wealth between the government and the mining companies.
16. Accordingly, the Zambian government introduced a Windfall Profits Tax at the rate of 25% chargeable when the copper price in the London Metal Exchange is \$2.50 per pound but below \$3.00 per pound; at the rate of 50% when copper price is above \$3.00 per pound but below \$3.50 and at 75% when copper price exceeds \$3.50.
17. Mongolia on the other hand, imposes a similar tax on gold which is chargeable when gold price at the same market reaches the price of \$500 per ounce at which the tax rate is 68%.

18. In the Zambian situation, new mining companies from India and China have accepted to pay the tax, while the older Companies have contested and have instituted proceedings to have the tax abolished.
19. In some of member countries of the Association, major mining companies commenced commercial mining operations in early 1990s when the price of minerals like gold stood at \$333.00 per ounce. Currently, the spot price of gold stands at \$836.50, showing a remarkable windfall increase of 151.50%. In addition, there have been deep concerns in many of states of the Association on the prices at which some of the public enterprises were sold during privatisation.
20. In the light of the outcry about equitable sharing of the mining wealth, and the need to address public concerns about the prices at which some of the privatised public enterprises were sold, it may be opportune for other countries to consider introduction of some sort of a Windfall Profits Tax on similar lines as the UK and Zambia have done.
21. The Paper on the **“Review of the Competition and Fair Trading Act: Making enforcement more Effective”** was presented by Chilufya Sampa. In his presentation, Mr.Sampa underscores the need to introduce a market regulatory mechanism in a liberalised economy that would encourage efficiency in production and distribution of goods and services, and which also protects the welfare of consumers and prohibits uncompetitive acts.
22. He explains that, while the law was enacted in 1994, the Commission came into operation in 1997 and that, although there have not been any domestic cases to test the effectiveness of the provisions of the law, there appears to be some lacunae and contradictions in the legislation, which need to be addressed.
23. The weaknesses and areas identified as requiring reform are in the institutional framework intended to enhance the independence of the Commission, and strengthening of the anti-competitive prohibition provisions.
24. In the area of enhancing the independence of the Commission, it has been suggested that the Commission should not be placed under a line Ministry, but be directly under Parliament. In the area of sharpening the provisions of the law, it has been suggested that clarity should be provided between anti-competitive business practices and dominance provisions.
25. The position in Zambia appears to be similar to that of the neighbouring countries to the extent that while the law on competition is a recent development, already the need to reform these laws has been appreciated.
26. Mr. G. W. Simkoko of the Zambia Centre for Dispute Resolution made a power point presentation on **“Arbitration and Court Annexed Mediation”**. In his presentation, Mr. Simkoko stresses the point that Arbitration and Court Annexed Mediation have been developed to resolve the problem of congestion of cases in the Courts, a situation which has been caused by economic development, population increase, growing awareness of their rights among the citizens and lack of adequate judicial officers prompted by low pay, a situation which is more or less similar to that obtaining in the region in the recent past.

27. He explains that in Zambia, the project to introduce alternative methods of dispute resolution other than through fully fledged court process began in 1989 and that between 1999 and 2000 the first batch of Arbitrators was trained.
28. He points out that ADR employed to settle disputes out of court, may follow one of the four alternative paths :- Negotiation, Conciliation, Arbitration (which is a judicial process) and a hybrid of any of the three listed methods. The distinction between Arbitration and Mediation is also highlighted and the advantages and disadvantages of each method outlined.
29. This paper throws some theoretical and practical lights on the efficacy of ADR and the advantages and disadvantages of the two major methods under the category of Mediation and Arbitration. These lessons may be drawn by other sister Law Reform Agencies undertaking review of their Civil Justice Systems.
30. The paper on **“Social Protection in Eastern and Southern Africa: Reform Prospects and Challenges”** was presented by Evans Kakula, Professor of Law and Director of the Institute of Development and Labour Law, University of Cape Town. In his presentation, Prof. Kikula argues that more attention needs to be given to labour law reform because of the challenges labour sector presents and the potential for economic development if labour issues are appropriately addressed.
31. He identifies the prospects of law reform as lying in the following areas: Mainstreaming social protection in law reform; linking Ministerial and Departmental reform activities with the reform agenda of law reform agencies; dealing with exclusion and marginalisation; recognition of informal and indigenous forms of social security; cross-border coordination of social security; prioritisation of social protection policies nationally and regionally.
33. Mrs. Mwenya Kaela Bwalya, Deputy Legal Counsel of the Energy Regulation Board of Zambia presented a paper on **“Utility Regulation”** in which she surveys the historic development of utility regulation in response to state withdrawal from direct engagement in economic activities, especially in the vital areas of economic services covering utilities, following their privatisation.
34. She asserts that the main reason for regulating provision of utilities are:- to achieve equilibrium in economic development; to balance the needs of supply and demand; to ensure that vital economic services are provided to consumers irrespective of their status.
35. The challenges which she identified as haunting any utility regulation framework include the following:-lack of regulatory commitment, including unwillingness of bureaucrats and politicians in Ministries and Departments to transfer regulatory decision making to independent regulatory agencies; hasty setting up of regulatory framework in response to donor pressure; lack of appreciation of the advantages that may be derived from competition in provision of economic infrastructure facilities; lack of cultures of transparency, participation and accountability;
36. The key principles of effective regulatory mechanism which she has identified include the following:- (i) independence of the regulatory

- agency from interferences in its operations, either from ministries, departments or any economic interest; (ii) accountability to an independent superior body or office, which has overall broader national interest and not confined to sectoral interest; (iii) transparency in its operation with adequate public participation in decision making; (iv) predictability of decisions based on defined criteria and parameters; (v) clarity of the agency's role in ensuring a fair return to utility provider and sustainability of services, while consumers pay reasonable tariffs or prices in return for quality goods and safe services; (vi) clarity of rules of operation; (vii) clothed with adequate powers to enforce its decisions; (viii) integrity in decision making and enforcement of its decisions.
37. The main issues for consideration by other Law Reform Agencies are whether the legal framework of multiple regulatory institutions that have been established in their countries adequately reflects the outlined principles for effective regulation as have been articulated in the Paper.
 38. The paper on **“Small Claims Courts in Zambia”** in the context of Law Reform and Economic Development was presented by Mr. Nigel Kalonde Mutuna, a practising Advocate of the High Court of Zambia.
 39. In this paper, Mr. Mutuna highlights on the steps which have been taken to establish the Small Claims Courts in Zambia, whose legislation although passed in 1992, the Courts have not yet been operationalized, because of the inherent defects and flaws in the law, which have to be addressed first. He also singles out the expected smooth realisation of the operation of Courts as an example of a project whose successful implementation has come about as a result of technical support from a sister agency of a neighbouring country.
 40. The main objectives of establishing such Courts are stated to be:- decongestion of normal Courts of multiplicity of civil cases, and at the same time, to ensure accessibility of justice to small and disadvantaged groups; objectives which are shared by many Law Reform Agencies in their law reform Agenda which emphasize at achieving social justice, equality and the rule of law through quality and accessible legal services, under widely accepted guiding principles of accessibility and affordability of legal services for all citizens.
 41. It can be observed from contents of this Paper that while the establishment of the Small Claims Courts in Zambia was well intentioned, its operationalization is reported to have taken a considerable time to achieve on account of the following among other defects in the initial legislation as identified in the paper (i) presiding officers designated as arbitrators and not as state appointed commissioners, whereas arbitrators are usually appointed by parties or courts; (ii) low fiduciary jurisdiction, limited to liquidated claims only and of not more than 4,000 fee units which is equivalent to Kwacha 720,000 or £100 or \$200. The amount is considered to be low and difficult to adjust, because it is stated in the law and not in the rules or regulation which can be amended as and when the need arises; (iii) the limitation of the courts' jurisdiction to liquidated claims is considered inappropriate and that the law should provide for all kinds of small claims for movable and immovable to be within the jurisdiction of the courts; (iv) requirement of jurisdiction to be exercised by way of arbitration,

- resulting into decision of the courts being termed as “awards” and not as “judgements” which can be enforced. Further more, the law as earlier cast, provides for such awards to be enforced by way of warrants of distress, which is considered to be inappropriate; (v) finality of awards which are not appeal able to higher courts, save to the High Court, and only on points of law.
42. The paper suggests a number of amendments to cure the identified defects in order to clear the way for operationalisation of the courts system.
 43. Other Law Reform Agencies may wish to draw some lessons from the Zambian experience in three fronts. Firstly, that it is desirable and indeed feasible, to establish Courts tailored to deal with small claims as a way of reducing the workload of the normal courts, and also as a means of making justice accessible to groups of small means, like Medium and Small Enterprises. Secondly, that a well intentioned law reform proposal may be difficult to implement if it is rushed through, without detailed examination of the operational environment; and thirdly, that it is always advisable to undertake training programmes whenever new judicial schemes are introduced.
 44. In order to ensure that timely justice is delivered to all, other Law Reform Agencies may wish to consider whether it would be appropriate to introduce a Small Claims Courts System in their Judicial Systems on similar lines as has been done in Zambia. This could be implemented within the framework of a broader Review of the Civil Justice System of a country.
 45. The paper on **“Securities Legislation in Zambia: Is it Still Potent for Capital Market Development or Has it Lost its Efficacy”** was presented by Mr. Mumba S. Kampampa, former Secretary and Chief Executive of the Securities and Exchange Commission of Zambia.
 46. In his presentation, Mr. Kampampa states that, the legislation had been passed with a view to facilitating privatisation of State Owned Enterprises (SOE) and with a complimentary objective of providing adequate investor protection in a liberalised and market oriented investment climate, drawing in from the experiences of advanced economies, where rules and regulations governing capital markets had evolved out of extended periods of practice.
 47. He then posed a question as to whether, after 14 years of operation, the Securities Market Legislation in Zambia suffices to regulate all aspects of the capital market, or it needs to be amended to meet current changes in the international market place?
 48. He states that, the forerunner of the current legislation, the Stock Exchange Act No 33 enacted in 1970, was not operationalised since the main agenda of the time was nationalisation. Following introduction of economic liberalisation in the 1990s which was closely associated with the privatisation of Public Enterprises, the Stock Exchange Act No 43 of 1990 which was a replica of the 1970 Act was enacted. It was however found to be somewhat outdated, and was therefore followed up with the enactment of the Securities Act No 38 of 1993 to regulate a factional stock exchange.

49. In his summation, the new legislation was intended to provide a legal framework for the regulation of the market by maintaining a balance between overregulation, which is cost averse and under regulation, which is prone to risk and lighter investor protection.
 50. The presenter makes comparison of the peer legislation in Kenya and South Africa; and argues that, while the current legislation is appropriate to enhance capital market development, more refinement was needed in line with the recommendations of the Mid –Term review of 1998, in order to ensure that the new legislation becomes compliant to principles of the International Organisation of Securities Commissions (IOSCO).
 51. He asserts that IOSCO sets out principles of good regulation based on three objectives which are: - (a) protection of investors, (b) ensuring that markets are fair, efficient and transparent, and (c) reduction of systemic risk.
 52. According to IOSCO’s 30 principles of good regulation, principles pertaining to the regulator are that (a) the responsibilities of the regulator should be clear and objective; (b) the regulator should be operationally independent and accountable; (c) the regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers; (d) the regulator should observe the highest professional standards, including appropriate standards of confidentiality and (e) the regulator should adopt clear and consistent regulatory processes.
- Recommendation:**
53. Other Law Reform Agencies when reviewing Economic Legislations of their countries may wish to inquire as to whether their existing Capital Markets and Securities Laws are compliant with the IOSCO’s principles of good regulation as has been articulated in the Paper.
 54. The paper on **“Intellectual Property Law”** was presented by Mr. George Mpundu Kanja of the School of Law of the University of Zambia.
 55. In his presentation, Mr. Kanja defines intellectual property and different branches of intellectual property, including copyright and related neighbouring rights, industrial property, industrial designs and trademarks; geographical indications and trade secrets. He gives justification for the regime of copyright and industrial property protection and the objectives of protection. He also outlines various enforcement measures and international framework for protection.
 56. With regard to challenges being encountered in relation to implementation of the intellectual property law in Zambia, he summarises these challenges as follows:- (a) it is the least known branch of law among the general public; (b) the legal regime is out dated, save for the copyright act which was revised in 1994. The Patents, Trade Marks and Designs Acts remain as inherited at independence in 1964; (d) lack of commitment and policy reform of the regime on the part of the government; (d) lack of understanding and appreciation among government officials and the general public about the social, cultural, commercial value and economic benefits that can accrue from putting in place a functioning legal regime on IP; lack of national IP policy framework and strategy for implementation of the same; lack of

- mainstreaming of IP in primary and tertiary education and in other sectors of the economy; and lack of incentives and awards for inventors.
57. Having identified these challenges, he points out the way forward in harnessing the potency of IP as a source of economic, social and cultural advancement by suggesting the following:- (a) government and its agencies, including other law reformers to formulate policies and administrative programmes to optimise the use of IP rights; (b) private sector enterprises, including SMEs and Multinationals to pay more attention in upholding IP rights; (c) sensitizing the public on the value and benefits of purchasing legitimate goods and services with the objective of local industries.; (d) carrying out an audit to assess current status of IP assets; (e) preparation of a national IP policy or strategy to be integrated with scientific, cultural, trade, economic and educational policies; (f) evolve a scheme for provision of incentives and awards for inventors and authors who develop and use IP assets.

Recommendation:

58. Other Law Agencies reviewing their IP legal regimes are likely to identify some if not all of the defects outlined in the Paper and may wish to examine them alongside their Investment Promotion Laws to ensure that adequate mechanisms are put in place to protect IPs and at the same time that there are safeguards for treatment of transfer of technology into their countries to ensure sustained economic development. In view of the importance of a well functioning IP legal regime to economic development, it is desirable that Law Reform Agencies consider it imperative to take on the review of IP and Transfer of Technology as a priority in their law reform agenda.
59. The Paper on **“Law Reform and Economic Development: Investment Legislation”** was presented by Hon. Justice Phillip Musonda who underscores the fact that investment laws are the most authoritative, complete and detailed statement of government policy towards foreign investment and therefore play an important role in promoting and regulating Foreign Direct Investment (FDI)
60. His Lordship states in his presentation that, the relevant law in Zambia on investment promotion, is the Zambia Development Agency Act No 11 of 2006, which replaces and repeals a string other laws, including the Investment Act of 1993, the Export Processing Zone Act of 2001, the Export Development Act of 1994 and the Small Enterprises Act of 1996.
61. This is an omnibus legislation incorporating thirteen objectives, the major of which is, fostering economic growth and development by promoting trade and investment in Zambia through an efficient, effective and coordinated private sector led economic development strategy. The Act further establishes the Zambia Development Agency as a one stop facility, to facilitate dialogue with the private sector and promote confidence in public sector support for business; to provide and facilitate support to micro and small business enterprises; to facilitate industrial infrastructure development and local services, and to promote Greenfield investment through joint ventures and partnerships between local and foreign enterprises.

62. The Minister of Commerce and Industry, acting on the recommendation of the Board of the Development Agency may establish Multi- Facility Economic Zones, which are geographic areas or premises with high quality physical and social infrastructure that are intended to attract investment in the manufacturing sector and act as engines for economic growth, wealth and job creation, and increased foreign exchange earnings.
63. The Act also provides for the establishment of a Trade and Industrial Development Fund and Privatisation, intended to provide funding to finance individuals and institutions which will support the economic growth and development by undertaking investment in priority areas and products.
64. His Lordship states that, while the Act has been credited as fostering FDI inflows, it has also been criticised for being too broad based, lacking focus, especially in the area of Small scale business promotion. Its major strengths are that:- (a) it establishes major investment facilitation under one roof; (b)it establishes multi-facility and special processing zones; (c) it offers trade and business promotion measures; (d) it offers incentives attractive to investment; (e) the facilitation support in the areas of licensing, land acquisition and other services facilitate private sector investment.

Recommendation:

65. The Zambian Act offers an example of consolidation of law and authority for investment promotion, which may be considered by other Law Reform Agencies in the course of reviewing of their countries' economic laws at some future date. The effectiveness of this law in Zambia will provide a meaningful assessment of how such consolidation could be cost effective and at the same time efficient in attracting and promoting foreign and local investments.