



REPORT

OF THE

**COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL GUIDANCE,
GENDER MATTERS AND GOVERNANCE**

FOR THE

THIRD SESSION OF THE TWELFTH NATIONAL ASSEMBLY

Printed by the National Assembly of Zambia

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TABLE OF CONTENTS

Item	Paragraph	Page
1.0	Membership of the Committee	1
2.0	Functions of the Committee	1
3.0	Programme of Work	2
4.0	Meetings of the Committee	2
5.0	Procedure adopted by the Committee	2
6.0	Arrangement of the Report	2

PART I **CONSIDERATION OF THE TOPICAL ISSUES**

	Topical Issue 1: Gender-Based Violence in Zambia	
7.0	Background to the study	3
7.1	Objectives	3
7.2	Summary of Submissions by stakeholders	3
	7.2.1 Legal and Policy Framework Governing Issues of Gender-Based Violence in Zambia	3
	7.2.2 Factors leading to the Increase in Number of cases of GBV	4
	7.2.3 Programmes being implemented in an Effort to Curb GBV	5
	7.2.4 Challenges Faced in Curbing GBV	5
	7.2.5 Suggestions on the Way Forward	6
8.0	Local Tour	7
8.1	Tour of the one stop centre in Nyimba District	8
	8.1.1 Prevalence of Gender Based Violence in Nyimba District	8
	8.1.2 Factors leading to the increase in the number of Gender Based Violence Cases	8
	8.1.3 Programmes to reduce Gender Based Violence in Nyimba District	9
	8.1.4 Challenges faced in fighting Gender Based Violence in Nyimba District	9
	8.1.5 Suggestions on the way forward	10
8.2	Public hearing held in Chipata at Chief Madzimawe's Palace	10
8.3	Committee's Observations and Recommendations	11
	Topical Issue 2: Review of the Operations of the Legal Aid Board	
9.0	Background	14
9.1	Objectives	14
9.2	Summary of Submissions by stakeholders	14
	9.2.1 Legal and Policy Framework Governing Legal Aid in Zambia	14
	9.2.2 Effectiveness of the Legal Aid Board in the Provision of Legal Aid since Operationalisation	16
	9.2.3 Current Model of Delivery of Legal Aid	16
	9.2.4 Collaboration between State and Non-State Actors in the Provision of Legal Aid	17
	9.2.5 Challenges Faced in the Provision of Legal Aid	17

9.2.6	Recommendations on the Way Forward	18
9.3	Local Tour Report on the review of the operations of the Legal Aid Board	18
9.3.1	Stakeholders’ meeting on the operations of Legal Aid Board in Chinsali District in Muchinga Province	19
9.3.2	Challenges faced in the Provision of Legal Aid in Chinsali District	19
9.3.3	Suggested way forward	20
9.4	Stakeholders’ meeting on the operation of the Legal Aid Board in Northern Province	20
9.4.1	Suggested way forward	21
9.4.2	Committee’s observations and recommendations	21

PART II

10.0	Review of the operations of the office of the Public Protector (OPP)	23
11.0	Participation of persons with disabilities (PWDS) in the electoral process in Zambia	25
12.0	The implications of the extractive industry activities on human rights: The case in Zambia’s mining sector	29
13.0	Report on the local tour	35
14.0	The death penalty in Zambia	40
15.0	The causes and extent of torture in Zambia	41
16.0	Judicial reforms in the justice system in Zambia	43
17.0	Enforcement of the law relating to violence and harassment against women and girls in Zambia	44
18.0	Conclusion	45
	Appendix I - List of National Assembly Officials	46
	Appendix II – List of Witnesses on Topic I: Gender Based Violence in Zambia	47
	Appendix III - List of Witnesses on Topic II: Review of the Operations of the Legal Aid Board	48

REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL GUIDANCE, GENDER MATTERS AND GOVERNANCE FOR THE THIRD SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 COMPOSITION OF THE COMMITTEE

The Committee consisted of Mr M Jere, MP (Chairperson); Mrs P G M Jere, MP (Vice-Chairperson); Mr C L Bwalya, MP; Mr T S Ngulube, MP; Mr R Bulaya, MP; Mr E Sing'ombe, MP; Mr C Nanjuwa, MP; Mr H Shabula, MP; Ms M Langa, MP and Mr S Banda, MP.

The composition of the Committee changed following the appointment of Mr T S Ngulube, MP as Deputy Chief Whip, upon which he ceased to be a Member of the Committee. He was subsequently replaced by Mr R C Mutale, MP.

The Honourable Mr Speaker
National Assembly of Zambia
Parliament Buildings
LUSAKA

Sir,

The Committee has the honour to present its Report for the Third Session of the Twelfth National Assembly.

2.0 FUNCTIONS OF THE COMMITTEE

In line with Standing Order No.157(2), the Committee on Legal Affairs, Human Rights, National Guidance, Gender Matters and Governance is responsible for the following sector ministries: Ministry of Justice, Ministry of Gender, Ministry of National Guidance and Religious Affairs and other Government departments, commissions and agencies under these ministries. The functions of the Committee are, among other things to:

- (i) study, report and make appropriate recommendations to the Government through the House on the mandate, management and operations of the Government Ministries departments and agencies under its portfolio;
- (ii) carry out detailed scrutiny of certain activities being undertaken by the Government Ministries, departments and agencies under its portfolio and make appropriate recommendations to the House for ultimate consideration by the Government;
- (iii) make, if considered necessary, recommendations to the Government on the need to review certain policies and certain existing legislation;
- (iv) examine annual reports of Government Ministries and departments under its portfolio in the context of the autonomy and efficiency of Government ministries and departments and determine whether the affairs of the said bodies are being managed according to relevant Acts of Parliament, established regulations, rules and general orders;

- (v) consider any Bills that may be referred to it by the House;
- (vi) consider International Agreements and Treaties in accordance with Article 63 of the *Constitution Amendment Act No. 2 of 2016*;
- (vii) consider special audit reports referred to it by the Speaker or an Order of the House;
- (viii) hold public hearings on a matter under its consideration; and
- (ix) consider any matter referred to it by the Speaker or an Order of the House.

3.0 PROGRAMME OF WORK

The Committee adopted the Programme of Work as set out below.

- (i) Consideration of the Action–Taken Report on the Report of the Committee for the Second Session of the Twelfth National Assembly.
- (ii) Consideration of the following topical issues:
 - (a) Gender-Based Violence in Zambia; and
 - (b) Review of Operations of the Legal Aid Board.
- (iii) Local Tours

4.0 MEETINGS OF THE COMMITTEE

The Committee held fifteen meetings during the year under review to consider submissions on the two topical issues.

5.0 PROCEDURE ADOPTED BY THE COMMITTEE

The Committee requested for written memoranda from stakeholders on the topical issues under consideration and invited them to appear before it in order to make oral presentations and make clarifications on issues arising from the written submissions. The Committee also undertook a local tour during the Session under review.

6.0 ARRANGEMENT OF THE REPORT

The Committee’s Report is organised in two parts: Part I deals with the deliberations of the Committee arising from the oral and written submissions from various stakeholders as well as its findings from the local tour and the Committee’s observations and recommendations thereon. Part II outlines the Committee’s recommendations following consideration of the Action–Taken Report on the Report of the Committee for the Second Session of the Twelfth National Assembly.

PART I
CONSIDERATION OF TOPICAL ISSUES
TOPICAL ISSUE 1 – GENDER-BASED VIOLENCE IN ZAMBIA

7.0 BACKGROUND

In 2011, when the *Anti-Gender-Based Violence Act, No.1 of 2011* was passed, the National Gender-Based Violence Crime Statistics reported 11,908 cases of gender-based violence (GBV) countrywide. Despite Government interventions in curbing GBV, such as the enactment of the Act, the development of the GBV policy for the health sector, revision of the Penal Code, establishment of fast track and victim-friendly courts for survivors and sensitisation programmes, numbers kept rising. For Example, in 2016, the Ministry of Gender in its 2015/2016 Gender Status Report set the number of reported GBV cases at 18,540 and, by the first quarter of 2017, the number of cases had risen to 21,504. It is against this background that the Committee resolved to inquire as to why, in spite of an Act that was commended for providing a holistic approach to combating GBV and other interventions, the number of reported number of GBV cases had continued to rise.

7.1 Objectives

The objective of this undertaking was for the Committee to:

- a) ascertain the adequacy of the legal and policy framework governing issues of gender-based violence in Zambia;
- b) appreciate the role of non-state actors in the fight against gender-based violence;
- c) establish the challenges being faced in the fight against gender-based violence; and
- d) make recommendations to the Executive on the way forward.

Witnesses

The Committee received both oral and written submissions from selected institutions set out at appendix II.

7.2 SUMMARY OF SUBMISSIONS BY STAKEHOLDERS

A summary of the submissions of the stakeholders who appeared before the Committee is presented below.

7.2.1 Legal and Policy Framework Governing Issues Of Gender-Based Violence In Zambia

Stakeholders submitted that while the legal and policy framework governing issues of gender-based violence (GBV) in Zambia were adequate, implementation remained poor, which rendered the set policies and laws ineffective.

Stakeholders submitted that while on the one hand, the National Gender Policy promoted awareness through campaigns to change harmful and negative cultural practices of society; encouraged victims to report cases of all forms of violence and sexual abuse to the relevant law

enforcement agencies; and promoted and conducted awareness campaigns targeted at women and men on the existence of legal provisions in the *Penal Code Act Chapter 87 of the Laws of Zambia*, the primary law on gender-based violence was the *Anti-Gender-Based Violence Act, No. 1 of 2011*. The Act provided for the establishment and appropriate spread of shelters by the Government for victims of gender-based violence. However, these shelters were very few and unevenly spread. Further, the Anti GBV Fund, established under the Act, which was supposed to be accessed by victims of GBV was inadequately funded and there were no guidelines as to how it was to be administered.

Stakeholders submitted that implementation gaps in the legal framework included the failure by the *Anti-Gender Based Violence Act No.1 of 2011* to specifically provide for offences and sanctions for GBV. It was submitted that although the Act categorised forms of GBV, it did not provide specific sanctions to go with these forms of violence.

Other concerns raised by stakeholders included the institutional overlap in terms of the mandate over GBV between the Ministry of Community Development and Social Services and the Ministry of Gender; the lack of a policy position by the Government in resource allocation with regard to the national budget apportioned to fight GBV; the inadequacy of numbers and capacities of staff in key institutions such as the Ministry of Gender and the Victim Support Unit; and the inadequate awareness of the legal and policy framework by the general citizenry.

7.2.2 Factors leading to the Increase in Number of Cases of GBV

Stakeholders were unanimous that GBV was a human rights violation, a public health challenge as well as a barrier to civic, social, political and economic participation. The vice also undermined the safety, dignity and overall health status of millions of individuals worldwide.

Stakeholders submitted that the rise in the number of reported cases of GBV could be attributed to enhanced sensitisation and increased awareness campaigns on the various forms of GBV and its effect on the well-being of individuals in society. This had created confidence in the general public to report cases of GBV, contrary to what was happening in the past where GBV was considered a family or private affair.

Stakeholders further submitted that the upward swing of reported cases of GBV could be attributed to positive factors such as enhanced accessibility to GBV services that were being provided by both the Government and non-governmental organisations; the active participation of men, boys, traditional and religious leaders in condemning the vice; and increased self-esteem among women and girls which had resulted in the breakdown of the culture of silence which had in the past shrouded GBV.

Stakeholders were, however, quick to note that some negative factors had also contributed to the rise in the number of reported cases of GBV. Some of the factors included high poverty and illiteracy levels, negative cultural practices, abuse of social media, alcohol and substance abuse and lack of effective communication in relationships.

7.2.3 Programmes being Implemented in an Effort to Curb GBV

Stakeholders submitted that GBV required multi-sectoral approaches that enhanced access to health, legal and social protection systems for survivors of GBV. In this vein, a number of programmes were being implemented at various levels as outlined below.

a) Education Programmes

In the context of education, a number of measures had been put in place to ensure that there was a conducive learning environment. These included comprehensive sexuality education, construction of more schools to reduce the distances between schools, construction of boarding schools for girls only and implementation of the keeping girls in school initiative of the Girls' Education, Women's Empowerment and Livelihoods (GEWEL) Project with the support of the World Bank.

b) Literacy Programmes

It was also submitted that literacy was an empowering process, particularly for women who constituted most of the world's illiterates. The gender gap in literacy and education was widespread, particularly in rural areas. In this vein, literacy programmes being implemented countrywide were expected to contribute to reducing the levels of GBV.

c) Social Protection Programmes

Stakeholders further submitted that social protection interventions whose objective was to empower women's clubs and associations through entrepreneurship skills and cash grants to income generating activities undertaken by women had been implemented.

d) Health Promotion Programmes

Other interventions included health promotion programmes in primary health care and public health measures that tackled health issues from prevention, behaviour change communication, health promotion and education in nutrition, HIV/AIDS, protection against infections and provision of essential medicines.

e) Elimination of Negative Cultural Practices

There were various programmes which focused on working with traditional, religious, civic and community leaders so that negative cultural practices that promoted and condoned GBV were abolished.

7.2.4 Challenges Faced in Curbing GBV

Stakeholders noted that despite the interventions that were being implemented in an effort to curb GBV, there were still a number of challenges being faced in the fight against the vice. Some of the key challenges are outlined below:

a) Lack of Data and Research

There was lack of GBV data and research at community level. Stakeholders contended that if there was data available at community level, the Government and other players would find it easy to develop targeted interventions to prevent and respond to GBV.

- b) Donor-Driven Agendas Resulting in Duplication of Efforts and Limited Coverage**
Stakeholders observed that many non-state actors had donor-specific-driven agendas which resulted in duplication of efforts as there was limited coverage of interventions, particularly in rural areas.
- c) Inadequate Budgetary Allocations**
The other challenge was the inadequate budgetary allocation for the Ministry of Gender to mainstream and co-ordinate national, provincial and district interventions.
- d) Poor Enforcement of the Law**
With regard to the enforcement of the law, the conflict in the legal framework and policies led to challenges in the interpretation, implementation and monitoring of adherence and effectiveness in the execution of the law.
- e) Dual Legal System**
Zambia has a dual legal system that implemented statutory law and customary law. The Constitution provided for the application of customary law with respect to adoption, marriage, divorce or other matters of personal law.
- f) Lack of Forensic Laboratories**
The lack of forensic laboratories to refer children to when they were raped or defiled was a challenge. This led to loss of evidence resulting in withdrawal of cases or acquittals.
- g) Inaccessibility of Legal and Medical Services**
The other challenge was the long distances in rural areas to legal or medical services when GBV occurred. This inaccessibility resulted in the non-reporting and withdrawal of cases by victims of gender-based violence.
- h) Premature Withdrawal of Cases**
Often, perpetrators threatened to withdraw financial or material support. When this happened, most victims of gender-based violence prematurely withdrew the cases at the police or court. Further, cases have been withdrawn due to intimidation and victimisation.
- i) Non-availability of Under-Five Cards or Birth Certificates**
During the judicial process, the ages of most children are not verified due to lack of birth certificates or Under-Five cards. This has led to acquittals.
- j) Other Challenges**
Other challenges included inadequate transport, resources for investigating GBV-related cases, office space for counselling and trained manpower.

7.2.5 Suggestions on the Way Forward

Based on the foregoing, stakeholders were of the view that in order for the fight against GBV to be effective, there was need for affirmative action towards enhancing women's and girls' access to productive resources and ensuring that policies were adequate and supportive. Stakeholders further recommended the specific measures set out hereunder.

- (i) Stakeholders called for the harmonisation of customary and statutory laws governing GBV, especially on child marriage prevention and response. Stakeholders submitted that there was need to enact the Child Code Bill and Marriage Bill without further delay.
- (ii) Stakeholders observed that there was need to establish provincial and district level offices by the Ministry of Gender in order to enhance co-ordination among various actors.
- (iii) Stakeholders also identified the need to revise the *Anti-Gender-Based Violence Act, No. 1 of 2011*, to resolve some inconsistencies in some roles. A good example of serious inconsistency was the fact that the Anti-GBV Fund was presently under the Ministry of Community Development and Social Services as opposed to being under the Ministry of Gender.
- (iv) It was further noted that there was need to integrate GBV in the curriculum of doctors and clinicians and police officers to facilitate a comprehensive response.
- (v) There was also a call by stakeholders for the establishment of GBV one-stop-centres in all districts to provide social, medical and police services in one place to victims of GBV.
- (vi) Consider allowing clinical officers and nurses, who were the primary healthcare givers in rural health posts, to certify medical forms in cases of gender-based violence
- (vii) Consider in-service capacity building programmes on GBV management for service providers such as health workers, police and counsellors.
- (viii) Revive the construction of a forensic laboratory which had earlier commenced under the Ministry of Home Affairs.
- (ix) Stakeholders recommended that the Ministry of Community Development and Social Services should consider establishing safe houses for GBV victims in every province and scale up the establishment of fast track courts.
- (x) There was also need for enhanced collaboration with GBV partners in order to sustain programmes and continue providing support and sensitisation to communities about the vice.
- (xi) Stakeholders recommended that there should be a review of the legal framework so as to protect non-school going children against child marriages and early pregnancies.
- (xii) To enhance availability of reliable data, the Central Statistical Office (CSO) should be the authentic source of GBV data in Zambia.

8.0 LOCAL TOUR

In order to consolidate its findings from the long meetings on Gender Based Violence Zambia and the Review of the Legal Aid Board, the Committee undertook a local tour to Eastern, Muchinga and Northern Provinces. The Committee visited a number of institutions and held a

public hearing and stakeholders’ meetings. The key findings of the Committee during its local tour are summarised below.

8.1 Tour of the One Stop Centre in Nyimba District

During the visit to the One Stop Centre, the Committee was informed as outlined below.

- (i) The Committee heard that Nyimba One Stop Centre was opened on 9th October, 2014 with support from World Vision Zambia in partnership with the Government of the Republic of Zambia. The centre’s programmes were supported by World Vision Zambia until March 2018 when it was handed over to the Government of Zambia under the Ministry of Health. The One Stop Centre through support from the Ministry of Health had only managed to provide fuel when available to follow up cases of gender based violence as they were reported.
- (ii) The Ministry of Health was doing its best to support the activities at the One Stop Centre but due to limited funds and competing activities, only the maternity and children’s wards were prioritised, a situation which resulted in the Centre not conducting any mobile outreach programmes since it transitioned from a World Vision supported institution to one under the Ministry of Health.
- (iii) The Centre had four members of staff; a nurse, police officer and two counsellors who had undergone training in Gender Based Violence (GBV) management. At the time of the committee visit, the members of staff were serving on voluntary basis but were hoping to be put on the Government payroll.

8.1.1 Prevalence of Gender Based Violence in Nyimba District

The Committee was informed that the One Stop Centre received an average of ten to fifteen cases on a busy day while two to three cases were received on a less busy day. The Committee was further informed that on average 800 cases were reported per year. Further, most of the cases comprised defilements, sexual abuse, physical abuse, denial of resources or opportunities, psychological abuse and forced and early marriages. The Committee was also informed that out of the cases which were reported, psychological abuse recorded a highest prevalence. The Centre managed to secure convictions on most of sexual cases which were reported. The Gender Based Violence cases reported from 2015 to date were as set out below.

YEAR	MALE	FEMALE	TOTAL
2015	164	730	894
2016	330	946	1276
2017	183	701	884
2018	173	612	785
2019 (1 ST QTR)	58	162	220
TOTAL	908	3151	4059

8.1.2 Factors leading to the increase in the number of Gender Based Violence cases

The Committee was informed of a number of factors which led to the increase in Gender Based Violence cases, as set out below.

- (i) The Committee heard that approximately 70 per cent of the population lived in abject poverty, and this had proved to be a driver of Gender Based Violence.
- (ii) The Committee heard that, because of poverty, families were unable to take their children to school. Children ended up being used to do chores while girls were, in most cases, married off at an early age. These incidences were more prevalent in Chikwasha area which was under Lwembe Chiefdom.
- (iii) The Committee was informed that Nsengas had a matrilineal culture which allowed a man to pay any amount he deemed fit as a bride price, a price which went as low as even K5. This practice of paying low price made a woman to have powers to chase a man from her home at any time whenever there was a misunderstanding because the woman was able to pay back the bride price to the man without difficulties. This practice saw children being left behind with the mother while receiving little or no support from their fathers. Such children ended up being abused psychologically and at times ended up being defiled or used for child labour.
- (iv) The Committee heard that the increase in the number of Gender Based Violence cases was as a result of cultural misconceptions that sleeping with a virgin could cure a person infected with the Human Immunodeficiency Virus (HIV) or could make someone to rich.

8.1.3 Programmes to reduce Gender Based Violence in Nyimba District

The Committee heard that the One Stop Centre was conducting community sensitisation meetings in order to raise awareness on the dangers of Gender Based Violence. The Centre was also championing the formation of gender sub committees at community level so as to detect Gender Based Violence cases at community level. Traditional leaders were also trained and recognised as champions who took the leading role in fighting Gender Based Violence in their chiefdoms. Among the Chiefs who were trained was Chief Ndake who had managed to retrieve sixty-one girls from early marriages in his chiefdom.

8.1.4 Challenges faced in fighting Gender Based Violence in Nyimba District

The Committee heard that some of the key challenges faced in fighting Gender Based Violence were as set out below.

- (i) Most perpetrators of Gender Based Violence were bread winners in their families, which led to most of the cases being withdrawn from further prosecution.
- (ii) The absence of a Resident Magistrate in Nyimba led to prolonged or delayed disposal of cases, and which in most cases resulted in the suspect going scot free.
- (iii) Lack of funding to the Centre made it very difficult to operate effectively. The staff at the Centre wondered why Gender Based Violence programmes could not be funded by the Government despite having the Ministry of Gender.

- (iv) Most of the Gender Based Violence cases ended up being resolved at community level where money exchange took place at the expense of the survivor as a victim of Gender Based Violence.
- (v) The late reporting of sexual offences resulted in insufficient evidence for the matters to be successfully prosecuted.
- (vi) The non-inclusion of the psychosocial counsellors on the Government payroll was a challenge as the workers could not fully apply themselves to the work since they were merely providing a service on voluntary basis.

8.1.5 Suggestions on the way forward

Some suggestions were made on the way forward on this matter. These included those set out below.

- (i) There was urgent need for a Resident Magistrate to be stationed in Nyimba so that Gender Based Violence cases could be attended to in a timely manner.
- (ii) There was need for the traditional leadership to take a leading role in reporting cases of Gender Based Violence and also finding a lasting solution to end vices.
- (iii) There was need to take measures to strengthen Gender Based Violence sub committees in the district so as to reduce incidences of Gender Based Violence.
- (iv) There was need for the Psychosocial Counsellors at the Centre to be employed by the Government payroll if they were to work more effectively in addressing cases of Gender Based Violence in Nyimba District.

8.2 Public Hearing Held in Chipata at Chief Madzimawe's Palace

The Committee conducted a public hearing in Chipata in Chief Madzimawe's Palace. The members of the public in attendance during this interaction expressed the concerns outlined below.

- (i) Gender-based violence and child marriage had continued to be of great concern in Chief Madzimawe's chieftom. In this regard, the chieftom had put in place measures to improve the living standards of its people by forming palace committees. Among the committees instituted was the committee responsible for gender-based violence, child labour and related cases. The committee responsible for gender-based violence cases provided education and protection against gender-based violence by conducting sensitisation meetings on the dangers of committing Gender Based Violence.
- (ii) There were trained psychosocial counsellors and paralegals who dealt with gender-based violence cases in the chieftom. Further, the local courts in the chieftom were helpful as gender-based violence cases that occurred in the chieftom were easily referred to the local courts and the perpetrators were dealt with accordingly. The Committee was also informed that the local courts in the chieftom recognised that there existed a traditional

court where cases of such nature were referred to in order to be dealt with by the traditional court in Chief Madzimawe's Palace.

- (iii) The Chiefdom was doing fairly well in dealing with gender-based violence. The traditional leadership, however, indicated that there were more gender-based violence cases among families and communities that chose to remain quiet whenever such cases were committed.
- (iv) When the initiative to curb gender-based violence was introduced by the Chief, it was not well received. However, after its implementation the members of the chiefdom appreciated the intervention.
- (v) Before the initiative to highlight gender-based violence was introduced in the chiefdom, in a family, a man made all the decisions even when the decisions made were not for the benefit of each member of that family. But after the introduction of the initiative, the wife and children realised their rights and became part of the decisions made in a home.
- (vi) Before the initiative was introduced in Chief Madzimawe's chiefdom, there was a lot of beer drinking and drug abuse. After its introduction beer drinking had reduced, which in turn had led to the reduction in gender-based violence.
- (vii) Cultural beliefs had led to gender-based violence being concealed as the family members of those victimised persons did not allow gender-based violence cases to be prosecuted up to the end, instead they chose to withdraw the cases, citing family ties and forgiveness.

On the way forward, the Committee heard that there was need to sensitise communities through local churches about the dangers of engaging in gender-based violence and the effects of concealing such vices.

8.3 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

Following its interactions with various stakeholders during its local tour to Eastern Province specifically in Nyimba District and Chipata City on Gender-Based Violence in Zambia, the Committee makes observations and recommendations as set out below.

- (i) The Committee is concerned that many perpetrators of gender-based violence have continued to go scot-free because victims have prematurely withdrawn cases at police or court because of high poverty levels. Perpetrators usually threaten to withdraw or completely withdraw financial or material support.

The Committee urges the Executive to ensure that the Anti-Gender-Based Violence Fund, established under part VI of the Act, is fully operationalised so as to scale-up economic empowerment interventions for GBV survivors, as GBV is rooted in weak economic status, especially among women.

- (ii) The Committee is concerned that most of the gender-based violence cases end up being resolved at community level instead of being reported to relevant authorities. In some

instances, money exchanges hands and cases are settled at home rather than taking them through the courts of law. In this way, victims of these crimes are denied access to justice while the perpetrators remain free in the communities.

The Committee urges the Government to work together with stakeholders to come up with more sensitisation programmes in Nyimba District so that communities are sensitised to desist from entering into agreements that hinder justice for the victims of Gender Based Violence.

- (iii) The Committee observes with concern that most victims and families of victims of GBV prematurely withdraw cases due to unavailability of amenities such as drop-in-centres, one-stop-centres, mobile clinics, temporary protective shelters for victims and fast track courts. The Committee is of the view that if perpetrators withdraw financial or material support, victims would still find refuge in these amenities.

The Committee recommends that the Executive should come up with robust measures as a matter of urgency to scale-up these amenities in order to enhance access to services by victims of gender based violence.

- (iv) The Committee observes that some cultural beliefs are contributing to increased Gender Based Violence in communities as they discourage the reporting of such vices to relevant institutions.

The Committee recommends that more sensitisation activities on negative cultural beliefs be conducted so that those communities begin to report gender-based Violence cases. This will address the increasing incidences of gender-based violence in communities.

- (v) The Committee is concerned that although the law provides for a doctor to certify medical forms in cases of GBV, not all health facilities in the country have these medical personnel readily available, which results in loss of evidence and gender-based violence cases being abandoned or lost in the courts when presented.

The Committee was of the view that clinical officers and nurses, who were the primary healthcare givers in most health posts, could be among the medical personnel who are authorised to sign medical forms in cases of gender-based violence.

The Committee thus recommends that consideration be given to expanding the legal definition of who can certify a medical examination report and testify in court to allow for flexibility and preservation of evidence.

- (vi) The Committee observes that the non-availability of under-five clinic cards and birth registration certificates makes it difficult to verify the age in the judicial process, which has led to frustrations and in most cases acquittals.

The Committee, therefore, urges the Executive to come up with measures to ensure that births are recorded and birth registration certificates made available countrywide.

- (vii) The Committee observes with great concern that the absence of a Resident Magistrate in Nyimba District was impacting negatively on the fight against gender-based violence due to delayed in delivery of prosecution of offenders, which in most cases resulted into the perpetrators going scot free.

The Committee recommends that the Government should consider sending a Resident Magistrate in Nyimba District so as to address issues of delayed delivery of justice on gender-based violence cases.

- (viii) The Committee is greatly concerned that the One Stop Centre in Nyimba District does not receive direct allocation of funds from the Government for its operations. The Committee also observes with great concern that the psychosocial counsellors at the One Stop Centre are not Government employees, but are providing a service on voluntary basis. This has greatly affected on the quality service rendered by the Centre.

The Committee, therefore, strongly recommends that the Government considers allocating funds to the One Stop Centre if the Centre is to operate effectively on gender-based violence cases.

- (ix) The Committee is concerned that although social media has to some extent played a role in highlighting GBV, social media messages have some instances been negative. An example was the woman who was sexually assaulted with a bottle of castle lager by fellow women who alleged that the victim was having an affair with the husband of one of the women.

The Committee, therefore, urges the Executive to take steps to mitigate the negative aspects of social media vis-à-vis GBV by prosecuting offenders and those who post such negative messages.

- (x) The Committee notes with concern the inconsistencies in the definition of a child in Zambian law. While the *Anti-Gender-Based Violence Act, No. 1 of 2011* defines a child as anyone below the age of sixteen, this is in conflict with some provisions in other legislation. Notable among these is the Constitution which defines a child as a person who is eighteen years and below.

The Committee, therefore, urges the Government to review and harmonise the definition of a child in all pieces of legislation that impact on the child, such as the Constitution, with a view of having one definition. The Committee is of the view that this will have a positive impact on efforts aimed at preventing child marriage. In this regard, the Government is urged to expedite the enactment of the Child Code Bill which will go a long way in addressing this concern.

TOPICAL ISSUE 2 – REVIEW OF THE OPERATIONS OF THE LEGAL AID BOARD

9.0 BACKGROUND

The Legal Aid Board (LAB) in Zambia is established under Section 2 of the *Legal Aid (Amendment) Act, No. 19 of 2005*. The Board, which became operational in 2008, was instituted to provide free or subsidised legal advice, assistance, education and mechanisms for alternative dispute resolution in both civil and criminal matters. Prior to 2008, there was a Directorate of Legal Aid in the then Ministry of Legal Affairs which later became Ministry of Justice. The Directorate was set up in 1967 when the Legal Aid Act was enacted.

Although Zambia had laid a solid foundation for the provision of legal aid with the right to access justice clearly codified in the Constitution, access to justice through legal aid had taken place through a limited policy and legal framework that covered the Board but was silent on civil society organisations (CSOs), paralegals and legal assistants.

In view of the foregoing, the scope of state-provided legal aid services was limited and excluded the majority of indigent persons in Zambia and the type of legal aid services they were most in need of. Further, access to justice for the rural and urban poor was restricted due to poverty; lack of access to lawyers; and the basic lack of knowledge on procedures of access to justice and available providers of support services. This situation prompted the Committee to undertake a review of the operations of the Legal Aid Board in its effort to contribute to the enhancement of access to justice in Zambia.

Witnesses

The Committee received both oral and written submissions from the institutions listed at appendix III.

9.1 Objectives

The objective of this undertaking was for the Committee to:

- a) ascertain the adequacy of the legal and policy framework governing legal aid;
- b) assess the effectiveness of the Legal Aid Board;
- c) establish challenges being faced in the provision of legal aid; and
- d) make recommendations to the Executive on the way forward.

9.2 SUMMARY OF SUBMISSIONS BY STAKEHOLDERS

The submissions of the stakeholders who appeared before the Committee are summarised below:

9.2.1 Legal and Policy Framework Governing Legal Aid in Zambia

Stakeholders unanimously agreed that a number of international and regional laws that provide for Legal Aid such as the Universal Declaration of Human Rights, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, the International Covenant on Civil and Political Rights, the International Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), the Body of Principles for the Protection of all Persons Under

any Form of Detention, the Convention on the Elimination of All Forms of Discrimination against Women and the African Charter on Human and People's Rights had been ratified and to a great extent domesticated into Zambian law.

Stakeholders further submitted that Article 18(1) of the *Constitution of Zambia, Chapter 1 of the Laws of Zambia* provided for protection from all forms of discrimination and the right of a person to a fair hearing within reasonable time by an independent and impartial court established by law while Article 18(2)(d) provided that unless legal aid is granted to him in accordance with the law enacted by Parliament for such purpose be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice

It was submitted, however, that the *Legal Aid Act*, which was the primary piece of legislation that governed the provision of legal aid services, was lacking in some areas as outlined below.

- (i) The Act did not regulate the provision of legal aid services by civil society organisations (CSOs) and other non-state actors.
- (ii) The scope of legal aid in the Act did not include the promotion of legal literacy, education and awareness among vulnerable sections of society.
- (iii) The Act did not have provisions that specifically addressed access to legal aid for persons with mental challenges.
- (iv) There was no provision in the *Legal Aid Act* that addressed access to legal aid for a child.

It was further submitted that the legal aid framework did not offer any protection to legal aid providers. Hence, there was need to ensure that legal aid providers and persons aggrieved with the provision of legal aid were protected from all interference in the execution of their duties and allegations of impropriety promptly investigated and adjudicated upon.

With regard to the policy framework, stakeholders noted that Zambia recently launched the National Legal Aid Policy which to a large extent adopted the best practices set out in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. The objectives of the policy, which acknowledged the inadequacy of the legal aid legal framework, were to:

- (a) Widen the scope of legal aid services through the review of the existing application and eligibility processes and standards.
- (b) Promote legal education.
- (c) Increase geographical coverage of the legal aid system by involving other key stakeholders.

- (d) Enhance competence and accountability of paralegals, legal assistants and legal aid assistants in order to enhance the delivery of legal aid services.
- (e) Strengthen institutional framework with the mandate and functions of the Legal Aid Board being expanded to include not only the provision and administration of legal aid, but also the co-ordination, regulation and monitoring of the legal aid system.

Stakeholders submitted that the new Legal Aid Policy, adopted on 1st October, 2018, also recognised the need for the *Legal Aid Act* to be amended in order to bring it in line with international standards, particularly the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. Stakeholders unanimously agreed that in order for legal Aid to be fully effective, accessible, credible and sustainable, there was need to expeditiously review the *Legal Aid Act*.

9.2.2 Effectiveness of the Legal Aid Board in the Provision of Legal Aid since Operationalisation

Stakeholders were of the view that the Legal Aid Board was generally effective in the superior courts such as the Supreme Court, the Court of Appeal and the High Court, where persons facing criminal charges were represented. However, in Subordinate Courts where the greater part of criminal cases was adjudicated, the availability of legal aid was less than desirable due to under staffing and isolation of some courts in relation to where legal aid offices were located. More importantly, stakeholders noted that legal aid in civil cases had been less in comparison to criminal cases.

It was submitted that the effectiveness of the Legal Aid Board depended on the availability of an adequate legal and policy framework coupled with adequate human and financial resources. It was noted that the Board had, over the years, provided legal aid services under very difficult circumstances characterised by a lean workforce, mainly found at provincial centres across the country. The Board normally failed to recruit and retain legal practitioners due to poor conditions of service. This inadequacy in the workforce in the midst of a high demand for legal aid services had resulted in many poor people, particularly those in rural areas, not accessing legal aid services.

9.2.3 Current Model of Delivery of Legal Aid

Stakeholders submitted that the provision of Legal Aid in Zambia was primarily premised on the ‘Means Test’ for persons appearing before the High Court and Subordinate Court for trial. When assessing the means of an applicant, income, personal and real property were taken into consideration. It was, however, established that emphasis on the ‘Means Test’ had the potential to leave out many people from accessing Legal Aid, especially where they were facing serious criminal offences for which Legal Aid should be provided in the interest of justice.

In addition to the ‘Means Test’, grant of legal aid to persons appearing before the subordinate courts went further to consider all the circumstances of the case and the interest of justice in determining whether or not legal aid should be granted.

It was further submitted that there were two traditional models of delivery of legal aid - salaried staff and judicare, whereby private legal practitioners, who were paid out of the Legal Aid Fund, handled cases for clients who were granted legal aid. According to stakeholders, judicare had helped in lessening the workload, providing expertise in certain areas of legal practice and in dealing with cases that had conflict of interest.

9.2.4 Collaboration between State and Non-State Actors in the Provision of Legal Aid

Stakeholders observed that there had been notable efforts of collaboration between state and several entities that provide legal aid services. Over the years, the Board had collaborated with the Law Association of Zambia, the Legal Aid Clinic for Women, Legal Resources Foundation, Women in Law and Development in Africa, Women in Law in Southern Africa, Prisons Care and Counselling Association, Open Society Initiative for Southern Africa and the International Legal Aid Group. The collaboration ranged from training, policy issues, best practices and experiences, litigation, Alternative Dispute Resolution (ADR) and case referrals.

Despite the aforementioned collaboration, stakeholders bemoaned the fact that non-state actors that provided legal aid services were not sufficiently regulated. In this vein, stakeholders recommended the amendment of the *Legal Aid Act* to bring it in line with the Legal Aid Policy, which recognised the provision of legal aid services by civil society organisations.

9.2.5 Challenges Faced in the Provision of Legal Aid

Stakeholders identified the challenges set out below in the delivery of effective Legal Aid services:

- (i) Stakeholders observed that the Board had a dire need to fill all the positions that were vacant in order for it to function optimally. The ideal establishment was 350 positions and only 174 positions were filled, which had led to an excessive workload.
- (ii) Stakeholders also observed that citizens' awareness levels of legal aid and related remedies were very low and that in the absence of requisite knowledge, citizens' demand for and utilisation of legal aid was low.
- (iii) Stakeholders unanimously noted that one major challenge in the provision of legal aid was the lack of adequate funding for the LAB which was mandated to provide the service. An upward adjustment of the budgetary allocation to the Board would go a long way in improving service delivery.
- (v) Stakeholders observed that majority of the indigents were being denied justice as the K50 consultation fee, and K450 and K500 legal contribution for criminal and civil cases, respectively, being charged by the Legal Aid Board were too high.
- (vi) With regard to the legal framework, stakeholders submitted that the non-domestication of most international and regional instruments that provided for legal aid had hindered the provision of legal aid services in Zambia.

- (vii) There was no provision in the *Legal Aid Act* that addressed access to legal aid for a child as stipulated under Principle 35 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems which states that legal aid provided to children should be prioritised, in the best interest of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children.
- (viii) Stakeholders observed that the Legal Aid Board had inadequate office space and an aging fleet of vehicles. The institution was renting office accommodation in Livingstone, Chipata, Chinsali, Mansa and Kitwe while the vehicles were becoming more expensive to service and maintain.
- (ix) Stakeholders unanimously submitted that the Board had insufficient geographic coverage to provide an effective legal aid system. The Board only had twelve offices countrywide meant to cater for all provinces in the country.

9.2.6 Recommendations on the Way Forward

In light of the above challenges, stakeholders were of the view that in order for the Legal Aid Board to be effective and efficient in the execution of its mandate, the following should be done:

- (i) Funding to the Legal Aid Board should be improved to match it with that of the National Prosecution Authority so that as an office charged with protection of the presumption of innocence for the majority of citizens, the Board be given the same worth and dignity;
- (ii) International and regional instruments on provisions of legal aid should be domesticated and fully implemented by amending the current *Legal Aid Act* to bring it in line with the National Legal Aid Policy of 2018;
- (iii) The National Legal Aid Policy which was considered proactive and elaborate on how best to deliver legal assistance to the indigent, should fully and effectively be implemented;
- (iv) The formal inclusion and regulation of all non-state actors in the provision of legal aid services should be prioritised; and
- (v) The Legal Aid Board should initiate and implement sensitisation and awareness programmes designed to promote an understanding of legal aid by the general public and public officials involved in the administration of justice such as the police, prosecutors, judicial officers, prison officials and probation and social welfare officers.

9.3 LOCAL TOUR REPORT ON THE REVIEW OF THE OPERATIONS OF THE LEGAL AID BOARD

Having obtained oral and written submissions from various stakeholders, the Committee undertook a local tour to Muchinga and Northern Provinces on the topical issue. Its findings during the tour are summarised below.

9.3.1 STAKEHOLDERS' MEETING ON THE OPERATIONS OF LEGAL AID BOARD IN CHINSALI DISTRICT IN MUCHINGA PROVINCE

During the stakeholders' meeting on the review of the Operations of the Legal Aid Board in Chinsali District the issues below were raised.

- (i) The Legal Aid Board was introduced in Muchinga Province specifically in Chinsali District in 2015 and that the office was meant to cater for the whole Province. Legal Aid Board sensitisation activities were conducted in the townships of Chinsali, Isoka, Nakonde and Mpika Districts.
- (ii) The Legal Aid Board office in Chinsali had only two Advocates against seven districts in Muchinga Province. The Committee was further informed that the two Legal Aid Board Officers could not manage to be in all the districts to provide the needed Legal Aid services.
- (iii) Members of the Public within Chinsali Township were aware of the presence of the Legal Aid Board office; however the people in the outskirts of Chinsali District were not aware of the Legal Aid Board and its operations.
- (iv) Most of the people of Muchinga Province like any other people elsewhere, at one time or another come into conflict with the law and had no means to hire lawyers to defend them. This saw many of them being convicted even where they may not have convicted if they had proper legal representation through access to Legal Aid.
- (v) The Committee heard that Legal Aid Board Office in Chinsali District received forty people who were seeking legal aid assistance: twenty-nine cases were granted legal aid out of which eighteen cases were of criminal nature while eleven were civil cases.
- (vi) Although the Legal Aid Board was effective in Chinsali District, the provision of the services to other districts such as Nakonde, Mpika and Isoka had been very in effective due to understaffing.
- (vii) Some other stakeholders submitted that the Legal Aid office in Chinsali was not operating effectively as its presence was not felt since most of the people in Chinsali were not aware of the Legal Aid Board having an office in the district.
- (viii) Non-state actors were not effectively participating in the provision of Legal Aid services in the Province. This was as a result of not being engaged by the Legal Aid Board so that the awareness of its operations in the district was enhanced.

9.3.2 Challenges faced in the Provision of Legal Aid in Chinsali District

The Committee heard that there were challenges that Legal Aid Board Chinsali office faced and some of these are set out below.

- (i) There were only two Advocates who were expected to provide legal aid services in the entire Muchinga Province; meanwhile the Legal Aid Board was only active in Chinsali,

Isoka, Nakonde and Mpika. The Committee heard that the Legal Aid board had no presence in Chama, Mafinga and Shiwang’andu districts.

- (ii) There was little sensitisation of the public on the existence of the Legal Aid Board in other districts in the Province. The Committee further heard that it had been difficult to reach out to people in the said districts due to logistical challenges that the office in Chinsali was facing.
- (iii) The Legal Aid Board office was too small as it could not provide office space for each Legal Aid Board Officer which compromised on the aspect of privacy.
- (iv) There was delayed conclusion of matters especially those in districts outside Chinsali which were due to limited number of lawyers and limited time to cover other districts.

9.3.3 Suggested way forward

Set out below are suggestions on the way forward as submitted by the stakeholders.

- (i) There was need to sensitise the communities regarding the presence of the Legal Aid Board in Muchinga Province. Sensitisations could be made through civic leaders and by also use of the community radio stations.
- (ii) There was need to employ more lawyers in order to cover all the seven districts in Muchinga Province.
- (iii) There was need for improved office infrastructure for the Legal Aid Board in Chinsali District.
- (iv) There was need for increased funding to the Legal Aid Board office in Chinsali District for logistics and operations.

9.4 STAKEHOLDERS’ MEETING ON THE OPERATION OF THE LEGAL AID BOARD IN NORTHERN PROVINCE

During the stakeholders’ meeting on the review of the Operations of the Legal Aid Board, stakeholders in Kasama District submitted as set out below.

- (i) The Legal Aid Board office in Northern Province was operating in five out of the twelve districts.
- (ii) In every district in Northern Province was a Court that adjudicated cases, but there were no Legal Aid Advocates to defend those who had no capacity to hire Legal Advocates.
- (iii) Stakeholders further submitted that most of the people did not know how to defend themselves in court and had no capacity to hire layers whenever they were in conflict with the law, a number of them ended up being convicted.

- (iv) People in the peri-urban areas of Kasama District were aware of the presence of the Legal Aid Board office and that the office provided legal aid service to those in need. However, the Legal Aid Board in Kasama District was understaffed as only one Advocate serviced the whole Province.
- (v) The Legal Aid Service attracted a consultation fee of K50 while the charge for a civil case was K500 and that for a criminal case was K450.
- (vi) There were no non-state actors or paralegal personnel that supported the Government in the provision of Legal Aid service in Kasama District. This compromised the provision of effective legal aid services as the Department was often overwhelmed.
- (vii) The Legal Aid Board office in Kasama received inadequate funding for the Officer to effectively provide out the needed legal Aid services to the people.
- (viii) Some communities in some districts of Northern Province rejected legal aid services citing the presence of Legal Aid Board as an institution that defended and encouraged criminals.

9.4.1 Suggested way forward

The stakeholders suggested that as a way forward with regard to the effective provision of Legal Aid services in Northern Province, the measures as set out below should be implemented.

- (i) There was need to increase the number of Legal Aid Advocates in Northern Province in order to provide effective legal aid service to the people in all the twelve districts.
- (ii) There was need for the Government to increase its funding to the Legal Aid Board in Kasama so that it could effectively provide legal aid services to the people in the entire Province.
- (iii) There was need to sensitise communities in all the districts in the Province so that the public could realise that individuals who fell in conflict with the law were merely suspects until proven guilty, and that the Legal Aid Board was available to defend them so that the said individuals could receive justice.

9.4.2 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

Taking into account both written and oral submissions from stakeholders and the findings of the local tour, the Committee makes the observations and recommendations as set out hereunder.

- (i) The Committee observes that although the *Legal Aid Act* is generally a good piece of legislation, it is out of date as it does not take into account the broad definition of legal aid that is contained in the policy, and which includes concepts such as legal education, legal information and legal advice.

The Committee, therefore, recommends that the Act be reviewed to bring it in line with the policy direction which has been hailed as proactive and elaborate. The Committee also

urges the Government, in reviewing the Act, to fully domesticate international and regional instruments on legal aid.

- (ii) The Committee observes that the Legal Aid Board is severely understaffed and faces the challenge of insufficient presence in districts such as Chama, Mafinga and Shiwang’andu, which has significantly undermined its ability to provide services to members of the public, and ultimately, access to justice.

In view of this, the Committee recommends that the Government, through the Ministry of Finance, should grant the necessary Treasury Authority so that the Board can fill up all the vacant positions for its establishment to be actualised.

The Committee further recommends that there should be a provision in either the *Legal Aid Act* or the *Law Association of Zambia Act* compelling Counsel to take up at least three cases per year on *pro bono* basis under the Legal Aid Board before being awarded their practicing licence.

- (iii) The Committee notes with concern that without effective legal aid, the presumption of innocence cannot be effective. The Committee is of the view that it is irrational for the Government to adequately fund the National Prosecution Authority, which prosecutes offenders and inadequately fund the Board which carries out the noble task of defending the less privileged in society as the two institutions are two sides of the same coin.

The Committee, therefore, recommends equitable funding for the two institutions by the Ministry of Finance. The Committee also calls for the inclusion of funding for capital expenditure for office procurement and construction.

- (iv) The Committee observes that there is a bias towards criminal cases when it comes to legal aid provision as 80 percent of cases that the Board handles are criminal matters while only 20 percent are civil matters.

The Committee, therefore, urges the Executive to consider splitting the Board into civil and criminal divisions so that indigents are well-represented across all different legal issues.

- (v) The Committee notes with concern that administrative fees being charged by the Board are too high that indigents are being denied justice because they cannot afford these fees.

The Committee, therefore, urges the Executive to consider graduating legal fees into tiers for different clients, according to what they can afford. If fees are stipulated by law, they will be affordable for all.

- (vi) The Committee expresses worry that not enough is being done to sensitise the general citizenry on legal aid, which has led to misconceptions on its relevance, costs as well as the benefits of legal aid.

The Committee, therefore, recommends that a robust information dissemination and communication strategy to be developed and implemented. In this vein, requisite personnel and other resources should be made available.

PART II

CONSIDERATION OF THE ACTION-TAKEN REPORT ON THE REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL GUIDANCE, GENDER MATTERS AND GOVERNANCE FOR THE SECOND SESSION OF THE TWELFTH NATIONAL ASSEMBLY

10.0 REVIEW OF THE OPERATIONS OF THE OFFICE OF THE PUBLIC PROTECTOR (OPP)

10.1 Actualisation of the New Organisational Structure of the OPP

The Committee had observed that despite the new developments, which were necessitated by changes in the law, the Office of the Public Protector had continued to operate as before, because Treasury authority was yet to be granted for the release of funds for the actualisation of the new organisational structure.

The Committee observed that the added responsibilities of the Office of the Public Protector had resulted in the development of a new organisational structure designed to meet the operational and management demands of the Office, including its progressive devolution to all provinces. In view of this, the Committee had recommended that the Government, through the Ministry of Finance, should grant Treasury authority so that the Office of the Public Protector could be fully operationalised in line with the constitutional requirements of a fully functional office that would be progressively decentralised to provinces and districts.

Executive's Response

It was reported in the Action-Taken Report that the Treasury had taken note of the guidance from the Committee. It was submitted that the Office of the Public Protector had an establishment that was 75 per cent filled. As and when the necessary fiscal space became available, the Treasury would endeavour to provide an allocation for recruitment of the officers to fill the remaining positions over the medium term in order to improve the operations of the institution and facilitate progressive devolution to all provinces.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the actualisation of the new organisational structure of the OPP.

10.2 Other Operational Challenges faced by the OPP

The Committee had observed that apart from the challenges associated with the non-implementation of the new organisational structure, the Office of the Public Protector was faced with other operational challenges such as a depleted motor vehicle fleet, difficulties in meeting accommodation costs or rentals, lack of finances and facilities to carry out capacity building and

training activities for staff as well as to carry out public sensitisation campaigns on the existence of the Office.

It was, therefore, recommended that the Office of the Public Protector, being solely accountable to Parliament, should be budgeted for under the National Assembly and be funded as such. This would ensure that the Institution made an impact as envisaged by the new legal regime. If the Office remained or continued to be funded as it had hitherto been, it would continue to remain obscure and ineffectual.

Executive's Response

It was reported in the Action-Taken Report that Article 248 of the *Constitution of Zambia (Amendment) Act No. 2 of 2016* states that the Office of the Public Protector shall report to the National Assembly on matters concerning its affairs. On the proposal to place the Office of the Public Protector's budget under the National Assembly, it was the considered view of the Executive that this would contradict Article 244(4) of the amended Constitution which states that "*the Public Protector shall not be subject to the direction or control of a person or an authority in the performance of the functions of the Office*". Therefore, the placing of the Office of the Public Protector under the National Assembly would contravene the supreme law.

Committee's Observations and Recommendations

The Committee observes that placing the budget of the Office of the Public Protector under the National Assembly would indeed compromise the operations of the Office. The Committee, therefore, recommends that the Executive expediently grant Treasury Authority to the Office of the Public Protector to actualise its approved structure in order for it to carry out its operations efficiently and effectively. The Committee resolves to await progress on the matter.

10.3 Tenure of Office of Public Protector

The Committee had observed that the Public Protector was now equal in status to a High Court Judge and may only be removed from office on the same grounds and following the same procedures as would apply to a judge although the Public Protector may retire with full benefits, on attaining the age of fifty-five years. It was a concern, however, that the Public Protector had a much lower retirement age than that of a High Court Judge.

Therefore, it was recommended that in order to entrench the security of tenure of the Public Protector, the law should be revised so that the office-holder could serve for one non-renewable term of seven years as was the case in other jurisdictions like South Africa, where the Office was well-established.

Executive's Response

The Executive responded in the Action-Taken Report that the Public Protector should serve for one non-renewable term of seven years and the conditions of service should be equated to those of a serving High Court Judge just as was obtaining in South Africa and Namibia. However, the selection of the Public Protector should be conducted by a Select Committee of the National Assembly which shall advertise the position, shortlist and interview the candidates before submission to Parliament for ratification. In order to achieve this, there is need to amend the *Constitution of Zambia (Amendment) Act No. 2 of 2016*.

Committee's Observations and Recommendations

In noting the response, the Committee recommends that the Executive appoints a Public Protector who would fully carry out their mandate, without impediments, as is the case with Public Protectors in jurisdictions like South Africa and Namibia. The Committee awaits a progress report on the matter and an update on the proposed amendment of the Constitution.

10.4 Optimal Operation of the OPP

The Committee had observed that the existence and operation of the Office of the Public Protector was not known to many Zambians. In this regard, the Committee reiterated the need to adequately fund the Office of the Public Protector for it to operate optimally and progressively spread its operations to provinces and districts.

Executive's Response

It was reported in the Action-Taken Report that the Executive noted the Committee's recommendation on the need to adequately fund the Office of the Public Protector. However, it was cardinal to note that resources were limited while demands from all ministries, provinces and spending agencies were too numerous. Consideration would, however, be made when revenue permitted to allocate more resources to the Office over the medium term.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the granting of Treasury authority so that optimal operation of the OPP can be ensured.

11.0 PARTICIPATION OF PERSONS WITH DISABILITIES (PWDS) IN THE ELECTORAL PROCESS IN ZAMBIA

11.1 Domestication of the UNCRPD

The Committee had observed that Zambia was a state party to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and had domesticated aspects of the convention through the *Persons with Disabilities Act*, No. 6 of 2012 and the *Electoral Process Act*, No. 15 of 35 of 2016. However, it was recommended that the Government should fully domesticate the UNCRPD by engaging stakeholders in a consultative process so that the convention could be adapted to the local socio-legal requirements.

Executive's Response

It was reported in the Action-Taken Report that the Government wished to reaffirm its commitment to domesticate the UNCRPD and other international instruments on persons with disabilities to which Zambia was party, through the *Persons with Disabilities Act*, No. 6 of 2012. The Act provides for the participation of persons with disabilities with equal opportunities in the civil, political, economic, social and cultural spheres.

Further, it was reported that the Government through the Ministry of Community Development and Social Services was domesticating the UNCRPD through implementation of National Social Protection Policy of 2014 particularly Pillar No. 5, which was the Disability Pillar.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the domestication of the UNCRPD.

11.2 ECZ Data Collection to Inform Distribution of Services

The Committee had observed that there had been appreciable legal reform to the electoral process aimed at attaining inclusiveness of PWDs in public and political processes. As a result, during the 2016 General Elections, the Electoral Commission of Zambia (ECZ) made some efforts to cater for PWDs.

This notwithstanding, it was observed that provision of services to PWDs by the ECZ was only done in selected constituencies due to resource constraints. Facilities such as ramps, Braille ballots and jackets were not distributed countrywide. This was compounded by the fact that the ECZ did not adequately capture data on PWDs, disaggregated to the different forms of disability so as to efficiently plan and cater for the needs of people with different disabilities.

In this light, it was recommended that before embarking on the provision of such services, there was need to ensure that ECZ carried out proper data collection to inform the distribution of services.

Executive's Response

It was submitted in the Action-Taken Report that ECZ commenced the collection of data related to PWDs during the 2010 and 2015 voter registration exercise and the 2016 General Elections.

It was further reported that from 2016, the Commission had continued to collect data at polling stations during by-elections by indicating in the voter's register persons who had disabilities and the form of disability that they had. This was to enable the Commission plan for the provision and distribution of electoral services and materials. The register presently comprised 7,758 visually impaired people. Further, the Commission provided for a Braille voting template.

Committee's Observations and Recommendations

In noting the submission by the Executive, the Committee recommends that a timeframe be given within which the data will be collected as the 2021 General Elections are less than two years away. The Committee resolves to await a progress report.

11.3 Human and Logistical Resources to ECZ

The Committee had recommended that the ECZ should be sufficiently funded and equipped with necessary human and other logistical resources to enable it implement its mandate with regard to the rights of PWDs.

Executive's Response

It was submitted in the Action-Taken Report that the Commission had a focal point person who handled matters relating to PWDs in order to mainstream and co-ordinate all matters concerning PWDs in the electoral process. Further, the Commission had continued appealing for funding from Government to fully implement its mandate to provide electoral services to PWDs.

Committee's Observations and Recommendations

The Committee resolves to await a progress report, particularly on ECZ's road map with regard to provision of electoral services to PWDs.

11.4 Provision of Special Vote for PWDs

The Committee had observed that despite the *Electoral Process Act*, No. 35 of 2016 providing for a Special Vote for PWDs, this facility was never made available during the 2016 Elections. Had it been put in place, it would have gone a long way in assisting PWDs to vote conveniently. It was, therefore, recommended that the law should be implemented in full so as to not violate the rights of PWDs as envisaged by the UNCRPD.

Executive's Response

It was reported in the Action-Taken Report that the Commission had been exploring the best way to implement the Special Vote through research and studying best practices from other jurisdictions. The Commission further needed to carry out extensive consultations with various stakeholders on the implementation of the Special Vote.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the provision of the Special Vote for PWDs.

11.5 Inaccessibility of Polling Stations

The Committee had observed that the other challenge faced by PWDs had to do with the long distances between homesteads and polling stations. Those who had physical disabilities could not travel long distances to access the nearest polling station for voting purposes. As a result, they opted not to participate, especially that there was no guarantee of disabled friendly facilities at polling stations.

It was recommended that ECZ should urgently carry out a delimitation exercise which would locate polling stations closer to the people.

Executive's Response

It was reported in the Action-Taken Report that the Commission planned to undertake the delimitation of constituencies, wards and polling districts countrywide in 2018. However, funding was awaited. In view of this status, the Commission had continued to intensively engage the Ministry of Finance which had so far submitted a supplementary budget of K30million for the 2018 delimitation exercise to Parliament for approval.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the planned delimitation of the constituencies.

11.6 Allocation of Sufficient Resources for Socio-Economic Needs of PWDs

The Committee had recommended that sufficient resources should be allocated to meet these socio-economic needs so as to alleviate the poverty levels among PWDs.

Executive's Response

It was reported in the Action-Taken Report that the Government was committed to alleviating poverty and vulnerability amongst its citizens. Therefore, in 2018, the Social Welfare Programme had been allocated a total of K44, 434,264.03 of which K28, 981,200.00 was specifically allocated for the various programmes under disability affairs. Additionally, the social cash transfer programme had also been increased incrementally over the years and in 2018, a total of K721,180,000 had been allocated to cater for 700,000 beneficiaries.

It was also reported that the Government had continued to facilitate pro-poor programmes that contributed towards poverty reduction through implementation of the food security pack programme, livelihood and empowerment support schemes, community self-help initiatives and community skills development activities. In the 2018 budget, a total of K170,652,715.17 was allocated to the community development programme of which K140, 000, 000.00 would go towards the food security pack to provide for 80,000 female-headed households keeping orphans, households with disabled persons, child-headed households and households with the aged.

Committee's Observations and Recommendations

The Committee resolves to await detailed statistical data on the distribution of the food security pack, particularly to persons with disabilities.

11.7 Mobile National Registration and Voter Registration Facilities for PWDs

The Committee had recommended that the Government should provide mobile national registration and voter registration facilities for PWDs who may not be physically able to cover long distances to access these services, especially in rural communities such as Kaoma and Kalabo, where bad terrain compounded their immobility.

Executive's Response

It was reported in the Action-Taken Report that the Electoral Commission of Zambia (ECZ) conducted mobile voter registration during the national voter registration exercise to reduce walking distances for eligible voters. However, the Commission had no plans to introduce home visits during the voter registration exercise.

It was further reported that the Commission planned to undertake a countrywide delimitation of constituencies, wards and polling districts in 2018 and Kaoma and Kalabo Constituencies would form part of this exercise.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the mobile national registration and voter registration facilities for PWDs.

11.8 Engagement of PWDs by ECZ

The Committee had recommended that ECZ should engage PWDs at all stages and levels of the electoral process as polling agents, electoral committee members and Returning Officers.

Executive's Response

It was reported in the Action-Taken Report that ECZ had continued to enhance its engagement with PWD organisations at all stages of the electoral process. The engagement of PWDs had been through the inclusion of PWD organisations on the national voter education committee and the conflict management committees, which were at national and district level. The two committees oversaw electoral processes such as voter education and conflict management. During recruitment of poll staff, PWDs were not excluded from competing for various election officer positions.

Committee's Observations and Recommendations

In noting the submission by the Executive, the Committee recommends that ECZ quantify the PWDs who worked as electoral officers in the last election, and resolves to await a progress report on the matter.

CONSIDERATION OF THE ACTION-TAKEN REPORT ON THE REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL GUIDANCE, GENDER MATTERS AND GOVERNANCE FOR THE FIRST SESSION OF THE TWELFTH NATIONAL ASSEMBLY

12.0 THE IMPLICATIONS OF THE EXTRACTIVE INDUSTRY ACTIVITIES ON HUMAN RIGHTS: THE CASE OF ZAMBIA'S MINING SECTOR

12.1 Amendment of the *Zambia Development Agency Act, No. 11 of 2006*

The Committee had recommended that the Government should consider amending the *Zambia Development Agency Act, No. 11 of 2006* to make it mandatory for a human rights due diligence to be undertaken before a mining company could be registered and licensed to operate in Zambia as well as the *Environmental Management Act No. 12 of 2011* to incorporate the issue of human rights due diligence.

Executive's Response

It was reported in the Action-Taken Report that the Zambia Environmental Management Agency (ZEMA) and the *Environmental Management Act No. 12 of 2011* recognised the importance of human rights in the exploitation of the environment and natural resources. Exploitation of the environment had potential to infringe on human rights. To this end, ZEMA welcomed the recommendation of the Committee and, would in consultation with the Ministry responsible for environmental protection, proceed to propose further enhancement of human rights provisions in the *Environmental Management Act, No. 12 of 2011* so as to clearly provide for a human rights due diligence.

Committee's Observations and Recommendations

In noting the Executive's submission, the Committee resolves to await a progress report on the matter.

12.2 Failure to Domesticated Key International Human Rights Instruments

The Committee was concerned that although Zambia had ratified a lot of international instruments that promoted and protected human rights, these had not been fully domesticated. It

was, therefore, recommended that the Government should take deliberate steps to domesticate the United Nations Guiding Principles on Business and Human Rights and other international instruments that Zambia had ratified.

The Committee had further requested for a further update on this matter in view of the fact that domestication of the UN Guiding Principles and Guidelines on Business and Human Rights could be achieved through enactment or amendment of existing legislation other than the Constitution itself.

Executive's Response

The Executive submitted in the Action-Taken Report that the realisation of the obligation to respect, protect and fulfil human rights and fundamental freedoms, which was one of the three major grounds on which the UN Guiding Principles and Guidelines was grounded, could only be fully enhanced and realised in the Constitution. Therefore, there was need to amend Part III of the Constitution through a Referendum so that these rights were fully realised.

It was further reported that other existing pieces of legislation did take into consideration the need to ensure the respect, protection and fulfilment of human rights and fundamental freedoms.

Committee's Observations and Recommendations

The Committee notes the response by the Executive and recommends that measures be taken to domesticate UN Guidelines through enactment or amendment of existing legislation other than the Constitution itself. In this regard, the Committee resolves to await a progress report on the matter.

12.3 Need for Enhanced Support to the Human Rights Commission and other State Agencies

The Committee had recommended that the Government should take steps to improve support to the Human Rights Commission (HRC) and other state agencies such as the Zambia Environmental Management Agency (ZEMA), Mines Safety Department (MSD), Water Resources Management Authority (WARMA) and the Department of Labour in order for them to discharge their functions more effectively and contribute to the promotion and protection of human rights.

Further, the Committee had requested for a progress report on the procurement of motor vehicles for the Labour Inspectorate and a brief on how the engagement of health inspectors from the Ministry of Local Government was being implemented in terms of conducting labour inspections, especially that health inspectors were not trained labour inspectors.

Executive's Response

It was reported in the Action-Taken Report that in its 2017 budget, the Government had allocated funds to the Ministry of Labour and Social Security to procure vehicles for labour inspection operations. The vehicles were especially given to the provincial labour offices where the problem of transport was highly prevalent.

On the other hand, the engagement of health inspectors from the Ministry of Local Government to conduct labour inspections had been put on hold until all necessary conditions and arrangements were put in place. The Government was in the process of sourcing funds to train a

number of health inspectors on labour and employment related issues in order to equip them with some basic skills, which would enable them to conduct labour inspections effectively. The Ministry of Labour and Social Security was in discussions with the Ministry of Local Government to consider modalities of actualising this important undertaking.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the matter.

12.4 Specific Nature of Government Support to HRC, ZEMA, WARMA and MSD

The Committee had requested for specific details in terms of the nature of support from the Government to, HRC, ZEMA, WARMA and MSD.

Executive's Response

The Executive responded in the Action-Taken Report that the Government supported state-owned agencies such as the WARMA and ZEMA to enable them undertake their roles and responsibilities effectively. The nature of support offered to the named institutions was as set out below:

(a) *Grants*

The Government, through the Ministry of Water Development, Sanitation and Environmental Protection, provided funds annually in form of grants to WARMA and ZEMA for their operations.

(b) *Policy Guidance*

The Government through the Ministry of Water Development, Sanitation and Environmental Protection, offered policy guidance on water resources development and management and environment to guide implementation of sector programmes. The Ministry reviewed and developed legislation on water resources development and management and environment in order to provide a framework for implementing policies and programmes.

The Ministry's portfolio functions on water and environment included the Water Policy, *Water Resources Management Act*, National Environment Policy and *Environmental Management Act*.

(c) *Technical Support*

The Ministry of Water Development, Sanitation and Environmental Management facilitated the preparation of investment plans, technical assistance and project proposals for purposes of resource mobilisation.

(d) *Guarantor*

The Government, through the Ministry of Water Development, Sanitation and Environmental Protection, acted as a guarantor when ZEMA and WARMA wanted to obtain loans.

With regard to the Government's continued commitment to supporting the HRC, to ensure that the Commission was able to carry out its mandate effectively and efficiently; the revision of the

Human Rights Commission Act, No. 39 of 1996 had been completed and a Bill, entitled the Human Rights Commission Bill of 2018, had been drafted and gone through the internal legislative committee of the Ministry of Justice awaiting consideration by Cabinet. It was hoped that all the necessary processes for Cabinet to approve the Bill would be completed before the next Session of Parliament, by which time the Bill was expected to be ready for presentation to Parliament and consideration for enactment into law. The proposed Bill had provisions that would strengthen the HRC's mandate, including compelling state organs to implement the recommendations made by the Commission.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the enactment of the Human Rights Commission Bill, 2018.

12.5 Protection of Human Rights of Contractors' Workers

The Committee had urged the Government to take measures to ensure the protection of human rights of contractors' workers by making the parent mine company liable for any human rights violations by contractors.

Executive's Response

It was reported in the Action-Taken Report that the Government, through the Ministry of Justice, was finalising the drafting of the Labour Code with the aim of tabling a Bill in the next legislative Session of Parliament in February, 2019, which would incorporate a wide range of issues related to employment and labour.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the matter.

12.6 Public Awareness of Legislation on Extractive Industry Activities and Environmental Issues

The Committee had recommended that the Government should put in place measures to simplify all the relevant legislation on extractive industry activities and make them available in local languages and user-friendly formats for affected communities. The Committee had further requested a progress report on the measures being put in place by the Government to mitigate low levels of environmental awareness in the country.

Executive's Response

It was reported in the Action-Taken Report that ZEMA had recently concluded the 2018-2021 Strategic Plan in which awareness was an essential part. The Agency was also in the process of developing a citizens' engagement strategy as part of the Strategic Plan to cover the years 2018-2021. This would provide guidance to ZEMA on strategies on the best way to communicate to the wider citizenry on various environmental issues for awareness raising.

Committee's Observations and Recommendations

The Committee notes the submission and awaits a progress report on the implementation of the measures contained in ZEMA's Strategic Plan, particularly the citizens' engagement strategy, so as to raise the levels of environmental awareness in the country.

12.7 Stiffening of Penalties for Environmental Pollution

The Committee had recommended that the Government should review the *Environmental Management Act No. 12 of 2011* with a view of stiffening the penalties paid by entities found to have damaged or polluted the environment in order to serve as an effective deterrent. Further, the Committee awaited a progress report on the review of the *Environmental Management Act*, which would incorporate the aspect of providing for penalties for polluters of the environment.

Executive's Response

It was reported in the Action–Taken Report that the review of the *Environmental Management Act, No. 12 of 2011* was in progress. ZEMA would follow-up with the Ministry of Justice through the Ministry responsible for environmental protection on the initial submissions for amendment of the Act. It was envisaged that the review would also include the introduction of minimum penalties for polluters of the environment.

Committee's Observations and Recommendations

The Committee notes the submission and recommends that the drafting of the Bill to amend the *Environmental Management Act, No. 12 of 2011* be expedited and possibly be presented to Parliament within 2019. In this regard, the Committee resolves to await a progress report.

12.8 Need for Provision on Regular, Mandatory Impact Assessment

The Committee had urged the Government to consider amending the *Environmental Management Act* to provide for additional mandatory impact assessment at regular intervals in subsequent years following the commencement of the business activity and requested for a specific response to its recommendation.

Executive's Response

It was reported in the Action–Taken Report that the *Environmental Management Act, No. 12 of 2011* and its subsidiary legislation, the Environmental Impact Assessment Regulations Statutory Instrument No. 28 of 1997 (“the EIA Regulations”) and the Environmental Management (Licensing) Regulations SI No. 112 of 2013 (“the Licensing Regulations”) provided for regular monitoring of the facilities that had potential to pollute.

With regard to facilities that went through the Environmental Impact Assessment (EIA), the EIA Regulations provided for post EIA monitoring. With the foregoing, ZEMA, as part of the Strategic Plan aforementioned, would update the monitoring programme developed under the Copperbelt Environment Project. Depending on availability of resources, the plan would be implemented to ensure that the performance of polluting facilities was assessed regularly as required by the laws aforementioned. It was also submitted that the EIA Regulations had been reviewed and the draft was submitted to the Ministry of Water Development, Sanitation and Environmental Protection for onward transmission to the Ministry of Justice.

Committee's Observations and Recommendations

The Committee notes the submission but reiterates its previous recommendation with regard to the need for regular assessment of the impact of the extractive industry in the normal course of its business activity and not additional EIAs where there is an alteration in the scope of the project.

12.9 Need for Legislation on Resettlement and Compensation

The Committee had recommended that the Government should enact relevant legislation on resettlement and compensation in order to enhance enforcement of the provisions of the two policies.

The Committee had further requested an update on the outcome of the consultations undertaken by the Ministry of Justice on the matter.

Executive's Response

It was reported in the Action–Taken Report that the process of resettlement and compensation was handled using the Guidelines for the Compensation and Resettlement of Internally Displaced Persons. The guidelines offered a procedure on how internally displaced persons should be resettled and compensated. The Government, however, took note of the Committee's observation and recommendation and the Ministry of Justice would engage with the Office of the Vice-President with a view to ascertain whether the contents of the guidelines needed to be legislated.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the outcome of the consultations undertaken by the Ministry of Justice on the need for legislation on resettlement and compensation.

12.10 Support to Small-Scale Mining Companies

The Committee had recommended that the Government should support small-scale mining companies to enable them provide a safe and healthy work environment for workers and abide by other relevant laws. The Committee awaited a progress report on the implementation of the three-year project.

Executive's Response

It was reported in the Action–Taken Report that the project activities in 2017 focused on capacity building activities in technical and business skills, empowering target groups with entrepreneurial skills and creating business linkages for the industry players. The key activities undertaken where a total of 370 benefited were as follows:

- a) Training of trainers' workshop on safety and health in the mines, business and entrepreneurship skills, market analysis and investment promotion in the development minerals sector intended to strengthen the capacity of programme stakeholders such as small-scale operators, Small and Medium Enterprises (SMEs) and business development service providers both from line ministries and the private sector, to establish and manage business enterprises in a sustainable and inclusive manner.
- b) A business forum was held in partnership with the Zambia Development Agency (ZDA) at the Zambia International Trade Fair, where the United Nations Development Programme (UNDP) showcased the development minerals sector with the aim of supporting innovation and linking up the small-scale mining entrepreneurs to industry and market players, thereby assisting to overcome economic challenges for the small-scale mining entrepreneurs. As a result, 400 industry and market players participated in

the business forum through one on one deliberation, presentations from market and industry players and funding institutions.

- c) Entrepreneurial skills training in cobblestone manufacturing and paving was provided under a partnership between the UNDP, Ministry of Mines and Minerals Development and the National Council for Construction (NCC). The aim of the training was to promote the use of cobblestone in road paving technology as part of the National Pave Zambia, 2000 being implemented by the Road Development Agency (RDA).
- d) Digitisation of geological records, publications and reports was undertaken to support the Geological Survey Department's mandate as a national generator, depository and disseminator of geological (geology, geochemistry and geophysics) information of the country through collection, digitisation and storage of data on development minerals.

The geo-information collected on development minerals resulted in the creation of a mineral resource inventory of the development mineral resources in Zambia for the investors, both large and small scale.

Committee's Observations and Recommendations

The Committee notes the submission and awaits a progress report on the implementation of the three-year project.

13.0 REPORT ON THE LOCAL TOUR

13.1 Kabwe Mine

The Committee had recommended that the Government should put measures in place to promote further research for the country to fully appreciate the magnitude and impact of lead pollution in Kabwe. Further, the Committee was awaiting a progress report on the planned study by ZEMA and requested the Government to indicate a time frame within which the study would be undertaken.

Executive's Response

It was reported in the Action-Taken Report that ZEMA, in conjunction with the Ministry of Mines and Minerals Development and Kabwe Municipal Council would be implementing the Zambia Mining Environmental Remediation and Improvement Project (ZMERIP), which would focus at addressing some of the historical environmental legacies and health risks to local communities in some of the affected towns such as Kabwe, Mufulira, Kitwe and Chingola. ZMERIP became effective on 29th November 2017, but was yet to receive funds to commence project implementation. Through this project, various studies would be conducted and mitigation measures implemented to address some of the key issues affecting the people. It was envisaged that subject to conclusion of all procurement requirements, the studies would commence in early 2019.

In addition, the Committee was informed that the University of Zambia, working with ZEMA and in partnership with various Japanese universities, had been conducting research in Kabwe

town to find levels of lead contamination in soils, plants, water and people. The results would be shared with ZMERIP project for implementation of the proposed measures.

Committee's Observations and Recommendations

The Committee notes the submission and recommends that ZEMA should issue preliminary reports on the ZMERIP project. The Committee further requests the Government to indicate a timeframe within which the study will be undertaken and resolves to await a progress report.

13.2 Mopani Mine

The Committee had recommended that the mine should put in place measures to ensure that thermal conditions underground were controlled in order not to expose the miners to inhumane conditions and requested for an update on the matter since most interventions were still being implemented.

Executive's Response

It was reported in the Action-Taken Report that the mine was undertaking the following remedial measures to alleviate the anomalous situation underground:

- a) Sinking of two shafts, the downcast and up-cast shafts. The downcast, which was handling 200 m³/s had not been commissioned. After commissioning, the shaft was expected to rise to 500 m³/s. The up-cast shaft with three main fans of 1.5 Mega Watts each was expected to handle 650 m³/s after commissioning. The two shafts had added extra volume to the circuit for dilution of temperatures and other pollutants.
- b) The mine had confined thermal temperatures of 50°C WB in an enclosed circuit and did not leak into the main ventilation network underground between central shaft and SOB shaft which used to contaminate the main intake in the past.
- c) In addition to the above, at Synclinorium project area, there would be a refrigeration chamber called Bulk Air Cooler (BAC) located at 100m from surface and would be connected to the main down-cast shaft.
- d) The mine had now developed a new downcast shaft called Super Shaft from surface to go below 5220ml at Mindolo sub-vertical to take care of bottom levels. The shaft was equipped to 6300ml-6500ml but the full excavation has reached 4960ml. Upon commissioning, the shaft was expected to handle 300m³/s extra air.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on this matter since most interventions are yet to be implemented.

13.3 Need for a lasting solution to the plight of Kankoyo Residents

The Committee had recommended that the Government should engage the mine management in order to find a lasting solution to the plight of Kankoyo residents by relocating the affected residents to an alternative land.

The Committee, therefore, had requested for a report on the specific outcomes of the ZEMRIP, which the Government was implementing with the support of the World Bank.

Executive's Response

It was reported in the Action-Taken Report that the main objective of the ZMERIP was to reduce environmental health risks and lead exposure to the local population related to mining activities in critically polluted areas such as Kabwe and the Copperbelt Province. ZMERIP would contribute to reducing environmental health risks in identified areas through:

- (a) Optimising existing mechanisms to identify, finance, implement and monitor feasible environmental and social measures for prioritised contaminated areas;
- (b) Strengthen environmental management in the mining sector through improved regulatory and institutional capacity of regulatory agencies (Zambia Environmental Management Agency, Mine Safety Department, Radiation Protection Agency) and the local governments; and
- (c) Targeted health interventions and improved job opportunities for affected people, particularly women and youth through collaborative partnership with local government and neighbouring communities.

So far, the Project had concluded the Environmental and Social Assessment of the affected areas. The assessment had identified the affected communities and proposed livelihood and income generation activities for the affected communities. Residents of Kankoyo would benefit from the livelihood and income generation activities.

Committee's Observations and Recommendations

The Committee notes the submission and resolves to await a progress report, particularly on specific outcomes of the ZMERIP project.

13.4 Water Quality Control Measures – Kalumbila Mine

The Committee had recommended that the Government should strictly monitor the water quality control measures that the mine had put in place in order to protect the rights of local people. An update on the developments was being awaited.

Executive's Response

It was reported in the Action-Taken Report that the Ministry of Mines and Minerals Development reported that Kalumbila Minerals Limited through Trident Foundation decided to put up measures to reduce high iron content in drinking water by installing high remove tanks on the water points so that the iron was reduced to acceptable standard set by World Health Organisation (WHO) standard for drinking water which was 0.3miligram per litre. It was for this reason that the Department of Water Resource Development was engaged to check on the iron content level on four water points as being representative samples of thirty-two drilled boreholes in the two resettled communities.

It was also reported that the Government would continue to monitor mining activities to ensure that there was no water pollution and to sensitise the communities on any possible causes of

pollution and ways of mitigating. The recommendation was that back washing and replacement of the filter media should be done at all water points in these two resettled areas as all parameters tested were above WHO standards.

Committee's Observations and Recommendations

The Committee resolves to await a progress report.

13.5 Monitoring of Water Quality by the Government

The Committee had also recommended that the Government needed to carry out independent studies to verify the elevated levels of iron in the boreholes that the mine had sunk for the local people. A progress report was awaited.

Executive's Response

It was reported in the Action-Taken Report that the department of water resources development, North-Western Province, in the first hydro census conducted from August to December 2016, sampled and analysed 160 samples for microbiology, physical and chemical parameters. Generally, most of the water samples were within permissible limits on the aspect of the physical and chemical parameters. The only parameters that needed major attention were that of high faecal coliform detection, high iron content and low PH (acidity).

It was against this background that the Department of Water Resources Development, in partnership with Kalumbila Minerals Limited (KML) undertook a second hydro census on the water points in Kalumbila Mine catchment area and the surrounding communities. The purpose of the hydro census was to help compare the initial results (baseline data) to the second hydro-census results to see if there would be any positive change or observations occurring especially after mitigation measures like chlorination, repairing of hand pumps and community sensitisation were said to have been done by Kalumbila Minerals Limited.

The 2017 hydro census recorded a decrease in iron concentrations at water points that were equipped with iron filters as compared to the concentrations in 2016.

Further, the Mines Safety Department together with ZEMA instructed the mines to be conducting water quality monitoring once per quarter to determine levels of both Tailing Dams (TDS) in terms of heavy metals and TSS. The results should be submitted to all regulatory institutions to check for compliance. The Mines Safety Department conducted independent water sampling exercises at all statutory sampling points to confirm on authenticity of results submitted by the mines.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the monitoring of the water quality for the displaced communities.

13.6 Lumwana Mine - Possible Environmental or health risks posed by the Mining and Storage of Uranium

The Committee had observed that although assurances were rendered by the mine management that the uranium being mined at the mine did not pose any environmental or health risks because

it was being kept in its mined state and not being processed, the Committee was alive to the fact that this was a subject of great concern to many Zambians.

The Committee, therefore, had urged the Government to carry out a detailed study on the matter and inform the nation on the state of affairs, including the safety of workers and awaited a progress report.

Executive's Response

It was reported in the Action-Taken Report that the Mines Safety Department, the Zambia Environmental Management Agency (ZEMA), and the National Institute for Scientific Research conducted a joint survey on radiation at Lumwana Mine. The results showed high levels of radiation on the uranium stockpile. Arising from the results, Lumwana Mine was instructed to implement the following interventions on site:

- a) Encapsulating the stockpile with laterite to about one metre thick. Effects of encapsulation gave rise to low dose rates recorded on the laterites.
- b) Constantly monitor Tailing Dams (TDs) slope stability, and surface of wall to prevent collapse due to saturation.

Committee's Observations and Recommendations

The Committee notes the submission and resolves to await a progress report on the stockpiling of uranium at Lumwana and whether the directives issued by ZEMA and the Mines Safety Department had since been complied with and if there was any reduction in the levels of radiation on the uranium stockpile.

13.7 The Case of Kaumuna Village

The Committee was concerned that the case of Kaumuna Village near the mine, whose houses were allegedly affected by mining activities, had remained unresolved since 2014. The Committee had, therefore, urged the Ministry of Mines and Minerals Development to ensure that the matter was addressed without further delay.

To this end, the Committee awaited a progress report on the matter, and reminded the Government that the issue constituted a violation of the rights of the people of Kaumuna Village and should therefore be treated with the urgency it deserved.

Executive's Response

It was reported in the Action-Taken Report that the Government anticipated to undertake a study on the affected houses within the course of 2018, once resources were made available by the Treasury.

Committee's Observations and Recommendations

The Committee noted the submission by the Executive but was concerned that there was no timeframe given within which the Treasury would make the funds available for the independent technical evaluation. To this end, the Committee reiterates that the case of Kaumuna Village be resolved as a matter of extreme urgency.

13.8 Cracking Houses in Tsopano Community

The Committee had recommended that the Government should engage the Konkola Copper Mines to help address the plight of the Tsopano Community by relocating them to an alternative piece of land.

Executive's Response

It was reported in the Action-Taken Report that the main objective of the ZMERIP was to reduce environmental health risks and lead exposure related to mining activities to the local population, particularly in critically polluted areas in Kabwe and the Copperbelt Province. ZMERIP would contribute to reducing environmental health risks in identified areas through:

- a) Optimising existing mechanisms to identify, finance, implement and monitor feasible environmental and social measures for prioritised contaminated areas;
- b) Strengthen environmental management in the mining sector through improved regulatory and institutional capacity of regulatory agencies (Zambia Environmental Management Agency, Mine Safety Department, Radiation Protection Agency) and the local governments; and
- c) Targeted health interventions and improved job opportunities for affected people, particularly women and youth, through collaborative partnership with local government and neighbouring communities.

So far the project had concluded the environmental and social assessment of the affected areas. The assessment had identified the affected communities and proposed livelihood and income generation activities for the affected communities from which the residents of Tsopano would benefit.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the implementation of the ZMERIP and how it will mitigate the impact on the Tsopano Community.

CONSIDERATION OF THE ACTION-TAKEN REPORT ON THE REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, GOVERNANCE, HUMAN RIGHTS, GENDER MATTERS AND CHILD AFFAIRS FOR THE FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY

14.0 THE DEATH PENALTY IN ZAMBIA

14.1 Review of the Penal Code

The previous Committee had requested for a progress report on the review of the Penal Code. The Committee had further noted with concern that the process had taken too long at consultation stage. The Committee, therefore, requested for a further update since the matter had not been finalised.

Executive's Response

It was reported in the Action–Taken Report that all stakeholder consultations were concluded and all legislation with penal sanctions were reviewed. The drafting of the amendments to the Penal Code was scheduled to commence and it was hoped that the Bill would be considered in the February, 2019 Legislative Session of Parliament.

Committee's Observations and Recommendations

The Committee notes with concern that this matter has taken inordinately long to finalise. The Committee, therefore, calls for the expeditious conclusion of the matter. The Committee awaits a progress report.

CONSIDERATION OF THE ACTION-TAKEN REPORT ON THE REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, GOVERNANCE, HUMAN RIGHTS, GENDER MATTERS AND CHILD AFFAIRS FOR THE FOURTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY

15.0 THE CAUSES AND EXTENT OF TORTURE IN ZAMBIA

15.1 Institutional Mechanisms for Addressing Torture in Zambia

The previous Committee had awaited a progress report on the enactment of a law to criminalise torture. Further, the Committee had requested for an update on the matter and urged the Government to expedite the review of the draft Bill so that it could be presented to Parliament for enactment without undue delay.

Executive's Response

It was reported in the Action–Taken Report that the Ministry of Justice was still in the process of reviewing the Anti-Torture Bill, as submitted by the Zambia Law Development Commission.

Committee's Observations and Recommendations

The Committee notes the submission and expresses concern over the inordinate delay in finalising the Bill. In this vein, the Committee recommends that the draft Bill be presented to Parliament for enactment without any further delay.

15.2 Zambia's Reservation on Article 20 of United Nations Convention Against Torture (UNCAT) and Failure to Recognise the Competence of Committee Against Torture

The previous Committee had requested for a progress report on Zambia's reservation on Article 20 of United Nations convention against torture (UNCAT) and failure to recognise the competence of committee against torture.

Executive's Response

It was reported in the Action–Taken Report that the protection against torture or inhumane or degrading punishment or other like treatment was enshrined in the Constitution under Article 15.

Committee's Observations and Recommendations

The Committee notes the submission but observes that the review of the Anti-Torture Bill has no bearing on the need for Zambia to withdraw the reservation entered on Article 20 of the UNCAT. The Committee, therefore, requests for an update on the matter.

15.3 Limited Mandate of the Human Rights Commission

The previous Committee had resolved to await a progress report on clothing of the Human Rights Commission with quasi-judicial powers. The Committee was happy to note that some progress had been recorded on the matter and had resolved to await a progress report since consultations on the review of the Human Rights Commission Act were still in process.

Executive's Response

It was reported in the Action-Taken Report that the Ministry of Justice was in the process of looking into the possibility of drafting the Human Rights Bill.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the consultations on the Review of the Human Rights Commission Act.

15.4 Need to Empower and Equip Law Enforcement Agencies to Carry Out Torture-Free Investigations

The previous Committee was concerned that this matter had been outstanding for a long time and called for its urgent resolution. The Committee had resolved to await a progress report.

Executive's Response

It was reported in the Action-Taken Report that the restructuring of the establishment was a very important component for the administration and operations of the Zambia Police Service. However, despite having submitted the revised establishment to Management Development Division (MDD) in 2014, it was not considered for approval after concerns were raised. The Zambia Police Service gave responses to the raised concerns, after which meetings were held. However, during the process of consultations, the Zambia Police Service Strategic Plan for the period 2013 to 2016, upon which the restructuring was based, expired.

In this regard, due to passage of time, MDD advised that another restructuring process be undertaken to respond to the societal dynamics and needs of the Institution. It was, therefore, envisaged that the exercise to revise the structure of the Zambia Police Service, would only be undertaken after the new strategic plan covering the period 2017 to 2021 had been developed.

Committee's Observations and Recommendations

The Committee is concerned that this matter, particularly the training aspect in the police service, has been a concern far too long and called for its urgent resolution. The Committee resolves to await a progress report on the matter.

FOREIGN TOUR TO KENYA

15.5 Restoration of Public Confidence in the Judiciary through Reform

The previous Committee had resolved to await a progress report on the judicial reforms being undertaken to restore public confidence.

Executive's Response

It was reported in the Action–Taken Report that the consultations in all the ten provinces had been concluded and the Commission was set to prepare a report on the consultations undertaken in the provinces during which time the Commission would further consult specific stakeholders such as the Judiciary. The report was to be finalised as soon as the Commission received funding.

Committee's Observations and Recommendations

The Committee notes the submission and observes that there is no timeframe given as to when the stakeholder consultations will be concluded. The Committee recommends that a timeframe be stipulated for the conclusion of these consultations and resolves to await a progress report.

15.6 Enhancement of the Role of Political Parties in Democratic Processes

The previous Committee had resolved to await a progress report on the proposed legislation on political parties' participation in democratic processes.

Executive's Response

It was reported in the Action–Taken Report that the consultations on the Bill had been concluded and the drafting of the Bill had been finalised. The aim was to present the Bill in the 2019 September Meeting of Parliament.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the matter.

CONSIDERATION OF THE ACTION-TAKEN REPORT ON THE REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, GOVERNANCE, HUMAN RIGHTS, GENDER MATTERS AND CHILD AFFAIRS FOR THE THIRD SESSION OF THE ELEVENTH NATIONAL ASSEMBLY

16.0 JUDICIAL REFORMS IN THE JUSTICE SYSTEM IN ZAMBIA

16.1 Policy and Legislative Framework Underlying Current Judicial Reforms

The previous Committee had resolved to await a progress report on the implementation of phase 3 of the project.

Executive's Response

It was reported in the Action–Taken Report that there had been established the Smart Zambia Institute (SZI), which was mandated to co-ordinate Information and Communication Technology (ICT) activities in all ministries, provinces and spending agencies (MPSAs). The Judiciary had submitted a detailed concept note on its computerisation needs to the Government. The SZI had

indicated that they did not have a budget line to support most of the Judiciary's computerisation needs in the period they were being implementing, which phase was running until 2019.

However, in 2016, with support from the European Union (EU), the Judiciary received forty stenograph machines, forty laptops and twenty case catalyst software, four photocopiers and five printers, albeit not adequate. The Judiciary would continue lobbying the Government and co-operating partners for more ICT equipment in order to complete phase III.

Committee's Observations and Recommendations

The Committee is of the view that the Judiciary should ensure that the project is included during budget planning stage so that it can be part of the national budget for the institution. The Committee resolves to await a progress report on the matter.

16.2 Operational Independence of the Judiciary

The previous Committee had resolved to await a progress report highlighting completion of the process of developing the Performance Management System.

Executive's Response

It was reported in the Action-Taken Report that the Judiciary had developed the terms of reference for a consultancy to develop a performance management system and was waiting for funds from the Treasury to develop and implement the system.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the funding and implementation of the Performance Management System for the Judiciary.

17.0 ENFORCEMENT OF THE LAW RELATING TO VIOLENCE AND HARASSMENT AGAINST WOMEN AND GIRLS IN ZAMBIA

17.1 Need to include Magistrates' Conditions of Service in the Judges (Conditions of Service) Act

The previous Committee had resolved to await a progress report on the outcome of the negotiations and the stakeholders involved in the negotiations.

Executive's Response

It was explained in the Action-Taken Report that Subordinate Court Magistrates had been engaged by the Judiciary's Advisory Committee on Conditions of Service and Establishment. The Magistrates proposed amendments to be included in the Judges (Conditions of Service) Act which had since been forwarded to the Secretary to the Cabinet for consideration.

Committee's Observations and Recommendations

The Committee resolves to await a progress report on the need to include magistrates' conditions of service in the Judges (Conditions of Service) Act.

18.0 Conclusion

In the Third Session of the Twelfth National Assembly, the Committee on Legal Affairs, Human Rights, National Guidance, Gender Matters and Governance considered two topical issues, namely: Gender-Based Violence in Zambia and the Review of Operations of the Legal Aid Board.

The Committee decided on the topic “Gender-Based Violence in Zambia” to establish why the number of cases in the country had continued to rise. At the end of the first quarter of 2017, the number stood at 21,504. This was despite Government interventions such as the enactment of the *Anti-Gender-Based Violence Act No.1 of 2011*, which was in line with international legal frameworks and drew experience from global best practices, the development of the Gender-Based Violence Policy, revision of the Penal Code, provision of fast track courts and victim-friendly courts for survivors and sensitisation programmes.

With regard to the review of the operations of the Legal Aid Board, the Committee was interested in knowing how effective the Board was in its effort to enhance access to justice in Zambia in line with the Seventh National Development Plan (7NDP). With the majority of the poor and vulnerable people having limited access to legal aid services, the Committee wished to ascertain the adequacy of the legal and policy frame work governing legal aid and establish challenges, if any, being faced in the provision of Legal Aid as well as make recommendations to the Executive on the way forward.

The Committee also undertook a local tour to consolidate its findings from the long meetings and best practices. The tour findings formed part of this report.

The Committee is hopeful that the observations and recommendations contained in this Report will go a long way in curbing gender-based violence and improving access to justice for the indigent in Zambia.

The Committee wishes to express its gratitude to the Honourable Mr Speaker and to the Clerk of the National Assembly for the guidance and support rendered to it throughout its deliberations. The Committee is also indebted to all stakeholders who appeared before it for their co-operation in providing the necessary memoranda and briefs.

Mr M Jere, MP
CHAIRPERSON

June, 2019
LUSAKA

APPENDIX I

List of National Assembly Officials

Ms C Musonda, Principal Clerk Committees

Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)

Mr S Chiwota, Senior Committee Clerk (SC)

Ms B Zulu, Committee Clerk

Mr E Chilongu, Committee Clerk

Mr E I C Chilimboyi, Committee Clerk

Ms C C Ndimba, Typist

Mr D Lupiya, Committee Assistant

APPENDIX II

List of Witnesses on topic 1: Gender Based Violence in Zambia

- (i) Ministry of Gender
- (ii) Ministry of Justice
- (iii) Ministry of National Guidance and Religious Affairs
- (iv) Ministry of Chiefs and Traditional Affairs
- (v) Ministry of Community Development and Social Services
- (vi) Ministry of Health
- (vii) Ministry of General Education
- (viii) Victim Support Unit – Zambia Police Service
- (ix) Zambia Centre for Communication Programmes
- (x) Young Women’s Christian Association
- (xi) Oxfam
- (xii) United Nations Development Programme
- (xiii) World Vision Zambia
- (xiv) Common Grounds Network

APPENDIX III

List of Witnesses on topic II: Review of the Operations of the Legal Aid Board

- (i) Ministry of Justice.
- (ii) Law Association of Zambia.
- (iii) Legal Aid Board.
- (iv) Zambia Correctional Service.
- (v) Zambia Law Development Commission.
- (vi) Office of the Public Protector.
- (vii) Human Rights Commission.
- (viii) Magistrates and Judges Association of Zambia.
- (ix) University of Zambia – School of Law.
- (x) United Nations Development Programme.
- (xi) Common Grounds Network.