



REPUBLIC OF ZAMBIA

REPORT

OF THE

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

FOR THE

**SECOND SESSION OF THE TWELFTH NATIONAL ASSEMBLY
APPOINTED ON WEDNESDAY, 20TH SEPTEMBER, 2017**

Printed by the National Assembly of Zambia

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Consisting 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; Ms E Phiri, MP; Mr E Sing'ombe, MP; Mr C Nanjuwa, MP, Mr H Shabula, MP; and Mr K Mukata, MP.

Following the declaration of Chilanga Constituency Seat vacant on 7th March, 2018 by the Electoral Commission of Zambia (ECZ), Mr K Mukata ceased to be a Member of Parliament.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

Your Committee has the honour to present its Report for the Second Session of the Twelfth National Assembly.

Functions of the Committee

2.0 In line with Standing Order No. 157 (2), the duties of the Committee on Legal Affairs, Human Rights, National Guidance, Gender Matters and Governance are 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.

Programme of Work

3.0 Your 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 First Session of the Twelfth National Assembly.
- (ii) Consideration of the following topical issues:
 - (a) Review of the operations of the Office of the Public Protector; and
 - (b) Participation of persons with disabilities in the Electoral Process in Zambia.
- (iii) Local Tour.
- (iv) Consideration of the Committee’s draft Report for the Second Session of the Twelfth National Assembly.

Meetings of the Committee

4.0 Your Committee held ten meetings during the year under review to consider submissions on the two topical issues.

Procedure Adopted by the Committee

5.0 Your 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 clarifications on issues arising from the written submissions. Your Committee also undertook a local tour during the session under review.

Arrangement of the Report

6.0 Your Committee’s report is organised in two parts: Part I deals with the deliberations of your Committee arising from the oral and written submissions from various stakeholders as well as its findings from the local tours and the Committee’s observations and recommendations thereon. Part II outlines your Committee’s recommendations following consideration of the Action – Taken Report on the report of your previous Committee.

PART I

A. REVIEW ON THE OPERATIONS OF THE OFFICE OF THE PUBLIC PROTECTOR

Background to the study

7.0 The ombudsman institution in Zambia was first established as the office of the Investigator General in 1973. The Investigator General was under the Executive arm of Government with the main mandate of investigating maladministration in the public and civil service institutions. Following the enactment of the *Constitution of Zambia (Amendment) Act, No*

2 of 2016, the office of the Investigator General was transformed into the office of the Public Protector, with a much broader mandate as a parliamentary ombudsman office. The constitutional changes also resulted in the enactment of the *Public Protector Act No. 15 of 2016*, which repealed and replaced the *Commission for Investigations Act*, Chapter 39 of the Laws of Zambia. On this basis, your Committee resolved to undertake a study aimed at appreciating the operations of the office of the Public Protector in the context of the new legal framework.

Witnesses

7.1 Your Committee was presented with both oral and written submissions from the institutions set out hereunder.

- (i) Office of the Public Protector.
- (ii) Anti – Corruption Commission.
- (iii) Human Rights Commission.
- (iv) Ministry of Labour and Social Security.
- (v) Ministry of Justice.
- (vi) Zambia Congress of Trade Unions.
- (vii) Zambia National Pensioners’ Association.

Summary of Submissions

7.2 All the stakeholders welcomed the new constitutional and legislative changes that had taken place to enhance the operations of the Office of the Public Protector.

A summary of the submissions of the stakeholders who appeared before your Committee are summarised below.

Major Changes Introduced in the Legal Framework for the Office of the Public Protector

7.3 Following the enactment of the *Constitution of Zambia (Amendment) Act, No. 2 of 2016*, the office of the Investigator General was transformed into the Office of the Public Protector. Previously, the office had been an Executive Ombudsman, but the changes in the Legal Framework transformed it into a parliamentary ombudsman. This constitutional innovation provided the Office with the requisite protection to carry out its functions independently as it was now required to be accountable to the National Assembly. The following were the key changes highlighted by the stakeholders:

- (i) the appointment of the Public Protector would now be made by the President on the recommendation of the Judicial Service Commission, subject to ratification by the National Assembly. Stakeholders welcomed this provision because it introduced some appreciable level of transparency in the process of appointing the Public Protector. It also gave the office functional autonomy from the Executive to be able to carry out its investigations in an independent manner;

- (ii) in terms of *section 6 of the Public Protector Act*, the mandate of the Ombudsman has been extended to inquire into incidences of maladministration that bordered on a breach of fundamental human rights;
- (iii) whereas previously the President would direct what allegations could be investigated, the office of the Public Protector was empowered following the legislative changes, and particularly *sections 13 (1) of the Public Protector Act*, to investigate any allegation of maladministration on its own initiative or on receipt of a complaint made by any complainant;
- (iv) under the previous legal regime, the office merely made recommendations to the institutions complained against, whereas under the current regime, the Public Protector had been empowered to make a binding decision against a public office. A decision of the Public Protector was equivalent to a court order pursuant to section 29 of the Act; and
- (v) to ensure security of tenure of the office, the Public Protector had been made equal in status to a High Court Judge and his/her removal from office had to be on the same grounds and follow the same procedures as those applicable to a Judge albeit the Public Protector may retire with full benefits, on attaining the age of fifty –five years.

Adequacy of the Policy and Legal Framework for the Delivery of Effective Ombudsman Services in Zambia

7.4 With respect to the policy framework, stakeholders submitted that there was lack of a clear and adequate Government policy with regard to the delivery of ombudsman services in Zambia. It was pointed out that in the seventh National Development Plan, which was the socio – economic blue print for the country’s development, the Public Protector was only mentioned once under strategic objective 11.4.1 relating to strengthening transparency and accountability.

Stakeholders were however, unanimous that the legal framework for the Office was adequately provided for under Articles 243 to 248 of the Constitution of Zambia and under the *Public Protector Act, No. 15 of 2016*.

Progress made in the Implementation of the provisions of the New Legal Framework

7.5 Following the enactment of the Public Protector Act in 2016, the Office had made progress in implementing the provisions of the new legal framework by developing a new organisational structure in collaboration with the Management Development Division (MDD). The new structure, which included provincial offices, had adequately provided for positions to carry out the functions of the Office of the Public Protector. The job descriptions for the new structure had also been developed and approved by Cabinet Office. However, the structure had not yet been operationalised due to non availability of funds.

According to stakeholders, the approved organisational structure had a total establishment of 109 members of staff budgetary. The total budgetary requirement for personal emoluments per

annum was K15, 577,296.00. However, treasury authority for the implementation of the structure had not yet been granted even though the request was submitted to the Ministry of Finance through the Public Service Management Division (PSMD) in 2016.

Challenges being Faced in the General Operations of the Office and Enforcement of the new Legal Framework

7.6 Notwithstanding the drastic changes the Office of the Public Protector had undergone, several stakeholders observed that there were still a number of operational challenges besetting the Office. The biggest challenge emanated from the non implementation of the new organisational structure. Despite the transformation of the office and the broadening of its mandate, the Public Protector had continued to operate as it had previously done when it was the Office of Investigator General. To this end, the Office did not have the required personnel such as lawyers and investigators to adequately carry out its mandate.

The other difficulty faced by the Office of the Public Protector was that since it moved to rented office accommodation, it almost always failed to meet the cost of rentals mainly because the Ministry of Finance had not created a separate budget line for accommodation. Consequently, the office was forced to use operational funds to pay rentals.

Stakeholders summed up the challenges being faced by the Office of the Public Protector as mostly hinging on inadequate finances given to the institution by the Government. To this end, the Office could not increase its fleet of vehicles in order to be able to carry out field assignments. The Office could also not carry out capacity building and training activities for its staff, neither could it effectively mount advocacy or publicity activities to sensitise the general public about its existence.

In terms of the enforcement of the new legal regime, the Office of the Public Protector had developed draft regulations to operationalise some important provisions of the Act. The draft regulations were submitted to the Ministry of Justice, but they were yet to be finalised. Stakeholders also observed that after enactment of the *Public Protector Act, No. 15 of 2016*, the Office of the Public Protector had transitioned to being a parliamentary ombudsman. To this end, stakeholders expressed concern that the National Assembly had not made any significant effort to ensure that this relationship was rationalised in light of the new legal regime.

Suggestions on the Way Forward

7.7 Stakeholders noted that the Office of the Public Protector was an important oversight institution in strengthening the public service delivery system through its primary role of fighting maladministration in the public sector. The work of the office was twofold, in that in the execution of its mandate, it carried out enforcement and oversight functions by monitoring the effectiveness of the performance of the public service delivery system in terms of the implementation of ethical administrative mechanisms.

In light of the above, stakeholders were of the view that in order for the Office to effectively and efficiently execute its mandate, the following should be done:

- (i) Sufficient resources should be allocated to allow for efficient and effective management of administrative, logistical and material services for effective operations of the Office. The estimated operational cost required for the office was K70,000,000.00 per year;
- (ii) Funding should be directly appropriated to the Office by Parliament or the Office should be budgeted for under the same head as the National Assembly so that budgetary allocation is not subject to the discretionary approval of the Executive;
- (iii) Offices of the Public Protector should be established at provincial and district level in order to conform to the principle of devolved governance as envisaged under the Constitution and the Revised National Decentralisation Policy of 2013;
- (iv) capacity should be developed within the Offices, mainly in the area of investigations, through training and exchange programmes with other ombudsman institutions from other jurisdictions;
- (v) a communication strategy should be developed within the institution, which would regulate engagements with other state institutions, stakeholders, and members of the public;
- (vi) find a mechanism of how the Office can work and collaborate with the National Assembly so as to strengthen oversight on Executive functions; and
- (vii) the tenure of office of the Public Protector should be revised in the Constitution by making it one term of seven years non renewable or two terms of five years each, with the second term being non renewable.

Local Tour Report on the Operations of the Office of the Public Protector

8.0 To consolidate its findings from the long meetings, your Committee undertook a local tour, during which it held two stakeholder meetings on the review of operations of the Office of the Public Protector. Your Committee found that the Office of the Public Protector was virtually unknown as a public office established to investigate matters of maladministration in the public service. Stakeholders highlighted that there were numerous bottlenecks in the provision of public services, but citizens did not know that they could lodge complaints with the Office of the Public Protector at no cost.

Stakeholders also expressed ignorance about the fact that the Office had previously existed as Investigator General since 1974. They however, welcomed its establishment and hoped that it would be properly funded so that it could be spread to all provinces and districts.

Committee's Observations and Recommendations

9.0 Your Committee's Observations and Recommendations are as set out below.

- (i) Your Committee observes that following the enactment of the *Constitution of Zambia (Amendment) Act, No 2 of 2016*, the Office of the Investigator General was transformed into the Office of the Public Protector, with a much broader mandate as a parliamentary ombudsman office. The Public Protector was now accountable to the National Assembly and not the Executive as was previously the case.

Your Committee welcomes this development and urges the Office of the Public Protector to leverage on this development, and ensure that relevant reports are submitted to the National Assembly in time for its consideration.

- (ii) Your Committee further observes that despite the new developments, which were necessitated by changes in the law, the office of the Public Protector has continued to operate as before, because treasury authority is yet to be granted for the release of funds for the actualisation of the new organisational structure. Your Committee further observes that the added responsibilities of the Office of the Public Protector have 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, your Committee recommends that the Government, through the Ministry of Finance, should grant treasury authority so that the office of the Public Protector can be fully operationalised in line with the constitutional requirements of a fully functional office that would be progressively decentralised to Provinces and Districts.

- (iii) Your Committee also observes that apart from the challenges associated with the non implementation of the new organisational structure, the Office of the Public Protector is 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.

Your Committee recommends 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 will ensure that the institution makes an impact as envisaged by the new legal regime. If it remains or continues to be funded as it has hitherto been, it will continue to remain obscure and ineffectual.

- (iv) With regard to the tenure of office of the Public Protector, your Committee observes that the Public Protector is 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 albeit the Public Protector may retire with full benefits, on attaining the age of fifty-five years. Your Committee is concerned that the Public Protector has a much lower retirement age than that of a High Court Judge.

Your Committee, therefore, recommends that in order to entrench the security of tenure of the Public Protector, the law should be revised so that the office holder can serve for one non - renewable term of seven years as is the case in other jurisdictions like South Africa, where the office is well established.

- (v) Your Committee observes that the existence and operations of the Office of the Public Protector were not known to many Zambians.

In this regard, and in addition to the recommendations aforesaid, your Committee reiterates 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.

B. PARTICIPATION OF PERSONS WITH DISABILITIES IN THE ELECTORAL PROCESS IN ZAMBIA

Background to the study

10.0 Zambia is a state party to a number of International and Regional Human Rights Instruments, including the Convention on the Rights of Persons with Disabilities (CRPD). The CRPD is the international blue print for the elaboration and protection of the rights of persons with disabilities (PWDs). It enjoins state parties to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all PWDs, and to promote respect for their inherent dignity. With regard to participation in the electoral process, it places an obligation on states to ensure that PWDs can vote, get elected into office and at all levels contribute to the public life of society.

Notwithstanding the fact that Zambia is a signatory to the CRPD and other international human rights instruments that protect the rights and dignity of PWDs, in Zambia, PWDs have continued to advocate and fight for protection of their rights to political and public participation through an inclusive and accessible electoral process. The struggle culminated into the 2011 High Court Case between *Selah Brotherton and Others v the Electoral Commission of Zambia* in which the Court made far reaching pronouncements which acknowledged that PWDs had been discriminated against on the basis of their disability, from participating in the political and public life because the electoral process did not meet the benchmarks of inclusivity and accessibility.

As a consequence of the foregoing, Zambia has seen appreciable changes in the Constitution, electoral laws as well as various other laws affecting PWDs. The efficacy of these changes in protecting the rights of PWDs is what prompted your Committee to undertake a study on the participation of persons with disabilities in the Electoral Process.

Witnesses

10.1 Your Committee received both oral and written submissions from the institutions set out hereunder.

- (i) Electoral Commission of Zambia.
- (ii) Human Rights Commission.
- (iii) Zambia Law Development Commission.
- (iv) Ministry of Community Development and Social Services.
- (v) Ministry of Justice.
- (vi) University of Zambia, School of Law.
- (vii) Zambia Congress of Trade Unions.
- (viii) Southern Africa Centre for the Constructive Resolution of Disputes.
- (ix) Foundation for Democratic Process.
- (x) Zambia Federation of Disability Organisations.
- (xi) Zambia Agency for Persons with Disabilities.
- (xii) Disability Rights Watch.

Summary of Submissions

10.2 In their submissions to your Committee, stakeholders pointed out that the electoral process had three different phases that were inter-connected. The pre-election phase, the election phase and the post-election phase. It was, therefore, critical to ensure that the rights of PWDs were promoted and protected at every stage of the electoral process. They also emphasised that PWDs were not a homogenous group, but rather different individuals with varied disabilities and needs, which required separate treatment and approach.

A summary of the submissions of the stakeholders who appeared before your Committee is set out below.

The Legal and Policy Framework for the Recognition and Promotion of Inclusiveness of PWDs in the Electoral Process

10.3 In terms of the legal framework, stakeholders were agreed that at international level, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) had adequately catalogued the rights of PWDs. They pointed out that Zambia had ratified and domesticated aspects of the CRPD through the *Persons with Disabilities Act No. 6 of 2012*. Of note, section 4 of the Act provided for the general principles in relation to the rights of PWDs, which included the respect for their inherent dignity, autonomy, independence and freedom to make their own choices, non - discrimination, full and effective participation, inclusion in society, equality of opportunity and accessibility. Section 51 of the Act provided for the rights and opportunities of PWDs to vote and be voted for. This section requires that PWDs are guaranteed free access to facilities and materials, which are adapted to their needs and are protected from hostile environments that can violate their right to a secret vote and to the free expression of their choices.

With respect to the participation of PWDs in the Electoral Process, on the one hand, stakeholders cited the Bill of Rights enshrined in Part III of the Constitution of Zambia 1991 as containing civil and political rights and freedoms that guarantee the right to participate in democratic processes, including elections. These fundamental freedoms included: freedom of association and assembly; freedom of expression; and the right to vote, among others. It was pointed out however, that these freedoms were general to all citizens and did not make any provisions that catered specifically to the requirements of PWDs as required by Article 29 of the CRPD. On the other hand, stakeholders noted that Article 45(1) (c) of the *Constitution of Zambia (Amendment) Act, No 2 of 2016* made provision for the fair representation of various interest groups in society in the electoral systems for the election of the President, Member of Parliament or Councilor.

Other stakeholders welcomed the enactment of the *Electoral Process Act, No. 35 of 2016*. They noted that this statute had domesticated part of the CRPD as it related to the rights of PWDs to participate in political and public life. They particularly cited section 3 of the Act as having domesticated Article 29 of the CRPD by proscribing discrimination based on disability when providing electoral services such as; voter education, voting materials, polling stations, information dissemination through campaigns, among others.

Stakeholders also highlighted section 24 as another progressive provision. The section, inter alia, mandated the Electoral Commission of Zambia, in determining the location of polling stations, to take into account any factor that could affect the free, fair and orderly conduct of elections, including the availability of suitable venues, distance to be travelled, safety and convenience of voters and the accessibility at the polling station. The section required these considerations to contemplate the different forms of disabilities that affected various PWDs and not to treat them as a homogenous group.

Further, stakeholders noted the provisions of section 48 which allowed PWDs to apply for a special vote to vote at a polling station other than the one they registered at, on account of their disability or simply their convenience, as well as section 61, which permitted assisted voting due to different forms of disabilities.

With regard to the policy framework, stakeholders noted the existence of the National Policy on Disability, which sought to protect the rights of PWDs. It was noted that the policy made reference to equal opportunities for PWDs in terms of access to services such as quality health care, education, skills training, social protection etc. The policy however, did not specifically provide for measures on participation of PWDs in political and public life, except to recognise gender equity in the provision of services to persons with disabilities.

Adequacy of the Legal and Policy Framework

10.4 Stakeholders agreed that on paper, the legal framework was fairly adequate; however, in practice it was not being fully implemented. They submitted that Zambia had made appreciable effort in domesticating aspects of the CRPD through the *Persons with Disabilities Act* as well as the *Electoral Process Act*. They recommended for the full domestication of the convention.

Stakeholders noted that despite the commendable efforts to domesticate the CRPD, there were still some archaic pieces of legislation on the statute books, which contained terms that were derogatory to PWDs. To this end, they cited the *Mental Disorders Act, Chapter 305 of the Laws of Zambia*, which made reference to certain persons with mental disabilities as “imbecile”, “idiot”, “mentally retarded,” among others

With regard to the National Policy on Disability, stakeholders observed that the policy was oriented towards the provision of social services to PWDs, such as social cash transfer schemes, education and health. While appreciating the policy, stakeholders were of the view that the policy did not have any specific objectives on the inclusion and participation of PWDs in electoral and political processes.

Measures Taken to Enhance Participation of PWDs in the Electoral Process and the Adequacy thereof

10.5 In light of the High Court decision in the case of *Selah Brotherton and Others v Electoral Commission of Zambia*, as well as the enactment of the *Electoral Processes Act*, stakeholders submitted that the ECZ had made some effort to address some of the challenges faced by PWDs in the electoral process, particularly in the 2016 general elections. They, however, noted that the ECZ had undertaken to procure 5,600 temporary ramps for persons with physical disabilities, but this was never fulfilled. That notwithstanding, the following measures were put in place:

- (i) training of PWDs as election trainers to reach out to other PWDs;
- (ii) construction of permanent ramps in some polling stations especially schools;
- (iii) provision of braille ballot papers and jackets for the visually impaired;
- (iv) inclusion of PWDs in conflict management committees as well in witnessing the printing of ballot papers in Dubai; and
- (v) provision of voter education materials for PWDs.

Notwithstanding the measures taken as outlined above, stakeholders bemoaned their inadequacy. They noted that the services provided by the ECZ were not rolled out to the whole country, but were concentrated mainly in urban areas. In some instances where services such as braille ballot papers and braille jackets were available, they were only for the presidential polls. Unfortunately, a good number of the visually impaired were not braille literate to be able to use braille jackets. In this regard, stakeholders were of the view that had the ECZ carried out proper assessments during voter registration, they would have actually known how many visually impaired persons were Braille literate and, therefore, able to use such material. The Electoral Commission of Zambia would then have instituted alternative measures to facilitate the participation of those who were not braille literate.

Stakeholders also submitted that the ECZ could not sufficiently cover the whole country in terms of providing services to PWDs because of inadequate funding. While legal provisions could be said to be adequate to protect the rights of PWDs, there were no matching resources to implement the requirements of the law. As a result, many PWDs, especially in rural areas, did not benefit from services provided by the ECZ, thereby being denied their right to participate in public and political life.

Challenges Being Faced on Enhancement of the Participation of PWDs in the Electoral Process and Recommendations on the Way Forward

10.6 With regard to the difficulties being faced by PWDs in participating in the electoral process, stakeholders submitted that PWDs were highly stigmatised on account of their disability by members of their communities. As a result, they were not accommodated in the electoral process either as candidates or voters. It was submitted that to overcome this challenge, there was need for the state to carry out broad community sensitisation so as to change the mindset of community members on matters of disability.

Stakeholders also highlighted that despite progressive provisions in the Electoral Processes Act and the Persons with Disabilities Act, meant to protect the rights of PWDs, there was no robust implementation of the letter of the law. As a result, most PWD rights remained unfulfilled. There was, therefore, need for the ECZ and the Ministry of Community Development and Social Services to ensure that the law was being enforced for the realisation of PWD rights.

Stakeholders were unanimous on the fact that budgetary allocations to the ECZ were not sufficient to support the provision of electoral services to PWDs. Given that PWDs were in different categories with divergent needs, there was need to provide sufficient technical and financial support to the ECZ, so that the institution could fulfill its mandate as by law provided. Stakeholders noted that it did not augur well for the country to always depend on donor aid to run part of the electoral process. They submitted that donor dependency could only be curtailed if the Government made adequate provisions for the electoral process in the national budget from domestic resources.

Local Tour Report on the Participation of Persons with Disabilities in the Electoral Process

11.0 Having obtained written and oral submissions from various stakeholders, your Committee undertook a local tour on the topical issue and held three public hearings in Kaoma, Mongu and Kalabo districts of Western Province. Your Committee gathered information by interacting with state and non state stakeholders as well as members of the general public in order to consolidate its findings during the meetings held at Parliament Buildings. Your Committee made the findings as set out below.

11.1.0 Pre – Election Period

- (i) Your Committee found that discrimination against Persons with Disabilities started from the communities where they lived. Members of the community, including family members, viewed disability as an inconvenience or burden to them. This was common especially in rural communities where there were beliefs that some types of disabilities were contagious. To this end, PWDs faced exclusion from community activities such as meetings designed to disseminate civic and voter education. Furthermore, political parties could not adopt them as candidates even if they expressed such desire because they were viewed as being incapable of winning them an election much less to serve as a leader.
- (ii) Your Committee found that in rural communities, PWDs found it very difficult to access socio - economic rights such as health, education, and employment. As a result, PWDs

were condemned to perpetual poverty and illiteracy. Therefore, their main preoccupation was to find ways and means of survival, while matters of public and political participation took a back row.

- (iii) With regard to voter registration, your Committee found that PWDs could not easily access this service because apart from it not being continuous as required by law, it was difficult for PWDs to obtain national registration cards and subsequently be registered as voters because registration centres were located very far away from their communities, and the buildings within which they were located were not easily accessible by PWDs, especially those on wheel chairs and crutches.
- (iv) With regard to civic and voter education, your Committee found that PWDs were rarely engaged as educators. Further, they could not access these services because they were delivered in formats that were not accommodative of PWDs. For example, there was no provision for sign language interpreters for those with hearing impairments or braille for the visually disabled.
- (v) With regard to attendance of political meetings, your Committee found that the PWDs could not attend such meetings for fear of being harmed or injured on account of the ever increasing political violence. Rather than risk their safety, PWDs opted to stay away from campaigns or political meetings and in the process were excluded from receiving political messages required to make informed choices.

11.1.1 Polling/Election Period

- (i) Your Committee found that the ECZ had, in the 2016 General Elections made efforts to make some polling stations conducive for PWDs to vote by constructing rumps to allow those on wheel chairs to enter the polling station. Notwithstanding this measure, your Committee found that the polling booths are too small, narrow and high to accommodate a wheel chair or those who were crawling. In this regard, some PWDs had to be lifted to mark the ballot and cast it, a situation which was undignifying of PWDs.
- (ii) Your Committee also found that the distances between polling stations and homesteads are extremely long to the extent that PWDs cannot easily access them. In Western Province, this is compounded by the sandy terrain which makes it difficult for those in wheel chairs, crutches and those crawling to manoeuvre even if the polling station was in close proximity.
- (iii) Your Committee found, particularly in Kaoma, that during the 2016 elections, some Electoral Officials were not well trained to attend to PWDs. To this extent, PWDs were made to stand in lines for a long time instead of being fast tracked as is stipulated in the ECZ guidelines on elections.
- (iv) Your Committee found that persons with visual impairments who were assisted to vote by either a relative or elections official, did not feel confident that their choice of candidate was respected. To this extent, the right to secrecy of the ballot was violated.

11.1.2 Post Election Period

- (i) Your Committee found that in addition to the difficulties of accessing polling stations by PWDs as highlighted above, they were excluded by political parties as party or polling agents to attend to polling stations on behalf of political candidates.
- (ii) Your Committee found that during announcement of results, persons with hearing and speech impairments were generally not provided with sign language interpretation to be able to follow the flow of the announcements.
- (iii) Your Committee also found that PWDs were never engaged as returning officers for either parliamentary or local government elections.
- (iv) Your Committee found that the ECZ did not translate results into braille to enable persons with visual impairments to have access to election results.

Committee's Observations and Recommendations

12.0 Taking into account both written and oral submissions received from stakeholders as well as findings from the public hearings held during its local tours, your Committee made its own observations and recommendations as set out hereunder.

- (i) Your Committee observes that Zambia is a state party to the CRPD and has 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*.

Your Committee commends the Zambian Government for this effort, but urges the Government to fully domesticate the CRPD by engaging stakeholders in a consultative process so that the CRPD can be adapted to the local socio - legal requirements.

- (ii) Your Committee observes that there has been an 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 ECZ made some efforts to cater for PWDs as explained above. Notwithstanding these noble efforts, your Committee observes 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, your Committee recommends that before embarking on the provision of such services, there is need to ensure that the ECZ carries out proper data collection to inform the distribution of services. Further, 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.

- (iii) Your Committee observes that despite the *Electoral Process Act* providing for special voting 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. Your Committee, therefore, recommends that the law should be implemented in full so as to not violate the rights of PWDs as envisaged by the CRPD.

- (iv) Your Committee also observes that another challenge faced by PWDs has to do with the long distances between homesteads and polling stations. Those who have physical disabilities cannot travel long distances to access the nearest polling station for voting purposes. As a result, they opt not to participate, especially that there is no guarantee of disabled friendly facilities at polling stations. Your Committee recommends that the ECZ should urgently carry out a delimitation exercise, which would locate polling stations closer to the people.
- (v) Your Committee observes that the attitudes of members of the communities towards PWDs is negative and results in them being stigmatised, discriminated against, and excluded from participating in the public and political life of their communities.

Your Committee, thus, recommends that the Government should embark on a country wide sensitisation exercise so that people can learn and appreciate the different forms of disability. Your Committee also recommends that in order to encourage PWDs to participate in elections as candidates, the law should be reformed in such a way as to introduce affirmative action, whereby political parties will be allocated a certain percentage of PWDs as candidates. Alternatively, your Committee calls for constitutional changes to the electoral system of first past the post to a proportional representation or a mixture of both so as to ensure that quotas are provided for underrepresented groups such as PWDs. This will foster inclusiveness in the electoral, public and political processes.

- (vi) Your Committee observes that the provision of services to PWDs, such as voter registration, voter education, voting materials, among others, was not informed by well captured data. As a result, some of the PWDs were left out or did not know how to use the information given to them. For example, even though the ECZ provided braille ballots and jackets during the 2016 Presidential Elections, some of the visually impaired were braille illiterate, and therefore, did not vote. This was a waste of money which could have been avoided had the ECZ been more meticulous in its data capture.

Your Committee recommends that in future, the ECZ should develop an efficient way of collecting data which should also be disaggregated according to different disability requirements.

- (vii) Your Committee observes that political party violence during the electoral process has been on the increase in Zambia. Due to political violence, PWDs, especially those on wheel chairs and crutches, tend to shun political meetings for fear of physical harm or death. In this regard, they are denied the opportunity to receive civic and voter education as well as campaign messages to enable them make informed decisions required to exercise their right to vote. Political violence is, therefore, an indirect way of disenfranchising PWDs.

Your Committee, therefore, recommends that there is need to review the Electoral Code of Conduct so as to empower the ECZ to decisively deal with political parties and candidates perpetuating violence by excluding them from further participating in the electoral process. Your Committee also appeals to all political party leaders to put the country before self by openly condemning political violence, promoting political tolerance and educating their political party supporters to embrace political diversity since Zambia is a multiparty democracy.

- (viii) Your Committee urges the Government, through the Ministry of Community Development and Social Services, to put in place public sensitisation measures aimed at educating communities about disabilities so as to ameliorate the negative attitudes towards PWDs, which result in stigmatisation and exclusion from mainstream society.
- (ix) Your Committee urges the state to prioritise meeting the socio - economic needs of PWDs before meeting electoral needs. PWDs need access to health, housing, education, food and other basic necessities of life. If these are made available, PWDs will have more time to devote to matters of elections. Your Committee, therefore, recommends that sufficient resources should be allocated to meet these needs so as to alleviate the poverty levels among PWDs.
- (x) With regard to the electoral process, your Committee recommends that the Government should provide mobile national registration and voter registration facilities to 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.
- (xi) Your Committee recommends that the provision of electoral services to PWDs, such as: access ramps, braille ballots and sign language interpreters should be rolled out to the entire country, especially rural communities.
- (xii) Your Committee also recommends that in the course of providing civic and voter education, the ECZ should engage with organisations representing PWDs so as to train and equip them for purposes of reaching out to other PWDs across the country.
- (xiii) In order to be inclusive of PWDs, your Committee recommends that the ECZ should engage them at all stages and levels of the electoral process as polling agents, electoral committee members, and returning officers.

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 FIRST SESSION OF THE TWELFTH NATIONAL ASSEMBLY

The Implications of Extractive Industry Activities on Human Rights: The Case of Zambia's Mining Sector

13.0 Your previous 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 can be registered and licensed to operate in Zambia.

Executive's Response

It was reported in the Action Taken Report that the Government had taken note of your previous Committee's recommendation. However, the Government was of the view that the human rights due diligence should be undertaken under the *Mines and Minerals Development Act No 11 of 2015* or the *Environmental Management Act, No 12 of 2011*. This is because the assessments done by the Ministry of Mines and Minerals Development before a mining company was registered and the environmental impact assessments done by the Zambia Environmental Management Agency (ZEMA) included the social impact assessment which aimed at protecting human rights. Therefore, the human rights due diligence should be undertaken under the *Environmental Management Act* or the *Mines and Minerals Development Act*.

Committee's Observations and Recommendations

Your Committee notes the Executive's response and requests that the Government should proceed to amend the *Environmental Management Act* to incorporate the issue of human rights due diligence.

Failure to Domesticating key International Human Rights Instruments

13.1 Your previous Committee was concerned that although Zambia had ratified a lot of international instruments that promote and protect human rights, these had not been fully domesticated.

Your Committee, therefore, urged the Government to take deliberate steps to domesticate the UN Guiding Principles on Business and Human Rights and other international instruments that Zambia had ratified.

Executive's Response

It was reported in the Action Taken Report that Part III of the Constitution (the Bill of Rights) covered most of the human rights provided for in international instruments. However, the enhancement and realisation of rights contained in international instruments relating to economic, social and cultural rights and third generational rights was not currently covered by the Constitution. In order to include these in the Constitution, there was need to amend Part III of the Constitution through a referendum.

Committee's Observations and Recommendations

Your Committee requests 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 may be achieved through enactment or amendment of existing legislation other than the Constitution itself.

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

13.2 Your previous Committee had recommended that the Government should take steps to improve support to the Human Rights Commission and other state agencies such as ZEMA, MSD, 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.

Executive's Response

It was reported in the Action Taken Report that the Government provides support to state institutions and agencies in order to enable them undertake their roles and responsibilities effectively. With particular attention to the Department of Labour, the Government had commenced the process of procuring vehicles for the labour inspectorate to ease the problem of transport, which was one of the major challenges faced in undertaking regular labour inspections.

To ensure that labour inspections were undertaken across the country, the Government had come up with practical measures. To this end, the Ministry of Labour and Social Security was working closely with the Ministry of Local Government on this matter. Through the delegated powers from the Labour Commissioner, the Public Health Inspectors from the Ministry of Local Government were given additional responsibilities of conducting labour inspections in the districts where the Ministry of Labour and Social Security had no presence.

With regard to the Human Rights Commission, Article 230 (2) of the *Constitution of Zambia (Amendment) Act, No. 2 of 2016* provided that the Human Rights Commission shall ensure that the Bill of Rights was upheld and protected. The Government would continue to support the Commission to ensure that it carried out its mandate efficiently and effectively. Further, Government support would also continue to institutions such as ZEMA, MSD and WARMA.

Committee's Observations and Recommendations

Your Committee requests 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 is being implemented in terms of conducting labour inspections, especially that Health Inspectors are not trained Labour Inspectors. Your Committee also requests for specific details in terms of the nature of support from the Government to HRC, ZEMA, WARMA, and MSD.

Protection of Human Rights of Contractors' workers

13.3 Your previous 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 was strengthening the legal framework on employment and labour related issues by reviewing the labour laws and consolidating them in the Labour Code. The Labour Code would effectively govern labour relations between the employers and employees by establishing the minimum norms or regulations aimed at ensuring compliance to labour rights in Zambia.

The process would involve consolidating the different pieces of legislation on employment and labour into a Bill. Some of the critical issues to be considered in the Bill included foreign labour and casualisation. The Bill was expected to be presented in Parliament in the September, 2017 sitting.

Committee's Observations and Recommendations

Since the Bill was not presented in 2017, your Committee requests for a progress report on the consolidation process of labour and employment matters and the subsequent presentation of the Bill to Parliament.

Public Awareness of Legislation on Extractive Industry Activities and Environmental Issues

13.4 Your previous 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.

Executive's Response

It was reported in the Action Taken Report that following the observations made on low levels of environmental awareness in the country through a survey that was conducted in collaboration with Central Statistical Office (CSO), ZEMA had in the 2018 budget and years to come,

proposed various programmes which were expected to increase awareness levels. These measures included programmes to be implemented in collaboration with civil society, schools, community radio stations, national radio and television stations, including various programmes with journalists. Further, ZEMA had embarked on the use of social media as one of the key tools for communicating environmental information.

Committee's Observations and Recommendations

Your Committee requests for a progress report on the measures being put in place by the Government to mitigate low levels of environmental awareness in the country.

Stiffening of Penalties for Environmental Pollution

13.5 Your previous 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.

Executive's Response

It was reported in the Action Taken Report that penalties provided for in the *Environmental Management Act*, if applied to the maximum would be punitive for many of the facilities. However, the discretion was left to the courts to decide the quantum of the penalty. It was agreed that there should be an amendment to provide for minimum penalties so that the courts could not go below the minimum. It was worth noting that the review of the *Environmental Management Act, No 12 of 2011* was already in progress.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the review of the *Environmental Management Act*, which would incorporate the aspect of providing for penalties for minimum penalties for polluters of the environment.

Need for provision on Regular, Mandatory Impact Assessment

13.6 Your previous 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.

Executive's Response

It was reported in the Action Taken Report that the current Environmental Impact Assessment Regulations required a developer operating an approved project to carry out an additional EIA where there was an alteration or change in the scope of the project.

Committee's Observations and Recommendations

Your Committee reiterates its previous recommendation with regard to regular assessment of the impact of the extractive industry in the normal course of its business activity and not an additional EIA where there was an alteration in the scope of the project. Your Committee, therefore, requests for a specific response to its recommendation.

Need for Legislation on Resettlement and Compensation

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

Executive's Response

It was reported in the Action Taken Report that the Ministry of Justice would conduct necessary consultations on the matter.

Committee's Observations and Recommendations

Your Committee requests an update on the outcome of the consultations undertaken by the Ministry of Justice on this matter.

Support to Small Scale Mining Companies

13.8 Your previous 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.

Executive's Response

It was reported in the Action Taken Report that the Ministry of Mines and Minerals Development was implementing a three year project aimed at improving the productivity, safety, health and environmental issues of small scale mines. Through the Project, the capacity of small-scale miners to adhere to safety, health and environmental regulations was being addressed.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the implementation of the three years project.

14.0 REPORT ON THE LOCAL TOUR

Kabwe Mine

14.1 Your previous 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.

Executive's Response

It was reported in the Action Taken Report that the Government, through the Copperbelt Environment Project (CEP), commissioned a study known as the Kabwe Scoping and Design Study (KSDS, 2005) which covered a number of issues, including the impact of lead on the environment and human health. Notwithstanding this, the Government, through ZEMA, had plans to undertake further studies to build on the KSDS to appreciate the magnitude and impact of lead pollution.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the planned study by ZEMA, and requests the Government to indicate a time frame within which the study would be undertaken.

China Non – Ferrous Metal Mining (CNMC) Luanshya

14.2 Your previous Committee had recommended that the Government should carry out investigations on the parallel staff structure for locals and expatriates being employed for management and technical positions at CNMC.

Executive's Response

It was reported in the Action Taken Report that the Government had taken note of the recommendation by the Committee and would initiate investigations on the matter.

Committee's Observations and Recommendations

Your Committee requests for a progress report on the matter.

Mopani Mine

14.3 Your previous Committee had recommended that the Mine should put measures in place to ensure thermal conditions underground were controlled in order not to expose the miners to inhuman conditions.

Executive's Response

It was reported in the Action Taken Report that the Mine was putting in place measures to control thermal conditions underground, on an ongoing basis.

Committee's Observations and Recommendations

Your Committee requests for an update on this matter since most interventions are still being implemented.

Need for Investigation on Thermal Conditions Underground

14.4 Your previous Committee had recommended that the Government, through the Mine Safety Department, should carry out further investigations on the matter to establish the correct position on the thermal conditions underground.

Executive's Response

It was reported in the Action Taken Report that the Mines Safety Department undertook regular inspections to monitor the quality of the underground environment. The Department would, therefore, investigate as directed by the Committee.

Committee's Observations and Recommendations

Your Committee awaits an update report on the outcome of the investigation by the Mine Safety Department.

Need for a lasting solution to the plight of Kankoyo Residents

14.5 Your previous 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.

Executive's Response

It was reported that the plight of Kankoyo residents was mainly as a result of historical environmental pollution by the then Zambia Consolidated Copper Mines (ZCCM) Limited and its forerunners. At the time of privatisation, Mopani Copper Mines was insulated from historical environmental liabilities. It was for this reason that the Government with support from the World Bank was undertaking the Zambia Mining Environmental Remediation and Improvement Project (ZMERIP) which was launched in July 2017, and aimed at reducing environmental health risks to the local populations in some of the affected towns, which included Mufulira.

Committee's Observation and Recommendations

Your Committee notes that based on what was agreed during privatisation, Mopani Mine was insulated from historical environmental liabilities, and this meant that the Government as duty bearer was now responsible for the environmental damage and impact on the residents of Kankoyo. Your Committee, therefore, requests for a report on the specific outcomes of the ZEMRIP, which the Government was implementing with the support of the World Bank.

Water Quality Control Measures - Kalumbila Mine

14.6 Your previous 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.

Executive's Response

It was reported in the Action Taken Report that the Government through the Ministry of Water Development, Sanitation and Environmental Protection had brought this matter to the attention of the Kalumbila Mine Management who had since commenced tests on the source of the iron and how it could be removed from the water. Kalumbila had installed filters on two boreholes to remove the iron from the water supplied to the communities. The Government would continue to monitor this development.

Committee's Observations and Recommendations

Your Committee requests an update on the developments.

Monitoring of Water Quality by the Government

14.7 Your previous 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.

Executive's Response

It was reported in the Action Taken Report that the Government through the Ministry of Mines and Minerals Development noted the observation of your previous Committee. The Ministry would collaborate with the Ministry responsible for water, sanitation and environmental protection to ensure that the water quality was monitored and was of acceptable standard.

Committee's Observations and Recommendations

Your Committee requests for a progress report on the matter.

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

14.8 Your previous 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, your Committee was alive to the fact that this was a subject of great concern to many Zambians.

Your previous 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.

Executive's Response

It was reported in the Action Taken Report that the Government remained committed to enhancing the safety and health of workers at all places of work. Taking note of the recommendation by the Committee, the Government would work closely with specialised institutions such as the Occupational Safety and Health Institute, Mines Safety Department and the Occupational Safety and Health Services Department to ensure that the situation was strictly monitored at the Mine. This would prevent occurrences of the environmental and health risks that may be posed by uranium.

Committee's Observations and Recommendations

Your Committee awaits an update on the matter.

The Case of Kaumuna Village

14.9 Your previous 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. Your previous Committee, therefore, had urged the Ministry of Mines and Minerals Development to ensure that the matter was addressed without further delay.

Executive's Response

It was reported in the Action Taken Report that the Ministry of Mines and Minerals Development was sourcing funds to undertake an independent technical evaluation, the results of which would form the basis for addressing the matter.

Committee's Observations and Recommendations

Your Committee is concerned that there is no time - frame given within which the Ministry of Mines will source funds to undertake its independent technical evaluation. To this end, your Committee awaits a progress report on the matter, and reminds the Government that the issue at hand constitutes a violation of the rights of the people of Kaumuna Village and should therefore, be treated with the urgency it deserves.

Pollution of Nearby Water bodies by Konkola Copper Mines (KCM)

14.10 Your previous Committee had noted that the potential for water pollution from overflows and spillages in streams such as the Mushishima stream still remained. Your Committee had, therefore, urged the Government to ensure that the Mine puts in place stringent measures to prevent pollution of the nearby water bodies.

Executive's Response

It was reported in the Action Taken Report that the Government through ZEMA had engaged KCM to ensure that measures were put in place to protect the surface and underground water resources. Accordingly, KCM had done the following:

- (i) recycling of water from Muntimpa Tailings Dam overflow by March, 2018. This project would improve water quality in the Muntimpa stream, an immediate receiving water body. The project would also result in less fresh water intake from the Kafue River thereby increasing water accessibility to the downstream water users;
- (ii) upgrading of the remaining Muntimpa Tailings Pipeline 3 with more durable HDPE pipes by December, 2017 to prevent frequent pipe failures which resulted in spillages of slurry;
- (iii) construction of a new effluent catchment pond within the main tailings leach plant to capture slurry prior to Chingola stream by September, 2017;
- (iv) de-silting of the Chingola stream, including the pollution control dam by December, 2017 as part of ongoing restoration programme and also to provide cavity for emergency spillages to avoid overflowing into the Mushishima stream; and
- (v) implementation of a dynamic water balance which was ongoing and should assist identification of sources of excess water which required fixing.

Committee's Observations and Recommendations

Your Committee requests for an update report on the matter.

Cracking Houses in Tsopano Community

14.11 Your previous Committee had recommended that the Government should engage the Mine 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 Konkola Copper Mines had carried out assessment of the Tsopano community houses which were cracking. The technical assessment

report showed that there was no linkage between blasting and cracking of houses. The report had been shared with their community leadership and Government representatives.

However, Government through the Ministry of Water Development, Sanitation and Environmental Protection and Ministry of Mines and Minerals Development with support from the World Bank was undertaking the Zambia Mining Environmental Remediation and Improvement Project (ZMERIP) which was launched in July, 2017. This was aimed at reducing environmental health risks and other related impacts to the local populations in some of the affected towns which included Chingola (Tsopano Community).

Committee's Observations and Recommendations

Your Committee requests a progress report on the implementation of the ZMERIP and how it would mitigate the impact on the Tsopano Community.

Measures in Place to Reduce Air Pollution

14.12 Your previous Committee had recommended that the Government should ensure that the Mine put in place comprehensive measures to prevent air pollution through dust control.

Executive's Response

It was reported in the Action Taken Report that the Ministry of Mines and Minerals Development would ensure that comprehensive preventive measures at sources and pathways were put in place. Accordingly, the mine had put in place a state of the art Nchanga Smelter Complex with sulphur dioxide capture in excess of 99 percent and remarkable achievement in air quality. To further improve on air quality from the stacks, KCM had embarked on two major projects to install off gas cleaning system at the Anode Furnaces by August, 2018 and a new bag house at Slag Cleaning Furnaces by March, 2018. Both projects were aimed at capturing residue dust and associated heavy metals in the stack emissions.

Committee's Observations and Recommendations

Your Committee requests for a progress report on the implementation of the measures being put in place to reduce dust emissions.

PART III

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 APPOINTED ON THURSDAY, 24TH SEPTEMBER 2015

The Death Penalty in Zambia

15.0 Your previous Committee had requested for a progress report on the review of the Penal Code.

Executive's Response

It was reported in the Action Taken Report that the Zambia Law Development Commission had conducted local stakeholder consultations. Further, studies of comparable jurisdictions whose penal legislation was advanced had been conducted. There was also in place a technical committee that was appointed by Cabinet to oversee the remaining part of the process.

Committee's Observations and Recommendations

Your Committee notes with concern that the process has taken too long at consultation stage. Your Committee, therefore, requests for a further update since the matter has not been finalised.

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

A. THE CAUSES AND EXTENT OF TORTURE IN ZAMBIA

Institutional Mechanisms for Addressing Torture in Zambia

16.0 Your previous Committee had awaited a progress report on the enactment of a law to criminalise torture.

Executive's Response

It was reported in the Action Taken Report that the Human Rights Commission in collaboration with the Zambia Law Development Commission, with support from the United Nations Development Programme, facilitated the drafting of an Anti-Torture Bill. The draft bill was officially handed over to the Government through the Minister of Justice.

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

Your Committee requests for an update on the matter and urges the Government to expedite the review of the draft Bill so that it can be presented to Parliament for enactment without undue delay.

Zambia's Reservation on Article 20 of UNCAT and Failure to Recognise the Competence of Committee against Torture

16.1 Your previous Committee had requested for a progress report.

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

Your Committee notes that reviewing of the Anti – Torture Bill had no bearing on the need for Zambia to withdraw the reservation entered on Article 20 of the UNCAT. Your Committee, therefore, requests for an update on the matter.

Limited Mandate of the Human Rights Commission

16.2 Your previous Committee had resolved to await a progress report on clothing of the Human Rights Commission with quasi-judicial powers.

Executive's Response

It was reported in the Action Taken Report that the Human Rights Commission had since mobilised resources for the review of the *Human Rights Commission Act, No. 39 of 1996*. This was with the view to align the Act with the provisions of the *Constitution of Zambia (Amendment) No. 2 of 2016*, the 7th National Development Plan as well as the Paris Principles.

The process of the review of the *Human Rights Commission Act*, would be a highly consultative and inclusive process with views from a broad spectrum of stakeholders. It was hoped that following these processes, a layman's Bill would be ready for submission to the Ministry of Justice for further action and tabling before Cabinet by the end of 2017 as indicated in the 7th National Development Plan Implementation Framework.

Committee's Observations and Recommendations

Your Committee is happy to note that some progress has been recorded on this matter, and resolves to await a progress report since consultations on the review of the *Human Rights Commission Act* are still in process.

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

16.3 Your previous Committee had resolved to await a progress report on the expansion of the Police Service establishment.

Executive's Response

It was reported in the Action Taken Report that the proposed new establishment which addressed structural requirements for the Zambia Police Service was submitted to Management

Development Division (MDD) for consideration and approval. The proposed new establishment had not yet been approved.

Committee's Observations and Recommendations

Your Committee is concerned that this matter has been outstanding for so long and calls for its urgent resolution. Your Committee awaits a progress report on the matter.

B. MANAGEMENT OF CONFLICTS IN THE ELECTORAL PROCESS IN ZAMBIA

Continuous voter registration

17.0 Your previous Committee had resolved to await a progress report on continuous voter registration.

Executive's Response

It was reported in the Action Taken Report that the Electoral Commission of Zambia intended to commence voter registration by 30th October, 2017 at the Voter Education Centre at Lusaka Show Grounds. This exercise would commence once funding was availed to the Commission.

Committee's Observations and Recommendations

Your Committee notes that voter registration did not commence on 30th October 2017 as assured because the ECZ was not funded for this undertaking. By implication, the ECZ has continued to breach the law, which provides for continuous voter registration. Your Committee calls for urgent measures to be taken to ensure that the law is respected and implemented without delay. Your Committee awaits a progress report.

COMMITTEE'S FOREIGN TOUR TO KENYA

Restoration of Public Confidence in the Judiciary Through Reform

18.0 Your previous Committee had resolved to await a progress report on the judicial reforms being undertaken.

Executive's Response

It was reported in the Action Taken Report that the Legal and Justice Sector Reforms Commission concluded obtaining information and petitions from members of the public, in the last remaining provinces (North-Western and Luapula). The next step would be to gather information from stakeholders in the justice sector.

Committee's Observations and Recommendations

Your Committee notes with concern that there is no timeframe given as to when the stakeholder consultations will end. Your Committee recommends that a timeframe be stipulated for the conclusion of these consultations. Your Committee awaits a progress report on the matter.

Enhancement of the Role of Political Parties in Democratic Processes

18.1 Your 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 draft Political Parties Bill was prepared and presented to the Ministerial Cabinet Liaison Committee (CLC) meeting where it was passed. Currently consultation involving various key stakeholders was underway.

Committee's Observations and Recommendations

Your Committee awaits 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

JUDICIAL REFORMS IN THE JUSTICE SYSTEM IN ZAMBIA

Policy and/or Legislative Framework Underlying current Judicial Reforms

19.0 Your 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 phase 3 of the computerisation project had not commenced due to lack of funding. The funders of the ZAJIS project, Investment Climate Facility for Africa (ICF) wound up their operations. The budget line under the Judiciary budget was insufficient to implement the project. However, the Judiciary was committed to the implementation of the last phase of the project.

Committee's Observations and Recommendations

Your Committee is of the view that since the funders of the project have wound up their operations, the Judiciary itself should ensure that the project was included during budget planning stage so that it can be part of the national budget for the institution. Your Committee awaits a progress report on the matter.

Operational Independence of the Judiciary

19.1 Your 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 Performance Management System was yet to be developed. However, terms and conditions, medical scheme and a strategic plan had been developed.

Committee's Observations and Recommendations

Your Committee requests for a progress report on the development of the performance management system.

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

Establishment of Fast Track Anti-GBV Courts

20.0 Your previous Committee had resolved to await a progress report on the establishment of Fast Track Courts in all provinces.

Executive's Response

It was reported in the ATR that the Ministry of Gender, having taken note of the need to roll out the Fast Track Courts to all provinces, had initiated the process of establishing four additional Fast Track Courts on Gender Based Violence in Chipata, Livingstone, Mongu and Ndola. So far, two sites namely Livingstone and Ndola had been assessed while the assessment of Chipata and Mongu were underway.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the roll out of Anti GBV Fast Track Courts.

Amendment of the Penal Code

20.1 Your previous Committee resolved to await a progress report on the revision of the Penal Code.

Executive's Response

It was reported in the Action Taken Report that the Zambia Law Development Commission had conducted local stakeholder consultations. Further studies of comparable jurisdictions whose penal legislation was advanced had been conducted. There was also in place a technical committee that was appointed by Cabinet to cover the remaining part of the process.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the amendment of the Penal Code.

LOCAL TOUR REPORT

Accessibility of Court Facilities to Persons with Disabilities

21.0 Your previous Committee had resolved to await a progress report.

Executive's Response

It was reported in the Action Taken Report that due to inadequate funding for infrastructure development, the Judiciary was faced with the challenge of making courts accessible to persons with disabilities.

Committee's Observations and Recommendations

Your Committee notes that access to justice by persons with disabilities is a fundamental human right enshrined in several international and regional human rights standards to which Zambia is a state party. In this regard, your Committee awaits a progress report.

Establishment of Appropriate Facilities for Juvenile Offenders

21.1 Your previous Committee had resolved to await a progress report on the development of child friendly court infrastructure.

Judiciary's Response

It was reported in the Action Taken Report that the process of establishment of child - friendly infrastructure in collaboration with the UN system in Zambia was ongoing. The Lusaka Fast Track Court for gender based violence had been equipped with child-friendly facilities.

Committee's Observations and Recommendations

Your Committee awaits a progress report since the process of equipping courts with child friendly infrastructure was on – going.

State of infrastructure in the Judiciary

21.2 Your previous Committee had resolved to await a progress report on the matter.

Executive's Response

It was explained in the Action Taken Report that there had been no funding for this activity. The Ministry of Justice was still waiting for funding.

Committee's Observations and Recommendations

Your Committee awaits a progress report and urges the Government to provide funding to this activity as a matter of urgency.

Magistrates Residential Complex in Lusaka

21.2 Your previous Committee resolved to await a further progress report since at the time of reporting, not all Magistrates had vacated the complex.

Judiciary's Response

It was reported in the Action Taken Report that a few Subordinate Magistrates were still at the Thorn park Residential Complex. However, by the end of 2017, all the Magistrates would have vacated the complex.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the matter.

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

21.3 Your previous Committee had resolved to await a progress report on the outcome of the negotiations and which stakeholders were involved in the negotiations.

Judiciary's Response

It was explained in the Action Taken Report that at present, only Judges were consulted. However, further consultations would be undertaken.

Committee's Observations and Recommendations

Your Committee notes that Magistrates are yet to be engaged on this matter. Your Committee urges the Government to consult all stakeholders so that an amicable solution is found. Your Committee awaits a progress report on the matter.

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

Operations of the Zambia Institute of Advanced Legal Education (ZIALE) and Administration of the Legal Practitioners Qualifying Examination (LPQE)

22.0 Your previous Committee resolved to await a progress report on the matter.

Executive's Response

It was reported in the Action Taken Report that the Ministry of Justice was in the process of drafting new student rules, which would introduce the proposed changes to the curriculum.

Committee's Observations and Recommendations

Your Committee notes that this matter has dragged on for a long time without any significant progress being made. In this regard your Committee calls for urgent action and awaits a progress report on the matter.

Conclusion

23.0 Your Committee wishes to express its gratitude to you, Mr Speaker and to the Clerk of the National Assembly for the support rendered to it during the year. Your Committee is also indebted to all the stakeholders who appeared before it for their co-operation in providing the necessary memoranda and briefs.

Your Committee is hopeful that the observations and recommendations contained in this Report will go a long way in promoting and protecting human rights as well as improving governance in Zambia.

Mr M Jere, MP
CHAIRPERSON

June, 2018
LUSAKA

APPENDIX 1

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)

Mr G Zulu, Committee Clerk

Ms I Mwiya, Typist

Mr D Lupiya, Acting Committee Assistant

