

REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, GOVERNANCE, HUMAN RIGHTS, GENDER MATTERS AND CHILD AFFAIRS FOR THE FOURTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY APPOINTED ON 25TH SEPTEMBER, 2014

Consisting of:

Mr J J Mwiimbu, MP (Chairperson); Mr J M Kapyanga, MP; Dr M L Kaingu, MP; Mr M A Malama, MP; Mr S Mushanga, MP; Mr M J B Ng'onga, MP; Mr B M Ntundu, MP; and Ms V Kalima, MP.

Following the appointment in February, 2015 of Dr M L Kaingu, MP; Mr S Mushanga, MP and Mr M J B Ng'onga, MP to various ministerial positions, the membership of the Committee was reduced to five. Thereafter, Mr M Kapeya, MP; Mr S Masumba, MP and Mr H Kunda, MP were appointed to serve on your Committee, reverting the membership to eight.

The Honourable Mr Speaker
National Assembly
Parliament Buildings

LUSAKA

Sir,

Your Committee has the honour to present its report for the Fourth Session of the Eleventh National Assembly.

Functions of the Committee

2. In addition to any other duties conferred upon it by Mr Speaker or any Standing Order or any other order of the Assembly, the duties of the Committee on Legal Affairs, Governance, Human Rights, Gender Matters and Child Affairs are as follows:

- (a) to study, report and make appropriate recommendations to the Government through the House on the mandate, management and operations of the Government ministries, departments and/or agencies under its portfolio;
- (b) to carry out detailed scrutiny of certain activities being undertaken by the Government ministries, departments and/or agencies under its portfolio and make appropriate recommendations to the House for ultimate consideration by the Government;
- (c) to make, if considered necessary, recommendations to the Government on the need to review certain policies and certain existing legislation; and
- (d) to consider any Bills that may be referred to it by the House.

Meetings of the Committee

- 3. During the year under review, your Committee held fourteen meetings. In line with its programme of work, your Committee considered the topical issues set out hereunder.
 - A. The Causes and Extent of Torture in Zambia.
 - B. Conflict Management in the Electoral Process in Zambia.
 - C. Review of Operations of the Child Development Department, Ministry of Gender and Child Development.

To consolidate its study; your Committee also undertook a benchmarking visit to Kenya.

Arrangement of the Report

- 4. Your Committee's Report is organised in three Parts: Part I deals with the deliberations of your Committee in relation to the topical issues identified in its Programme of Work; Part II presents the findings, observations and recommendations of your Committee during its study tour to Kenya; and Part III deals with the your Committee's consideration of the Action Taken Report on the Report of your previous Committee for the Third Session of the Eleventh National Assembly.

Procedure Adopted by the Committee

- 5. During the period under review, your Committee considered three topical issues. In order to fully appreciate the issues under its consideration, your Committee invited various

stakeholders relevant to each of the topics under consideration, to provide both written and oral submissions. Below is a brief background to each of the topics discussed by your Committee, the objectives of your Committee's study, a list of witnesses who made submissions on each topic and a synopsis of the submissions made by the witnesses relating to each topic. Immediately following the summary of the submissions on each topical issue are the observations and recommendations made by your Committee on that topical issue.

PART I

CONSIDERATION OF TOPICAL ISSUES

A. THE CAUSES AND EXTENT OF TORTURE IN ZAMBIA

Background

6. Torture is a grave human rights violation. It involves treating a person in a cruel, inhuman and degrading manner and can seriously harm the integrity of the victim, both emotionally and physically. Acts of torture go against the victim's non-derogable right to human dignity and the right to life. Many international legal instruments, such as the Universal Declaration of Human Rights (UDHR), the International Convention on Civil and Political Rights (ICCPR) and the African Charter on Human and People's Rights (ACHPR), prohibit torture. Consequently, it is universally accepted that torture cannot be justified on any ground and its prohibition cannot be suspended by the state under any circumstance. In fact, the State must not only avoid torturing its citizens, but must also act promptly to stop torture and other cruel, inhuman and degrading treatment of its citizens by anyone. Therefore, strong legislation on torture, guided by the principles of the United Nations Convention Against Torture (UNCAT) would provide a clear approach in tackling the multi-dimensional aspects of torture and its effects. The UNCAT obliges each State Party to make torture a crime, punish those who are found guilty of it, and provide adequate support to victims. The State Party is also required to undertake education and awareness raising programmes regarding the prohibition of torture.

Except for article 15 which provides that "A person shall not be subjected to torture, or to inhuman or degrading punishment or other like treatment" there is no specific legislation on

the Zambian statute books that criminalises torture per se or provides for punishment of perpetrators and support to victims. As a result, perpetrators often go unpunished if not prosecuted under general assault-related offences such as unlawful wounding, assault occasioning actual bodily harm or grievous bodily harm as provided under the *Penal Code*. Concern has, therefore, been expressed that in its current state, the Zambian legal landscape in general does not clearly address issues of punishment of offenders as well as provision of support to victims. Nevertheless, the outcome of any litigation over torture matters in Zambia under Article 15 of the Constitution of Zambia and Article 28 which provides for enforcement and protective provisions to the issues of punishment of offenders, and compensation to the victim, solely depend on an individual's Judges decision of each case of allegation of torture.

Objectives of the Study

The objectives of your Committee's study were to:

- a) understand what is deemed to be torture in the Zambian context, its causes and most prevalent forms;
- b) appreciate the legal framework relating to torture as well as the role of the Zambian Courts in the prevention of torture in the justice system; and
- c) appreciate the institutional mechanisms in place for punishment of offenders, rehabilitation of torture victims, awareness raising and other related matters.

Stakeholders

Your Committee interacted with the stakeholders set out hereunder for this study:

- (a) the Chief Administrator, the Judiciary;
- (b) the Ministry of Home Affairs - the Zambia Prisons Service;
- (c) the Zambia Police Force;
- (d) the Police Public Complaints Authority;
- (e) the Ministry of Justice;
- (f) the Zambia Law Development Commission;

- (g) the Human Rights Commission;
- (h) the Council of Churches in Zambia;
- (i) the National Prosecutions Authority (NPA);
- (j) the Non-Governmental Organisations Coordinating Council (NGOCC)
- (k) Southern Africa Centre for the Constructive Resolution of Disputes (SACCORD);
- (l) Prisons Care and Counselling Association (PRISCCA); and
- (m) the University of Zambia (UNZA) - School of Law.

Summary of Submissions by Stakeholders

A synopsis of the submissions made by stakeholders who appeared before your Committee is presented below.

DEFINITION OF TORTURE IN THE ZAMBIAN CONTEXT

7. Stakeholders submitted that the term torture was not defined in Zambian legislation as there was no specific legislation in Zambia that holistically addressed torture. However, Zambia is a member of the United Nations and had signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). In this vein, Article 1 of CAT defines torture as follows:

“Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

Your Committee learnt that from the above definition, four elements of torture could be deduced:

- i) there must be a deliberate infliction of severe mental or physical pain or suffering;
- ii) such pain or suffering must be inflicted by a public official or any person acting in an official capacity, who is directly or indirectly involved;
- iii) such pain or suffering must be inflicted for a specific purpose; and
- iv) such infliction of pain or suffering must not be sanctioned by law.

From the above definition, it was worth noting that private individuals or institutions that had been ascribed public functions may be as guilty of committing acts of torture as public institutions. Further, these entities could not claim indirect involvement or lawful orders as a defence for torture. From the explicit wording of the CAT, no exceptional circumstance whatsoever was provided and no order from a superior may be invoked as a justification for torture. Further, from the definition contained in the CAT, any of the acts that were deemed to be torturous under the Convention were proscribed even if national laws permitted them. The use of the word 'law' in the Convention referred to both national and international law. The definition of torture in the Convention explicitly excludes pain or suffering arising only from, inherent or incidental to, lawful sanctions. The lawfulness of a sanction should be determined by reference to both national and international standards, including the United Nations Standard Minimum Rules for Treatment of Prisoners.

Your Committee was informed that the definition of torture recognised the high value attached to human life. The very essence of being human was being able to live a life of dignity and integrity. Acts that were considered to be torturous devalued human life and offended the principle of a life of dignity and integrity for all. Cruel, inhuman or degrading (CID) treatment or punishment on the other hand, was a less grave form or act of torture. More specifically, cruel, inhuman or degrading (CID) treatment or punishment referred to:

- any harsh or neglectful treatment that could damage a detainee's physical or mental health; such a treatment may characterise, for instance, prison conditions; and
- any punishment intended to cause physical or mental pain or suffering, or to humiliate or degrade the person concerned.

Cruel, inhuman or degrading treatment included acts that inflicted mental or physical suffering, anguish, humiliation, fear or debasement, but that fell short of torture. The term torture could, therefore, be differentiated from other forms of degrading treatment. The differences were succinctly summarised by one Constitutional Law expert who stated as follows:

“The differences between torture and other types of forbidden treatment lies in the kind, purpose and severity of the suffering inflicted. In these other cases, a certain minimum amount of pain or suffering is imposed but one or several of the essential elements of the term torture are lacking. Inhuman treatment includes all forms of imposition of severe suffering that are unable to be qualified as torture for lack of one or its essential elements (imposing suffering that does not reach the necessary intensity) such as beating, rape, deprivation of food, water and medical treatment, delayed execution, and particularly harsh conditions of detention. Degrading treatment essentially involves the humiliation of the victim, regardless of whether this is in the eyes of others or those of the victim himself or herself such as women hanging naked from handcuffs, repeated solitary confinement, subjection to cold, persistent relocation to a different cell, corporal punishment, handcuffing, slapping or hair pulling if contrary to the principle of proportionality”.

Furthermore, your Committee learnt that the main problem of Zambia’s prisons was overcrowding. When they were built, the prisons were designed to only take up to 5500 inmates but in recent years the prison population had increased to around 16500 in 2012. A survey carried out by the UN on crime trends and operations of criminal justice systems showed that Zambian prisons were the most crowded in the world. There were reports of people detained in prison whose appeals had been pending for close to 27 years. Additionally, the prisons were characterised by poor sanitation, dilapidated infrastructure, inadequate and deficient medical facilities, meagre food supplies and lack of portable water, which resulted in serious outbreaks of dysentery, cholera and tuberculosis which were exacerbated by overcrowding. This implied that the many prisoners were enduring filthy

and overcrowded cells. Some of these detention cases could be described as torture, but even where they did not meet the requirements to be termed torture, they certainly amounted to cruel and inhuman or degrading treatment.

From the above, your Committee was informed that while there were some points of difference between torture and inhuman or indeed degrading treatment, the underlying factor was that all these forms of inhuman treatment offended human dignity and were proscribed under international human rights regimes.

CAUSES AND PREVALENT FORMS OF TORTURE IN ZAMBIA

8. Your Committee learnt that despite the pervasiveness and severe consequences ascribed to torture, little empirical research had been carried out on this issue in Zambia and the related consequences, creating a critical gap in empirical data. Existing empirical literature (arising out of the work of the Human Rights Commission (2013), United States Department of State (2011), Open Society Initiative for Southern Africa (2011) and Human Rights Watch (2010)) in Zambia focused on prison conditions and human rights violations committed by the police. Therefore, the extent to which Zambian laws protected vulnerable groups against torture and inhuman treatment was not well documented. In this regard, no significant inquiry had been undertaken on the forms, causes and the effects of torture on vulnerable groups (such as women, children of female prisoners, juveniles, people living with HIV/AIDS, and people with disabilities).

A. Causes of torture in Zambia

Notwithstanding the above, stakeholders who appeared before your Committee submitted that the reasons outlined below were some of the key causes of torture in Zambia.

Absence of a specific legal framework criminalising torture - There was no provision in the Penal Law regime in Zambia that provides for torture as a crime. To this effect, officers implicated in acts of torture were charged with the offence of causing grievous bodily harm

under the *Penal Code, Chapter 87* and not torture. This lack of specific provisions criminalising torture had itself perpetuated acts of torture.

Impunity for perpetrators of torture - Torture was committed with impunity as there were no effective legal remedies such as punishment of offenders. A Human Rights Commission report pursuant to a study conducted in 2013 stated that police frequently used excessive force, including torture, in the conduct of criminal investigations. However, these acts went unpunished unless they resulted in death or somehow attracted public attention. This meant that many torture victims and/or their families often did not obtain remedies for various acts of torture suffered.

Furthermore, your Committee learnt that the Zambian Government has established the Police Public Complaints Authority (PPCA) in 1999 through the amendment of the *Zambia Police Act, Chapter 107* of the Laws of Zambia. The PPCA was created to improve police conduct towards members of the public. The Act empowers the PPCA to direct prosecution or dismissal of police officers who were suspected of committing violations of human rights, torture inclusive. While it was gratifying to note that since 2005, officers found guilty by the PPCA had been dismissed or discharged on recommendation by the PPCA, it was worrying that none of the perpetrators of torture had been prosecuted. This was clearly because of reluctance on the part of duty bearers under the Act to carry out such prosecutions. This has sent a message to police officers that the worst punishment that they could get for such conduct was dismissal from work. This was not a stiff enough punishment for someone guilty of torture and thus would not provide the required deterrence or indeed retribution for the offence committed.

Inadequate resources for the Zambia Police Force - Inadequate resources available to the Zambia Police Force to carry out thorough investigations in a professional manner leads invariably to the use of torture as a tool for investigations. Reports by the Human Rights Commission and the Government itself indicated that the number of police officers was inadequate. Ideally, there should be 27,000 police officers in the country but only about half of this number was currently in service. Further, most police stations and police posts

had no means of transport, telecommunication facilities and even accessories such as stationery were in short supply. In other words, the Zambia Police Force was not only an understaffed but also an under-funded institution. Lack of adequate resources forced the police and others carrying out public functions, in the criminal justice system, to depend very heavily on confessions from suspects and suspects' friends and relatives.

Lack of modern investigative skills - The police were required to perform their functions within the framework of the law which they had sworn to uphold. They had a duty to investigate crime by gathering admissible evidence which was required for successful prosecution of offenders. Some police officers relied on confessions which they extracted from suspects through torture because they did not have the skills to conduct criminal investigations effectively. Many accused persons had been acquitted due to shoddy investigations by police officers, thereby defeating the ends of justice as a result of lack of knowledge of forensic science and other modern investigative techniques.

Work environment of the police and occupational stress - The work environment and stress under which members of the Police Force operate can cause some officers to behave in an aggressive manner. Police officers did sometimes face grave danger, and they felt unappreciated by the public. In fact, policing was one of the most stressful jobs. There were times when they had to use force in apprehending suspects or to defend themselves against armed bandits. Unfortunately, stress may also affect the way some police officers treat suspects. They may be hostile and vent their anger and frustration on suspects, especially if they feel that their authority is being challenged.

Lack of close supervision of junior officers by their superiors – There was need for close supervision of junior officers in the Police Force by superiors to ensure that they adhered to professional conduct at all times.

Lack of comprehensive continuous professional development for the Police - Lack of comprehensive continuous professional development for police officers in the area of human rights has also contributed to the occurrence of police brutality generally and the

high number of cases of torture in particular. Even though there were occasional training opportunities in human rights for law enforcement officers, these were not well planned and delivered. This meant that there was no uniform understanding of the subject amongst serving police officers themselves, but there was also the possibility that new recruits had not been adequately trained in the area of human rights.

Lack of public sensitisation on human rights - The Zambian public also needs to be continuously educated on their fundamental human rights to help entrench a culture of holding duty bearers accountable for their actions. The more people in communities were taught about torture and human rights generally, the more of these cases would be reported, properly investigated and prosecuted. Currently, it was worrying that some members of the public in fact encourage police officers to torture suspects. Enhanced sensitisation of members of the public would also help communities engage with their civic leaders about creating conducive legal and policy frameworks to address the vice of torture.

B. Prevalent forms of torture in Zambia

Your Committee was informed that reports of torture by Police were widespread in Zambia, for example there were numerous reports of Police brutality, torture, detentions without trial, extra-judicial killings and overcrowding in detention centres. Suspects were frequently physically beaten in a bid to extract confessions from them. Furthermore, even persons who were not suspects were sometimes detained and ill-treated if they were related to or friends of a suspect who failed to report to the police. The prevalent forms of torture in Zambia which had been repeatedly cited in various reports included those outlined below.

- i) ***Denying Freedom of Movement*** – this was done by restricting movements after certain times and any person found moving after the prescribed times were beaten by police who patrolled the areas where the restriction was placed. Some people were detained overnight in police cells and/or until they paid some fine to the police.
- ii) ***Beating (in some cases leading to death) of suspects detained in Police Custody*** - this was done in order for the suspects to provide information to the police in a

criminal investigation. Many of these suspects were beaten whilst handcuffed and suspended on a makeshift swing popularly known as “kempelwa”. The “kempelwa” was a common Zambia police torture technique where a person was suspended in the air on a metal rod, with the hands and legs tied together and the rod placed in between. The body was then swung round the rod, and as the body swung, the police beat the person using different whips, mostly rolled up electric cables and iron bars. In other cases, police officers beat up suspects using various instruments such as a plank with a nail in it, which inflicted serious injuries on the suspect’s body.

- iii) ***Beating of relatives of detainees or convicts*** – this was also done in order to obtain information relating to criminal investigations.
- iv) ***Detention of family members*** – this involved detention of members of the family of a suspect in the quest as to elicit information on the whereabouts of the suspect or some other information demanded by the Police.
- v) ***Beating to death of a complainant or whistleblower*** – in some cases, the police beat to death a person who reported an incident in which other police officers had previously abused him/her or another person. This was meant to ensure that such a complainant or whistleblower did not pursue the complaint. It was also commonplace for police officers to beat up and detain a complainant who expressed his displeasure at how the police handled his or her case.
- vi) ***Police harassment, detention, beating or shooting of a person for a civil debt*** – in some cases, persons who failed to settle civil debts were harassed, detained, beaten, or even shot to death by the Police.
- vii) ***Detaining, harassing and beating innocent people on account of the Police Authority or Power to Detain*** – the police grossly abused the power to detain as anybody could be detained on the pretext of assisting with investigations and later released if there was insufficient evidence against him or her. In some cases, people

were detained merely because friends or relatives of police officers made complaints against such people. In some cases, suspects were often unlawfully detained at the police cells for long periods of time, contrary to the provisions of the law without being charged or taken to court for trial.

- viii) ***Beating to death persons with mental disabilities*** - In some cases, persons with mental disabilities were accused of theft, and became victims of police brutality.
- ix) ***Prolonged interrogation*** – Some people were subjected to prolonged interrogation on suspicion of various offences.
- x) ***Ordering other detainees in the Police Cells to harass and beat up a fellow detainee***
- The police officers sometimes ordered other suspects to harass or beat up a particular detainee in the cells if they had a particular interest in his or her case.
- xi) ***Sexual abuse*** - Police officers were known to demand sex from female detainees as a condition for their release. Similarly, raping of women and girls in police custody was also prevalent. Such acts also constituted acts of gender-based violence as defined under the *Anti-Gender Based Violence Act*.
- xii) ***Other forms of torture*** – Torture could take many other forms such as suffocation; burning; submersion; stretching; prolonged hours of standing, sitting or squatting; amputation or finger presses; electric shock; starvation; deprivation of water; deprivation of medical treatment; ridicule; isolation; exposure to undesirable fumes, gases, smells or excretory matter; and prolonged exposure to light, darkness or other harmful matter.

LEGAL FRAMEWORK RELATING TO TORTURE IN ZAMBIA

International and Regional Legal framework on Torture applicable to Zambia

9. Your Committee was informed that Zambia is a party to a number of international human rights instruments that proscribe torture. Key amongst these are the UN Convention against Torture (UNCAT) and the International Covenant on Civil and Political Rights (ICCPR).

Zambia acceded to the UNCAT in 1998. Article 1 of the UNCAT defines torture and Article 4 obliges member States to outlaw torture in their national law. Another key feature of the UNCAT was that it guaranteed an absolute right to freedom from torture. Under Article 2(3) of this Convention, no actions or inactions could justify acts of torture. Article 5 of the UNCAT permits prosecution of torturers wherever they were found in the territory of a State Party to the Convention, if the torturous act was committed in that State. At Article 20, the UNCAT also states that an international inquiry could be held for a particular State Party if there was reliable information of torture being systematically practiced in that Country. If there was a possibility that a person would be subjected to torture, the UNCAT prohibited the expulsion, return or extradition of such a person to the State where such torture was likely to occur. However, Zambia had placed a reservation on Article 20 to curb international inquiries against it if evidence of systematic torture was found. Further, Zambia had not recognised the competence of the Committee against Torture, which was the body that monitored the implementation of the UNCAT and made recommendations for improvements to State Parties. The Committee and its mandate were provided for in Articles 21 and 22 of the UNCAT. The Committee conducted its business through two mechanisms: inter-state complaints and individual complaints. Under Article 19, however, Zambia was obliged to give periodic reports on progress made in line with the UNCAT.

Another international instrument relevant to torture was the International Convention on Civil and Political Rights (ICCPR). Zambia is a signatory to the ICCPR. This international human rights instrument does not focus exclusively on torture, unlike the UNCAT. It guarantees broader civil and political rights, including protection from torture, right to personal integrity and human dignity. Article 7 of the ICCPR provides that:

“No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

At regional level, Zambia is a member of the African Union and a State Party to the African Charter on Human and Peoples Rights (ACHPR). Article 5 of the ACHPR provides that:

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

It was evident from the above provisions in various international legal instruments on torture that at the core of this right was the desire to protect human dignity from unwarranted violation. It was also clear that the drafters of the ACHPR specifically recognised slavery and slave trade as some of the forms of torture that Africans were subjected to.

National Legal Framework on torture applicable to Zambia

Apart from Article 15 of the Constitution, there was no specific law in Zambia which holistically addressed torture. Article 15 of the Zambian Constitution proscribes torture, inhuman and degrading treatment and guarantees freedom from such treatment. It is one of the few provisions in the Zambian Bill of Rights that does not have permissible derogations. This means that this right was absolute - it must be respected, promoted and protected with no exception. The Constitution further, in Article 28 affords any person the right to seek redress for torture by any person. However, the Constitution does not define what amounted to torture. This was particularly problematic because there was no statute that specifically ensured that this provision of the Constitution is clearly spelt out as to the elements of the acts which amount to torture.

Some aspects of torture, such as gender based violence and rape, are criminalised but even these aspects did not attract a higher punishment if done to meet the ends of torture,

inhuman or degrading treatment. This was also true where torturous acts have been prosecuted under the provisions of the *Penal Code* relating to assault in its various forms.

Your Committee also learnt that Zambian legislation legally provide for the death penalty (Article 12 of the Constitution) and there had been no judicial pronouncement on the subject. Further, some of the practices conducted in the course of effecting a death penalty could amount to torture, especially in the Zambian context where people condemned to death were kept on death row for many years before execution. This could be a serious form of psychological torture. The practice globally was moving towards the abolition of the death penalty.

Other legislative provisions that were aimed at preventing acts of torture or cruel, inhuman and degrading treatments were the following:

- (i) the *Zambia Police (Amendment) Act, No 14 of 1999* provides measures that operated to protect and monitor persons in police custody. Custody officers are designated to be directly responsible for the welfare of detainees;
- (ii) the *Prisons Act, Chapter 97* of the Laws of Zambia safeguards the welfare of prisoners by providing for the management and control of prisons and prisoners; this Act contains regulations that protect prisoners from cruel, inhuman and degrading treatment in matters such as hygiene, sanitation, diet, space and medical attention; and
- (iii) the *Refugees (Control) Act, Chapter 120* of the Laws of Zambia guarantees the protection of refugees from refoulement.

INSTITUTIONAL MECHANISMS FOR ADDRESSING TORTURE IN ZAMBIA

10. A number of laws in Zambia have mandated specific institutions to address torture, inhuman and degrading treatment. These institutions and their core functions are discussed briefly below.

i) The Human Rights Commission (HRC)

Key among the institutions responsible for dealing with torture was the Human Rights Commission (HRC). The HRC was established by Article 125 of the Constitution of Zambia. Its establishment was done in line with the international guidelines on the establishment and operation of national human rights institutions (NHRI's), commonly referred to as the Paris Principles.

Section 3 of the *Human Rights Commission Act, No 39 of 1996* states that the HRC was an autonomous body, and not subject to the direction of any person or authority in the execution of its duties. At section 9, the Act provides that the HRC is a national human rights institution which is mandated to investigate human rights violations; investigate any maladministration of justice; propose effective measures to prevent human rights abuse; visit places of detention or related facilities with a view to assessing and inspecting conditions of the persons held in such places and make recommendations to redress existing problems; establish a continuing programme of research, education, information and rehabilitation of victims of human rights abuse to enhance the respect for and protection of human rights; and do all such things as were incidental or conducive to the attainment of the functions of the Commission."

ii) The Zambia Law Development Commission

The Zambia Law Development Commission (ZLDC), a statutory body, is mandated to undertake research and make recommendations on the socio-political values of the Zambian people that should be incorporated into legislation. The ZLDC also has a mandate to investigate and recommend revision and reform of the law, elimination of anomalies in

the statute book, improvements in the administration of the law and dispensation of justice and generally ensuring that the law should develop and remain responsive to the needs of Zambian society, among other things.

This Institution is thus relevant to addressing torture, inhuman and degrading treatment as it could contribute to the creation of a conducive legal and policy framework for curbing the vice and incorporating the respect for human rights into the law of the land.

iii) The Zambia Police

Another relevant institution with regard to addressing torture in Zambia is the Zambia Police Force, established under Part VII, Article 103 of the Constitution. The *Zambia Police Act, Chapter 107* of the Laws of Zambia provides for the organisation, functions and discipline of the Zambia Police. The Zambia Police (ZP) is the body tasked to maintain law and order and is responsible for protecting life and property; preserving peace; ensuring the security of the people; preventing and detecting crime; protecting the rights and freedoms enshrined in the Constitution; fostering and promoting a good relationship with members of society; and performing other functions as provided by the Act. Your Committee was informed that learnt that whereas the law creating the Zambia Police Force was clear in stating its functions and boundaries, the practice of the Police Force was different, and it had emerged that one of the main perpetrators of torture, inhuman and degrading treatment in Zambia was the Zambia Police Force. The Police could not, therefore, provide an effective mechanism for addressing torture until they addressed their internal inadequacies vis-à-vis carrying out torture-free investigations.

iv) The Police Public Complaints Authority

The *Zambia Police Amendment Act, No 14 of 1999* constituted the Police Public Complaints Authority (PPCA). This institution is created to improve police conduct towards members of the public by recommending the prosecution of police officers who were charged with committing acts of torture, among other things. This institution, however, needs capacity building to ensure that it carries out its functions effectively under the Act. Further, its

mandate does not cover other law enforcement agencies such as the Drug Enforcement Commission, the Immigration Department, the Zambia Prisons Service and the Zambia Wildlife Authority.

v) The Director of Public Prosecutions (DPP)

Another institution that was well placed to address torture, inhuman and degrading treatment was the Director of Public Prosecutions (DPP). Article 56 (1) of the Constitution creates this office and the office holder was appointed by the President. The DPP was mandated to institute and undertake criminal proceedings against any person before any court, other than a court martial, in respect of any offence alleged to have been committed by that person. The DPP was further expected to take over and continue any such criminal proceedings as may have been instituted or undertaken by any other person or authority. In addition, the DPP may discontinue, at any stage before judgement was delivered, any such criminal proceedings instituted or undertaken by herself or himself or any other person or authority. The general prosecutorial functions in Zambia fell under the National Prosecution Authority (NPA), a statutory body created under the *National Prosecutions Authority Act, No 34 of 2010*. The Act protected the NPA from interference in the performance of its functions by any person. It was only subject to the direction of the DPP. However, the authority of the DPP was with exception to matters of public policy, where the DPP was subject to the direction of the Attorney-General.

vi) The Commission for Investigations

Your Committee was informed that another key institution in addressing torture was the Commission for Investigations, commonly known as the Ombudsman. This office is established pursuant to Article 90 of the Constitution. *The Commission for Investigations Act, Cap 39* of the Laws of Zambia provided for the Commission's powers and functions. Section (a) and (b) of the Act confer jurisdiction on the Commission to inquire into the conduct of any person to whom the Act applied in the exercise of his/her office or authority or in abuse thereof whenever so directed by the President; and unless the President otherwise directs, in any case in which it considers that an allegation of maladministration

or abuse of office or authority by any such person ought to be investigated. Evidently, this institution is well placed to investigate acts of torture by any public officer.

vii) The Legal Aid Board

The Legal Aid Board was also well placed to provide redress to victims of torture as well as persons wrongly accused of committing acts of torture. The Legal Aid Board provides free legal services to the indigent, particularly those subject to the criminal justice system.

viii) The Judiciary

The Judiciary, on the other hand, is the organ of the state that interprets laws. Article 91(1) of the Constitution vests the adjudicative power of the Republic of Zambia in the Judicature of Zambia, which consists of the Supreme Court of Zambia, the High Court for Zambia, the Industrial Relations Court, the Subordinate Courts, the Local courts and such lower courts as may be prescribed by an Act of Parliament. On the other hand, the Judiciary is enjoined to ensure that the rule of law was adhered to and that any person guilty of torture was punished in accordance with the law. The Judiciary is also required to ensure that all legislative and executive powers were checked and that none of them went against the standards set in the Constitution.

The aforementioned institutions are appropriate for carrying out the functions similar to those of the Committee against Torture alluded to above. If these institutions were strengthened, they could adequately and effectively address torture in Zambia.

COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

11. Your Committee wishes to reiterate that torture is a vice which is rampant in Zambia. Although torture arises from acts committed by public officials, the acts of private persons and entities are also increasingly receiving recognition as proscribed acts of torture under instrument law and covenants. The International Criminal Court has held that torture can be committed by public and private individuals or entities. Torture is a dehumanising act and often has lifelong effects on its victims, hence the need for this vice to be eliminated.

Following its interactions with various stakeholders, your Committee wishes to make the observations and recommendations outlined below.

- i) **Absence of a clear legal framework** - The absence of a definition of torture in the Constitution and the non- criminalisation of acts of torture has made it difficult for law enforcers in Zambia to charge perpetrators appropriately. The use of the provisions of the *Penal Code* to prosecute cases of torture has made it possible for many acts of torture to go unpunished. Even in cases where a perpetrator is convicted for, say, an assault, this offence is less grave than torture and the court may be at a loss because there are no specific provisions regarding how perpetrators of torture should be tried and punished.

In this regard, as Zambia goes through the constitutional, legal and justice sector reform processes, your Committee strongly recommends that the country fully domesticates the UNCAT through provisions clearly defining torture and specifically stating acts constituting torture both in the Constitution and subsequently in the relevant statutes. The provisions should include appropriate penalties taking into account the gravity of torture.

- ii) **Zambia's Reservation on Article 20 of UNCAT and failure to recognise competence of Committee against Torture** - Your Committee is worried that Zambia has maintained its reservation on Article 20 of the UNCAT, which effectively curbs international inquiries against it if evidence of systematic torture is found. Further, your Committee is concerned at Zambia's failure to recognise the competence of the Committee against Torture, which is the body that monitors the implementation of the UNCAT and makes recommendations for improvement to State Parties. These two positions adopted by Zambia give the impression that Zambia does not want to be held accountable under the UNCAT and that Zambia is not fully committed to eliminating torture.

Your Committee, therefore, implores the Government of Zambia to demonstrate commitment to the elimination of torture by lifting the reservation and

recognising the competence of the Committee against Torture. This will send a clear message to would-be perpetrators of torture that acts of torture will not be tolerated by Zambia and the State will not protect perpetrators of torture.

- iii) **Limited mandate of the Human Rights Commission** - Although the mandate of the Human Rights Commission includes investigating complaints such as torture, your Committee observes that its findings lead to mere recommendations, which have no legal coercive effect.

Your Committee recommends that the Commission be empowered to prosecute cases of human right abuse, especially those perpetrated through torturous acts.

- iv) **Need to Broaden mandate of the Police Public Complaints Authority** - Since the main perpetrators of torture have been identified as the police, your Committee observes that it is unrealistic to expect the police to objectively prosecute their colleagues who perpetrate torture. In this regard, your Committee is concerned that the Police Public Complainants Authority (PPCA) is only empowered to make recommendations with regard to dismissal and prosecution of such officers to be acted upon by the Government.

Your Committee strongly recommends that as a matter of urgency, legislative changes are initiated aimed at empowering the PPCA to prosecute police officers found to have perpetrated acts of torture. In a similar vein, the mandate of the PPCA should be broadened so that it covers other law enforcement agencies such as the Drug Enforcement Commission, the Immigration Department, Zambia Prisons Service and the Zambia Wildlife Authority.

- v) **Urgent need for strengthened public sensitisation** - Your Committee notes that many Zambian citizens are not aware of their human rights in general, including the right to freedom from torture, hence they tend not to demand them.

Your Committee strongly recommends that the Government should urgently strengthen the public sensitisation programmes being undertaken under the Human Rights Commission on what amounts to torture in order to empower the citizens to claim their rights. In the same vein, victims of torture should be encouraged to take legal action against the perpetrators.

- vi) **Impunity of perpetrators of torture** - Your Committee notes that many victims of torture feel discouraged from complaining and pursuing complaints relating to torture because they have no confidence that their complaints will be handled impartially and competently. Your Committee is particularly alarmed to note that one of the key characteristics of torture cases is the impunity of the perpetrators. Indeed, in spite of the numerous complaints by victims of this crime, few cases have been brought to the courts to date.

Your Committee, therefore, strongly recommends that persons alleging torture must be afforded the right to complain and that for its part, the Government must take measures to ensure that allegations of torture are investigated competently, promptly and impartially through competent authorities and perpetrators punished.

- vii) **Compensation and rehabilitation of victims of torture** - Your Committee, while noting that the Government has established the Zambia Police Victim Support Unit (VSU) under the *Zambia Police Act* to offer counselling services to victims of crime, including torture, observes that most torture victims are not afforded compensation or rehabilitation even in the few cases where such cases are successfully prosecuted. This is because the VSU handles various types of cases apart from cases of torture, and is not even equipped to specifically handle cases of torture.

Your Committee, therefore, strongly implores the Government to initiate measures aimed at ensuring that victims of torture are afforded an enforceable

right to fair and adequate compensation including, where possible, full rehabilitation.

viii) **Need to completely outlaw the use of evidence obtained through torture in criminal proceedings** - Your Committee notes that the investigative wings of the Government routinely use torture as a method of obtaining evidence for use in criminal proceedings. In this regard, your Committee recommends that the Government takes legal measures to ensure that statements obtained through torture are not admitted as evidence in any proceedings, except against a person accused of torture.

ix) **Need to empower and equip law enforcement agencies to carry out torture free investigations** - Your Committee notes the inadequate staffing levels, low budget provisions and lack of appropriate equipment in the law enforcement agencies.

Your Committee recommends that staffing levels in the investigative wings of Government be increased in order to increase the number of investigators. There is also need to increase budgetary allocations to investigative wings so as to avoid delays in the dispensation of justice. In addition, the investigators should be equipped with modern investigative tools and skills so as to conduct thorough investigations without resorting to torture.

x) **Work environment for police officers** - Your Committee notes that police work can be quite stressful and this may negatively affect the performance of some officers.

In this regard, your Committee recommends that the Police Command must deal with the issue of work-related stress among police officers by ensuring that officers who need psychological support are availed such help.

xi) **Content of education programmes for law enforcement officers** - Your Committee notes with concern that the content of various information and

education programmes for law enforcement officers does not adequately incorporate aspects of prohibition of torture and human rights.

Your Committee, in this vein, recommends that education and information programmes regarding the prohibition of torture be fully included in the training curricula not only of law enforcement personnel but also medical personnel, public officials and others who may be involved in the custody, interrogation or treatment of any person subjected to any form of arrest, detention or imprisonment. The Government should also have a programme of regularly reviewing interrogation rules, instructions, practices and also arrangements for the custody and treatment of persons in custody.

- xii) **Treatment of expelled aliens** - Your Committee notes with concern that the *Immigration and Deportation Act, No 18 of 2010*, which is the principal legislation in matters of expulsion of aliens, does not preclude the State from expelling a person to a country where such a person is likely to be tortured.

In this regard, your Committee implores the Government to initiate appropriate legislative changes so that no person can be expelled from Zambia (whether by return or extradition) when there are indications that the person would be tortured when he or she is deported or expelled to his or her country (non-refoulement).

B. MANAGEMENT OF CONFLICTS IN THE ELECTORAL PROCESS IN ZAMBIA

Background

12. While the society looks to elections to stabilise and legitimise government, elections often bring social tensions to a head, sometimes trigger serious conflict and even result in violence. Election-related conflict requires specifically designed responses for effective prevention, mitigation and resolution. It is important to note that the ability of an electoral process to achieve its democratic development objectives extends well beyond the election management body to the political actors, government agencies and security bodies, civic and media groups and national purveyors of justice to perform their respective roles in the

process. In other words, just as almost all sectors of society have an interest in the outcome of an election, they have equal responsibility in promoting its integrity. Therefore, there is need to develop a more comprehensive, multi-stakeholder approach to election conflict which would cover the entire election cycle. Such an approach would help identify links between the causes, tensions, outbursts and solutions to the conflict and help determine effective responses.

Zambia is not immune to the challenges of election-related conflict. It is a notorious fact that elections in Zambia have continued to be a source of conflict, and in some cases violence, despite the Electoral Commission of Zambia being mandated under the Electoral Act to manage and resolve electoral conflicts. In furtherance of this mandate, the Commission has established Conflict Management Committees at national and district levels. However, the problem of election-related conflict has continued unabated. Your Committee, therefore, considered that it was important to inquire into the reasons why this phenomenon continues to exist, the causes thereof and possible solutions thereto.

Objectives of the Study

The objectives of this study were to:

- (i) find out the causes of election-related conflicts in Zambia;
- (ii) understand the legislative and regulatory landscape relating to election-related conflict in Zambia; and
- (iii) appreciate the institutional arrangements in place for handling of election-related conflict in Zambia.

Stakeholders

The stakeholders for this study were:

- (a) the Electoral Commission of Zambia;
- (b) the Southern Africa Centre for the Constructive Resolution of Disputes (SACCORD);
- (c) Transparency International Zambia (TIZ);

- (d) Operation Young Vote (OYV);
- (e) CARITAS Zambia;
- (f) Zambia National Women's Lobby Group;
- (g) the Foundation for Democratic Process (FODEP);
- (h) Anti-Voter Apathy Project (AVAP);
- (i) the Forum for Democracy and Development (FDD);
- (j) the Movement for Multiparty Democracy (MMD);
- (k) the United Party for National Development (UPND);
- (l) the Zambia Police Force; and
- (m) the Anti Corruption Commission.

Summary of Submissions by stakeholders

A synopsis of the submissions made by stakeholders who appeared before your Committee is presented below.

13. Your Committee was informed by various stakeholders that elections by their nature were adversarial because they entailed that individuals or institutions, in this case political parties, competed against each other to be voted into positions of leadership and decision making. This required that the candidates or their parties, as the case may be, criticised each other's programmes and manifestos, questioned each other's track records and even the characters of party candidates and members. However, the conflict implicit in the electoral process was constructive and provided a useful context within which ordinary people could make decisions about their vote. If anything, an election was supposed to provide a mechanism for calling political leaders to account for their actions and policies, and whether these actions and policies served the public good and improved the quality of life for the citizens or not. Ideally, therefore, elections should be an instrument of conflict management as opposed to being a trigger of violence.

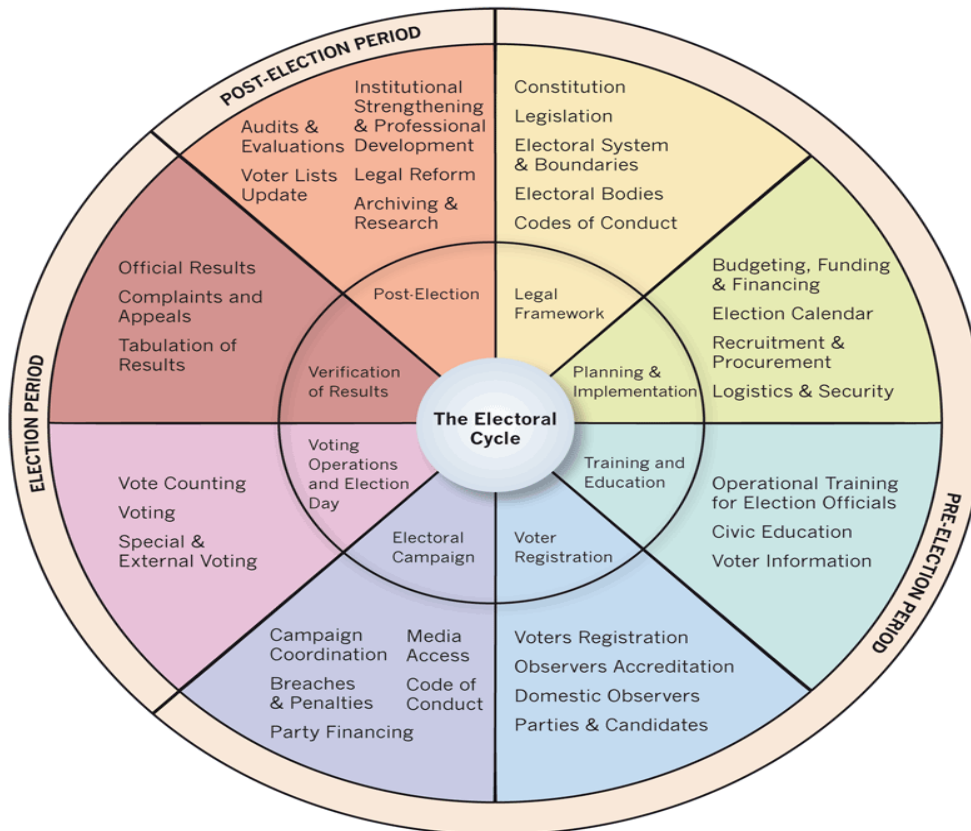
In Zambia, as in any other jurisdiction, an election was not a day's event but a process which determined which party would govern and the type of government to be formed. There were various sources of conflicts at different stages of the electoral cycle, and these could

be handled differently depending on the stage at which they occurred and the stakeholders involved as elaborated below.

STAGES OF THE ELECTORAL PROCESS AND POSSIBLE SOURCES OF CONFLICTS

14. Your Committee was informed that the causes of electoral conflicts and violence could be related to either short term or long term factors. Short term causes related to perceptions about unfairness or disadvantage, misunderstanding about the process, mechanisms or decisions in an election while long term causes related to deep-rooted social economic concerns related to diversity or perceived unfairness or discrimination by certain structures in the electoral system. The electoral cycle was made up of three main phases, namely: the Pre-election Phase, which involved voter registration and verification, announcement of the election date, nomination of candidates, campaigns and voter education; polling day, which involved actual voting; and the post election phase which involved vote counting and announcement of results. These stages are summarised in the figure below.

The Electoral Cycle



Source: *Building Resources in Democracy, Governance and Elections (BRIDGE) Materials*

i) PRE-ELECTION PHASE

a) **Legal Framework** - The Pre-election Phase of the electoral cycle was the largest in terms of proportion and number of activities and had a corresponding share of conflicts, which in turn had their own sources. Electoral conflicts in Zambia partly arose as a result of various constitutional provisions and the legislation flowing from these provisions. Some stakeholders believed that the current Constitution was basically a one party state Constitution that was being forced on the multiparty democratic dispensation. The Constitution was perceived as giving unfettered powers to the Republican President, which allowed the office holder to abuse public resources to the advantage of his/her political party at the expense of the other political parties and the rest of the stakeholders in the electoral system. The subsidiary legislation derived from the Constitution was equally perceived to be

weak and lacking proper enforcement mechanisms even when they contained good provisions.

b) Registration and Verification - During registration and verification of voters, there may be certain occurrences which could act as sources of electoral conflict, and these include:

- allowing ineligible people to register as voters;
- registering deceased or fictitious people;
- refusing to allow eligible people to register;
- failure by some eligible citizens to register as voters for example when the registration exercise was carried out in the rainy season;
- failure by some citizens to register as voters because they found it too onerous to access the registration centers repeatedly to register, verify their details and collect the voters' registration cards;
- failing to delete the names of deceased voters;
- deleting voters who were eligible from the roll;
- inadequate and partisan issuance of National Registration Cards (NRCs) and voter's cards;
- changing requirements for registration, for example citizenship requirements;
- inadequate time allocated to the voter registration and verification exercise resulting into disenfranchising some eligible voters; and
- not closing the voter's roll at the end of the stipulated period.

It was important to note that some of these factors may not actually exist, but mere perceptions of their existence could result into conflict as such perceptions could erode confidence in the electoral process.

c) Announcement of the Election Date - This could be a source of electoral conflict if the notice given before the election date was inadequate. Another source of electoral conflict at this stage was lack of consensus relating to when the date of elections should be and who should announce it.

d) **Nomination** - This activity could also result in some electoral conflict because of:

- excessive requirements for candidates to qualify for the nomination;
- prohibition of electoral alliances;
- unclear instructions as to the requirements for nomination;
- short notice before closing date for filing of nominations; and
- rejecting proposed party symbols without adequate reasons or accepting ones likely to confuse voters.

e) **Campaign** - During the campaign period, sources of conflicts could be the following:

- intimidation of opponents and voters and, in some cases, violence; this negatively affects female candidates and voters disproportionately compared to their male counterparts, and contributes to low participation of women in elective positions as well as increased voter apathy;
- perceived biased media coverage of political campaigns and denial of access or unequal access to the public media;
- inequalities in the use of campaign resources such as venues;
- alleged abuse of public resources for campaign purposes by some of the parties or candidates;
- malpractices, whether perceived or real, such as treating, bribery and vote buying, including initiation of development projects and distribution of relief food during the election period;
- character assassination during campaigns;
- failure to observe and enforce the *Electoral Code of Conduct*;
- where members of rival parties sought to disrupt their opponents' campaigns, intimidated voters and candidates and used threats and violence to influence voters;
- importation of cadres from other localities into an area where an election was imminent;

- destroying or defacing opponents' campaigns materials; and
- not letting voters have sight of sample ballot papers prior to the election.

f) Voter Education - Voter education activities could also be a source of electoral conflict because of:

- not giving sufficient time for voter education;
- dissemination of incorrect material/information; and
- not allowing civil society to conduct voter education.

ii) POLLING DAY

On Election Day there were a number of factors that could cause conflict and key among them were:

- late delivery of electoral materials;
- delivering insufficient electoral materials;
- suspicion of pre-marked ballot papers; and
- refusal by election officials to allow some voters to cast their ballots on account of improper or incomplete documentation.

iii) POST –ELECTION PHASE

The aftermath of a poll had its own challenges and some conflicts could arise from the handling of results. Specifically, conflicts could erupt because of:

- disqualification of valid votes;
- incorrectly counting the votes;
- loss or alteration of ballots or tally sheets;
- falsification of totals at collation centres;
- unreasonable delays in announcing results; and

- perceptions that the election had been rigged. This had traditionally been understood as stuffing of ballot boxes. However, it may manifest itself in various forms of electoral malpractices.

a) Other potential areas of Electoral Conflicts

Your Committee was informed that electoral conflicts could also arise when elections were organised as zero-sum events and losers were left out of participation in governance. Most of the above forms of conflicts usually broke out because of failure to resolve political and economic discrimination as competition for resources, including power, intensified. These causes tend to be amplified where the levels of diversity along ethnic, racial, religious or regional lines were high.

b) Stakeholders and how they contribute to escalating or curbing Electoral Conflicts

Your Committee was informed that various stakeholders played diverse but key roles in the electoral process. These include the voters, the Zambia Police Force, election observers, election monitors, the media, political parties and candidates, election and polling agents, traditional leaders, civil society, the donor community, the Anti-Corruption Commission and the Electoral Commission of Zambia. In performing their various roles, these stakeholders could contribute to either escalating or curbing electoral conflicts. Specifically, the following key stakeholders could contribute to either curbing or escalating electoral conflicts in the manner outlined below.

Political Parties

Stakeholders informed your Committee that in Zambia, intra party democracy was in short supply. The functions of political parties, other than as bodies for contesting elections to control government, were poorly understood by the public in general but also by most members of these political parties themselves. Furthermore, most parties had no systematic registration of membership and so depended on a few interested elite. Most political parties were characterised by poor internal communication and conflict resolution

systems, meaning that all aggrieved party members rushed to the media, and this made intra party-dialogue even more difficult.

Another threat to peaceful elections in Zambia was the escalation of inter party violence, mostly sparked by political polarisation between the ruling party and the opposition political parties. This reflected a deeply divided society in which two or more internally cohesive, sharply polarised and spatially mixed groups were implacably arranged against each other. Other challenges affecting peaceful coexistence amongst political parties are set out below.

- a) Political parties and their members regarded each other as enemies rather than as competitors with good will for the leadership of the same communities or societies. This has made it almost impossible to hold joint programmes aimed, for instance, at promoting peaceful co-existence among political parties.
- b) There was a tendency among political parties to point fingers at each other as the main perpetrators of violence while ignoring internal factors. This situation has further led to political parties not taking any internal measures to control their own members.
- c) Political parties were reluctant to curb violence by discouraging their members from taking the law into their hands because they felt that if they urged their members to refrain from violence and violent activities, their parties would be disadvantaged as there was no guarantee that their opponents would take similar action.

The Ruling Party

According to stakeholders, there was a perception that the ruling party (whichever one it may be at a given time) wielded strong influence on the state security agencies, particularly the police and intelligence officers, who were used to intimidate political opponents. Notably, the work of the police made a real difference in either promoting or negating free and fair elections. When the police acted in a partisan manner, they may help fan electoral conflicts, a situation which tarnished their image and reputation as they were seen as a partisan body that could not be trusted during the electoral process. Added to this, bias towards the ruling party by the police rendered them impotent to act against breaches of

the law by cadres belonging to the ruling party. Such bias within the Zambia Police was evidenced, for example, in the failure to fairly apply the *Electoral Code of Conduct*, the *Electoral Act* and the *Public Order Act*.

Conflicts also arose from the use of Government resources, such as transport, by the ruling party.

The Youth

Several stakeholders informed your Committee that oftentimes when there was election-related violence, some of the principal actors were young people. Although the youth were usually not the initiators of violence, they played a major role in the violence itself at the behest of their political party leaders. In much pre- and post-election violence, the youth were recruited and unleashed as ‘foot soldiers’ by party leaders for patronage. Predominantly, young people were brainwashed with party propaganda and hate speech before they were set upon opponents (of the same or a different political party). High levels of unemployment and poverty had turned the youth population in Zambia into fertile ground for the recruitment of participants in electoral violence. Cash, alcohol, food and promises of gainful employment and positions in the party and the Government were commonly used as baits. There was little ideological training to act with restraint, which explained the chilling and mindless violence visited upon political opponents by these youth.

The Media

Your Committee was informed that the media was another important stakeholder in the electoral process. A highly polarised and partial media could be a recipe for electoral violence. The role of the media in electoral conflicts was critical as it had the power to inflame the situation or lower the temperature through impartial reporting. During electoral conflicts in particular, the media was expected to behave responsibly and not to deliberately inflame the situation. The media should also accommodate independent and diverse views while at the same time avoiding comments that could exacerbate conflict. The media must ensure that their information was correct and timely so as to mitigate the

possibility of misunderstandings in the electoral process. Unfortunately, bias was evident in both the print as well as some electronic media in Zambia. It had been noted that in the instances of violence, the media in Zambia fanned the embers of hate and revenge while the sections of the media misinformed and employed partisan campaigns to promote their preferred political party or candidate. This has led to most members of the public trusting the social media, which could even be more dangerous, especially as these media were not accountable to anyone. To exacerbate the situation, even media practitioners had been targeted as victims of violence in recent elections.

The Electoral Commission of Zambia (ECZ)

The limited confidence exhibited by some political parties towards the ECZ with regard to the process also contributed to conflicts in the electoral process. This limited confidence was predicated on the apparent incapacity of the ECZ to deal firmly and decisively with various breaches of the *Electoral Code of Conduct*. Limited confidence in the ECZ was due to inadequate information by stakeholders, poor training of election officials, poor handling of election results, among others.

The Police

The manner in which the Police administered the *Public Order Act* was another key source of conflict. Currently, a number of stakeholders were of the view that the Police were biased in favour of the ruling party. The cancellation of public assemblies for which notice had been given to the police without credible reasons or in apparent preference for meetings of the ruling party, even where the ruling party had either not given notice or had given shorter than seven (7) days notice were cited as some of the Police practices which led to feelings of alienation by the aggrieved parties, ultimately creating conflicts in the electoral process. Some stakeholders submitted that even the administration of other statutes such as the *Penal Code* by the Police left much to be desired as the Police failed to apprehend and prosecute suspects if they were members of the ruling party but did so promptly if they belonged to the opposition parties. This increased the resentment and alienation of the aggrieved parties.

The Anti Corruption Commission (ACC)

The ACC plays a critical role in the fight against corruption, including corruption in the electoral process, as they were legally mandated to do so. However, the institution was perceived to be biased towards the ruling party, hence its work in most cases tended to contribute to and not curb electoral conflicts. The ACC also suffers from inadequate resources and staff which constrains its operations considerably.

The Courts of Law

The Courts were important entities which had the mandate of settling disputes, including those arising from the electoral process by interpreting the provisions of the law. By performing this role effectively and efficiently, the Courts could contribute to the reduction of electoral conflicts. However, the Courts in Zambia were also perceived to be biased towards the ruling party, hence a number of stakeholders had lost confidence in their work. Further, for a variety of reasons, court cases tended to take too long to conclude, so stakeholders were often unwilling to take their election related disputes to the Courts for adjudication, which could result in such parties taking the law into their hands.

Traditional Leaders

Traditional leaders could act as a unifying factor for their subjects who may hold divergent political views and belonged to different political parties. However, the use of traditional leaders by politicians to campaign for their political parties was not only contrary to the provisions of the law, but was also a source of conflicts between traditional leaders and their subjects who may not agree with the traditional leaders' preferred political party.

THE LEGISLATIVE LANDSCAPE RELATING TO THE ELECTORAL PROCESS IN ZAMBIA

15. Your Committee was informed that the principal legal instruments governing the elections in Zambia were the *Constitution of Zambia, Chapter 1* of the Laws of Zambia; the *Electoral Act, No 12 of 2006*; The Electoral (General) Regulations S. I. No 92 of 2006; the

Electoral Commission Act No. 24 of 1996; the Electoral (Code of Conduct) Regulations, S. I. No. 52 of 2011; and Local Government Elections Act, 1994. The key provisions relating to elections in these pieces of legislation were as follows:

i) Constitution of Zambia Act, Chapter 1 of the Laws of Zambia

Article 34 (1) and 38 (1) provides for the election of the President, and that elections must be held whenever the National Assembly was dissolved or within 90 days of the President vacating office by resignation, death or ceasing to hold office, respectively. Further, Article 34 (6) (b) provides that the election of the President must be by direct, universal suffrage and through a secret ballot. Parliamentary elections are provided for in Article 63, which states that the National Assembly shall consist of “one hundred and fifty elected members.” The Constitution further provides for the establishment of the Electoral Commission of Zambia (ECZ) in Article 76. It also provides for the enactment of an Act of Parliament (the electoral Regulations and Electoral Act) to prescribe the conduct of elections and matters related thereto in Articles 34, 67 (2).

Electoral Regulations 2006

ii) Electoral Act, No 12 of 2006

The *Electoral Act* provides the enabling legal and institutional framework for elections in Zambia. In general, the Act authorises the Electoral Commission of Zambia (ECZ) to undertake registration of voters, produce a voters’ roll and compile an election timetable. It also defines the criteria of who could be an election candidate and who could vote in an election in Zambia; spells out the composition of election officers; defines procedures and processes to be undertaken on an election day; defines the status of political party election agents, observers and monitors; defines corrupt and illegal practices and election offences; provides for conflict management; and further, provides for processes and procedures to be followed in election petitions. Section 109 of the *Electoral Act, No 12 of 2006*; provides for the power of the ECZ to make the Regulations. It was in exercise of these powers that the Electoral (General) Regulation and the *Electoral Code of Conduct* were promulgated.

Further, Part VII of the *Electoral Act* provides conduct and behaviours that constituted corrupt and illegal practices and election offences.

iii) *The Electoral (Code of Conduct) Regulations, 2011*

The *Electoral (Code of Conduct) Regulations, 2011* are a justiciable election code of conduct that defines the duties and prohibitions for all electoral stakeholders, including the ECZ; the Zambia Police Force; all election candidates; political parties and their agents; the media; as well as election monitors and observers. The Code also provides for a participatory and inclusive election conflict management process. The major prohibitions in the Code are provided in section 21, under the heading “General Offences.”

iv) *Electoral Commission Act, No 24 of 1996*

This Act provides for the composition of and other administrative matters relating to the Electoral Commission.

v) *Local Government Act, Chapter 282 of the Laws of Zambia, and Local Government Elections Act, 1994*

Section 12 of the *Local Government Act* provides for the election of councillors.

vi) *Public Order Act, No. 1 of 1996*

The *Public Order Act* (POA) regulates the right to assemble. The Act, as amended in 2001, provides that any person intending to assemble a public meeting, or procession, should notify law enforcement authorities in writing of such intent seven days before the meeting. The Act gave the Police discretion to permit or deny an assembly if it was deemed a threat to national security, if the Police considers that they could not at that time provide adequate protection, or that such an assembly might result in a riot or pose a threat to public safety. Thus, the Act prescribes that the Police could cancel an intended assembly, and that they should give the applying party 48 hours notice of cancellation. The *Public*

Order Act, No. 1 of 1996 was an amendment of the *Public Order Act, Chapter 113* sections 5 (4) and Section 7 (a) which provided that any person seeking to publicly assemble had to obtain a police permit before doing so.

vii) *Anti-Corruption Act No 3 of 2012*

The *Anti Corruption Act of 2012* is the principal piece of legislation enacted to combat corruption in Zambia. Section 34 of the Act is critical to election integrity. Section 34 gives the Anti-Corruption Commission jurisdiction to investigate and prosecute any offence of bribery prescribed under the *Electoral Act, 2006*.

CURRENT INSTITUTIONAL ARRANGEMENTS AND MECHANISMS IN DEALING WITH ELECTION RELATED CONFLICTS

The Electoral Commission of Zambia

16. Your Committee was informed that one of the mandates of the ECZ was to manage electoral conflicts and resolve disputes. This mandate was set out in section 111 of the Electoral Act. In pursuance of this mandate, the Commission had established Conflict Management Committees at national and district levels. These committees were composed of a Chairperson appointed by the Commission; a Vice Chairperson; one representative from each registered political party; representatives of civil society organisations and representatives of such Government ministries and institutions as determined by the Commission, such as the Zambia Police, Anti Corruption Commission and the Drug Enforcement Commission.

Functions of Conflict Management Committees

The Conflict Management Committees were mandated to manage and resolve electoral conflicts in a prudent and timely manner, with a view of achieving peaceful elections and mutual resolution through mediation of such conflicts. This was done through the publication and enforcement of the *Electoral Code of Conduct* which regulated the conduct

of the media, polling agents, political parties, monitors, observers and candidates during elections.

Apart from receiving complaints from electoral stakeholders on alleged breaches of the *Electoral Code of Conduct*, the Committees also attended to complaints based on alleged bias by electoral officers appointed by the Commission. This was cardinal for the holding of free, fair and peaceful elections.

Powers of the Conflict Management Committees

The Conflict Management Committees has powers to mediate electoral conflicts; advise the conflicting parties in an election conflict; report the matter to the Police for further action where a crime was committed during elections, for example, assault; and recommend the revocation of accreditation of any monitor or observer to the Commission.

Channelling of Complaints

Complaints to be resolved by the Conflict Management Committees (CMCs) should be in writing and addressed to the area Town Clerk/Council Secretary or to the Electoral Commission of Zambia. Once a complaint was received, a meeting was held within 24 hours of receipt of the complaint to assess whether the complaint should be handled by the CMC or referred to law enforcement agencies. The *Electoral Code of Conduct* directed that CMCs shall resolve or encourage amicable settlement of disputes within twenty four hours from the date of receipt of the complaint.

Your Committee was informed that the ECZ was the main institution mandated with the responsibility of preventing, managing, and resolving electoral conflicts with the help of the police, civil society and other stakeholders. In order to have guidance as well as legal backing, the ECZ was guided by the *Electoral Act* and the *Electoral Code of Conduct*, whereas the *Public Order Act* had influence on the electoral process, especially during campaigns in terms of facilitating political parties in their efforts to canvass for support from the public.

Depending on the gravity of the matter and the legal provisions contravened, the dispute could either be handled by the Conflict Management Committee or the law enforcement agencies. Where possible, these Conflict Management Committees helped to speedily resolve conflicts when they arose by building consensus between the parties involved through mediation. The process was voluntary.

The Judiciary

The Judiciary was another platform which provided a forum for the resolution of electoral conflicts through litigation. The Judiciary is established under Part VI of the Constitution.

EFFECTIVENESS OF MECHANISMS FOR RESOLUTION OF ELECTION RELATED CONFLICTS

17. Your Committee was informed that while various mechanisms were in place for the resolution of electoral conflicts, these mechanisms were not always effective. These mechanisms are discussed in detail below.

i) Electoral Commission of Zambia and the Conflict Management Committees – The Conflict Management Committees (CMCs) were effective in mediating conflicts among parties to the extent that they facilitated dialogue among the conflicting parties, through which dialogue the parties could make decisions, and resolve to reach an agreement. One of the strengths of the CMCs was that the composition of the CMCs was inclusive while at the same time the members were well trained mediators. In addition, the ECZ was strengthened by its mandate to establish the *Electoral Code of Conduct* which acted as a set of guiding principles for electoral conflict prevention for all stakeholders in the electoral process.

Notwithstanding the above, the ECZ and its CMCs had some serious weaknesses. Firstly, there was no law to compel political parties to disclose their sources of funding, so it was difficult for the ECZ to curb vices such as electoral corruption. In addition, the ECZ was not empowered to disqualify those candidates whose agents or supporters were found guilty of contravening the *Electoral Code of Conduct* from participating in the elections. Further,

while the CMCs had overriding powers and responsibilities to mediate electoral conflicts, they could not make certain decisions which were reserved for the Commission and the Judiciary (such as imposing fines or imprisoning offenders). In this light, the CMCs did not have judicial powers. Neither could they declare or announce the election results or order the recount of votes in case of a dispute over election results. These Committees could, further, not usurp the role of election officers during elections. These weaknesses severely hampered the effectiveness of the CMCs.

ii) The Zambia Police – The Zambia Police was expected to conduct independent investigations into the matters reported to them. The Police was well placed to arrest conflict situations where the conflict was likely to or had already escalated into violence, in which case CMCs did not even get involved. However, the administration of the *Public Order Act* was perceived to be a constraint to democratic participation as it had been used to constrain the ability of competing parties and/or candidates to freely express their governance opinions and aspirations, and to assemble for the purposes of communicating their intended actions if voted into office. It was perceived that most of the time, the Police were biased in favour of the party in power, thereby applying the *Public Order Act* selectively. In addition to this, the Police often failed to enforce the law against some perpetrators of violence, especially when those perpetrators belonged to the political party in power. In other instances, the Police exhibited excessive force which resulted into either further escalation of violence or some parties feeling alienated in the process.

iii) The Anti-Corruption Commission

The Anti-Corruption Commission had not successfully prosecuted, prevented or arrested many culprits who were involved in electoral corrupt practices that had been rampant in the Zambian electoral system. This was partly because of resource constraints and the fact that the Commission's operations were highly centralised. Other stakeholders informed your Committee that the failure to prosecute many electoral corruption cases was because of bias by the ACC since the culprits could have been from the ruling party.

iv) The Judiciary – The Judiciary mostly got involved when parties failed to reach consensus through the CMCs or when the nature of the conflict was too serious to be handled by the CMCs and required adjudication. Unlike the CMCs, the outcome of court processes did not necessarily result in a win-win situation. The focus of the courts was on finding the erring party upon whom appropriate punishment would be meted out. This system could be effective in reprimanding the instigators of conflict and was further supported by well trained and experienced staff in the Judiciary. Your Committee learnt that the courts had also exhibited some weaknesses, especially that the real demarcation of power between the Executive and the Judiciary was sometimes unclear. Therefore, suspicions that the courts were partisan or biased towards some candidates or parties were not uncommon among the contending parties. Further still, for cases that reached adjudication stage, there were such inordinate delays for them to be disposed of, that the outcomes were rendered academic and did not redress the wrongs complained of.

COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

18. Your Committee recalls that a number of progressive recommendations have been made in the Electoral Reform Technical Committee (ERTC's) Report of 2005 as well as the Technical Committee's Final Draft Constitution released by the Government on October, 23rd 2014. These recommendations, if implemented, will assist to curb or at least minimise electoral conflict. In this vein, your Committee notes that there can be no comprehensive electoral reform without comprehensive Constitutional reform. Your Committee, therefore, recommends as outlined below.

i) Autonomy of the Electoral Commission of Zambia - Your Committee notes that in its current form, the ECZ is not an autonomous institution in the real sense as its operations are largely controlled by the Executive. In particular, the mode of appointment of Commissioners of the ECZ is of concern as it is currently the preserve of the ruling party through the President. This lack of autonomy raises questions among political players and other stakeholders as regards the credibility of the institution. Your Committee strongly recommends that the autonomy of the ECZ

should be guaranteed beginning with an appointment procedure that is transparent in order to ensure that the composition of the Commission reflects the country's social and political mosaic. Once the ECZ is independent of the Government, the institution will be in a better position to enforce some of the electoral laws that are flouted with impunity by electoral players.

- ii) **Announcement of election dates** - Your Committee notes that the announcement of the date of presidential, parliamentary and local government elections has been a contentious issue. Your Committee, therefore, recommends that the date of elections should be enshrined in the Constitution as its announcement and fixing is a major cause of suspicion and may lead to election conflict.

- iii) **Administration of laws relating to elections** - Your Committee notes that the administration and enforcement of the *Public Order Act* and the *Electoral Code of Conduct* have been unsatisfactory. In this vein, while appreciating that the laws themselves may have some weaknesses, your Committee implores the ECZ and the law enforcement agencies, especially the Zambia Police and the Anti Corruption Commission, to be bold and enforce the law to the letter firmly and without bias. This will greatly reduce the incidence of electoral conflict as some of the provisions are quite efficacious in dealing with electoral malpractices if fairly enforced. In the meantime, the *Public Order Act* should be amended to make the Act more flexible and permissive.

- iv) **Unprofessional Conduct by law Enforcement Agencies** - Your Committee notes that the law enforcement agencies have sometimes exhibited unprofessional conduct in the handling of election-related cases. In this vein, your Committee recommends that appropriate training programmes must be offered to all the law enforcement agents, especially those to be deployed to service the electoral process. In the same vein, legal provisions should be developed which will ensure that police officers who fail to deal with electoral violence robustly, squarely and fairly are punished.

- v) **Need to broaden the powers of the Electoral Commission of Zambia** - Your Committee notes that the powers of the ECZ in enforcing the *Electoral Code of Conduct* are limited to reprimanding the persons or parties who breach the Code. This renders the Commission academic in its operations. In this vein, your Committee recommends that the ECZ should be empowered to determine electoral complaints or disputes brought before it and in this regard to disqualify candidates, or their agents, found guilty of electoral malpractices; and to cancel an election or election results and order a fresh election if the extent of the electoral malpractice is such that it could affect the results.
- vi) **Need to create special Courts to deal with disputes arising from the electoral process** - Your Committee notes that there are instances when electoral disputes cannot be resolved immediately and require court process. Currently, the court process takes inordinately long and is generally unsatisfactory to litigants. Your Committee strongly recommends that a fast track elections court must be constituted to determine these matters as is the case in other countries, even in some much younger democracies than Zambia. In such cases, the winner should not be announced until the litigation is concluded. Such matters should be concluded within a reasonable period, for example not more than 30 days.
- vii) **Need for full disclosure by the Electoral Commission on the electoral process** - Your Committee notes that lack of correct and accurate information about the electoral process can lead to suspicion and conflict. In this regard, your Committee recommends that the ECZ should continuously engage stakeholders, including the public, and make full disclosure of information pertaining to the electoral process.
- viii) **Media Bias** - Your Committee notes that media bias can result in, or at least contribute to, serious electoral conflicts. In this regard, your Committee recommends that measures be taken to compel the media, especially the public media, to be fair in their coverage of all political parties, especially during the election period. Further, training programmes on ethical and objective reporting must be provided to media

personnel and a media self-regulating mechanism with clear principles must quickly be put in place to monitor the breaches of media ethics.

- ix) Handling of election results** - Your Committee notes that there have been several complaints regarding the handling of election results by the ECZ from various stakeholders and this has led to dissatisfaction, suspicion and conflict. Your Committee therefore, recommends that the ECZ takes immediate measures to fully inquire into and appreciate the concerns of stakeholders on this matter and address them comprehensively before the 2016 elections.
- x) Need to reduce the number of documents required to vote** - Your Committee agrees with some stakeholders who submitted that only one document such as a national registration card should be used for voting. As such, there should be no requirement for both a national registration card and a voters' card. Your Committee recommends that the ECZ seriously consider this matter and, if possible, take measures to effect the necessary changes.
- xi) Role of political parties in promoting democratic culture** - Your Committee notes that political parties are supposed to be the pillars of a democratic culture through their activities and must actively participate in combating electoral malpractices which are a source of electoral conflict. The current situation where political parties do not practice intra party and inter party democracy is, therefore of concern to every well-meaning Zambian. In this regard, your Committee recommends that political parties should be compelled by law to uphold democratic tenets and to educate their own members about electoral regulations and punish them when they engage in such electoral malpractices in order to improve compliance with all electoral regulations. Further, political parties must be compelled by law to organise and participate in joint meetings and workshops aimed at discussing common challenges. This move would help to boost trust and goodwill and also reduce internal conflicts. Additionally, political parties, especially the ruling party, should also adopt clear and transparent fund raising mechanisms to avoid being suspected of abusing state resources.

xii) Voter education - Your Committee notes that voter education in Zambia only takes place in the run up to elections. As a result, it is often neither comprehensive nor effective. Your Committee recommends that voter education must be carried out on a continuous basis and using all available means. This will help to reduce, among other things, voter apathy.

xiii) Continuous voter registration - Your Committee notes that while the law provides for continuous voter registration, this has not been implemented due to various constraints, not least of which is the inadequacy of funding. In the process, a number of eligible voters have been disenfranchised. Your Committee strongly implores the Government to ensure that adequate funding is provided to the ECZ so that continuous voter registration is implemented as a matter of urgency.

C. REVIEW OF OPERATIONS OF THE CHILD DEVELOPMENT DEPARTMENT, MINISTRY OF GENDER AND CHILD DEVELOPMENT

Background

19. Following the realignment of Ministries over the past few years, the Child Development Department was hived off from the erstwhile Ministry of Sport, Youth and Child Development and moved to the Ministry of Gender and Child Development. In this regard, your Committee found it necessary to review the operations of the Department in order for the Members to familiarise themselves with the operations of the Department and gain an appreciation of the challenges, if any, that it was encountering in its new home. This activity was undertaken through a one day interactive meeting between your Committee and officials from the Ministry of Gender and Child Development. During this interaction, your Committee was briefed on various aspects of the operations of the Department as outlined below.

Functions of the Department of Child Development

Your Committee learnt that the Department of Child Development was one of the Government Departments in the Ministry of Gender and Child Development. The Ministry of Gender and Child Development was created by Presidential decree on 8th March 2012 and was gazetted on 22nd March, 2012 through Gazette Notice No. 183 of 22nd March, 2012. The portfolio functions of the Ministry were coordinating and monitoring the implementation of:

- i) the National Gender Policy;
- ii) the National Child Policy;
- iii) streetism;
- iv) the Legitimacy Act, Chapter 52 of the Laws of Zambia; and
- v) the Affiliation and Maintenance of Children Act, Chapter 64 of the Laws of Zambia.

Following the creation of the Ministry, a strategic plan and the organisational structure was formulated. The strategic plan provided guidance on the implementation of programmes and activities on gender and child development. As a result of the restructuring, five departments were created, namely:

- i. Child Development;
- ii. Gender Rights and Protection;
- iii. Gender in Development;
- iv. Human Resources and Administration; and
- v. Planning and Information Department.

The Child Development Department collaborated with other departments within the Ministry through the existing programmes such as:

- i) Gender Based Violence Programme which was targeting children and adults;
- ii) Programme of protection and promotion of women and children's rights which were targeting children and adults; and

- iii) UNICEF/GRZ programmes of cooperation which were targeting children and women.

The Ministry of Gender and Child Development was guided by its vision which was:

“A nation where there is gender equity, equality and the full realisation of women’s and children’s rights for sustainable development”.

The Department of Child Development endeavours to address the rights of children to survival, protection, development and participation in order to ensure that children developed to their full potential. Under Survival Rights, the Department was responsible for matters related to child health and child nutrition to ensure that children survived and grew into adulthood. Under Protection Rights, the Department was responsible for issues related to the protection of children against all forms of abuse and protection. Under Developmental Rights, the Department was responsible for issues of recreation and education to ensure that children had access to learning opportunities. Under Participation Rights, the Department ensures that children participate in matters affecting their welfare in accordance with their capacity.

1. General Objectives and Programmes

Your Committee was further informed that the Department has set for itself certain objectives that it sought to achieve as elaborated below.

Objective - To manage and implement child protection and survival programmes and coordinate a multi-sectoral response to child issues in order to ensure child development.

Your Committee learnt that under this objective, the Department was implementing a number of programmes which include the following:

Rehabilitation and Reintegration of Street Children

Your Committee was informed that in order to respond to the ever growing number of street children, the Department of Child Development was coordinating the implementation of the Street Children Rehabilitation and Reintegration Programme. Under this Programme, the Ministry was focusing on street children aged 0 to 15 years whilst the Ministry of Youth and Sports and the Ministry of Defence, through the Zambia National Service, were focusing on older street children aged from 15 years and above.

The implementation programme for the Rehabilitation and Reintegration of Street Children aged 0 to 15 was done through the District Child Protection Committees, comprising key stakeholders from Government line ministries, faith based and non-governmental organisations, while the Ministry of Gender and Child Development provided financial and technical assistance to the District Child Protection Committees. The following were the main activities being implemented under the Street Children Rehabilitation and Reintegration Programme:

- a) removal of children from the streets;
- b) rehabilitation of street children;
- c) identification of parents and guardians;
- d) economic empowerment of families and guardians of street children;
- e) reintegration of street children with their parents and guardians;
- f) public awareness on the problem of streetism; and
- g) enforcement of the law on child neglect through the use of Zambia Police Child Protection Unit (CPU).

Under the Rehabilitation and Re-Integration of Street Children Programme, the Department had achieved the following:

- i) provision of financial and technical support to the District Child Protection Committees countrywide to enable them implement activities related to street children programmes;

- ii) provision of support to families of street children in terms of entrepreneurship training and financial support to enable them take care of their children. In 2014 the Department reached out to a total of 160 families of street children in Lusaka, Kabwe, Livingstone and Kitwe;
- iii) continuous removal of street children from the streets countrywide. In 2014, the Department removed 1,100 children from the streets who were later re-integrated with their families; and
- iv) provision of grants to child care institutions dealing with street children and other vulnerable children countrywide.

Objective - To develop and review policies and legislation on gender and child development in order to provide an appropriate legal framework for effective implementation of gender and child programmes in the country.

Under this objective, the Department implemented the following programmes:

Review of the National Child Policy

The Department undertook periodic review of the National Child Policy. Currently, the Department was reviewing the 2006 National Child Policy to take on board emerging issues affecting children. The draft National Child Policy has been submitted to Cabinet Office.

Review of Child Related Legislation

The Department of Child Development in collaboration with the Ministry of Justice and other line ministries has the responsibility of reviewing child related legislation in order to ensure that they provided enough protection to children as well as to ensure that they were in conformity with International Treaties and Conventions on children to which Zambia was a party. Currently a Children's Code Bill was being developed. The aim of the Children's Code Bill was to amalgamate various pieces of legislation into one statute as well as to domesticate the Convention on the Rights of the Child (CRC) which the Zambian Government ratified in 1991.

Objective - To advocate and raise awareness on gender and child issues in order to promote the attainment of the rights of women, men and children.

Your Committee was informed that in order to ensure the promotion and protection of children's rights, the Department undertook public awareness activities on children's rights through the use of the mass media, community mobilisation and awareness meetings and through the commemoration of children marked days such as the International Children's Day of Broadcasting which falls in March, the Day of the African Child which falls on 16th June, the International Day of the Girl Child which falls on 11th October and the Universal Children's Day which falls on 20th November. Through some of these public awareness activities, the Department had managed to sensitise the public on children's rights and various forms of children's rights violation and abuse.

Objective - To plan and evaluate effectively, the implementation of gender and child development programmes in order to facilitate the development and implementation of appropriate interventions.

Your Committee was informed that in order to achieve this objective, the Ministry engaged in the major activities highlighted below.

Research on Children's Issues

Under this programme, the Department undertook periodic research in order to generate useful information needed for planning for children. In this regard, in 2013, the Department of Child Development with the support from cooperating partners undertook a survey on violence against children. The purpose of the research was to generate information on various forms of abuse against children so as to come up with appropriate interventions and measures to curb the increasing cases of child abuse and violence against children in Zambia. Furthermore, the Department in 2012 undertook a mapping exercise of child protection systems in Zambia in order to take stock of what systems were in place to protect children in Zambia. The exercise also examined the gaps in the protection systems and structures and came up with recommendations on how to strengthen these systems and structures.

In 2015, the Department intended to undertake a survey on street children in order to obtain accurate statistics on the number of children living on the streets. This survey would update the 2006 survey on street children which estimated the number of children living on the street at 13,500.

Objective - To effectively plan, monitor and evaluate the implementation of gender and child development programmes in order to facilitate the development and implementation of appropriate interventions.

Your Committee was informed that under this objective, the Department had implemented the programmes outlined below.

Monitoring and Evaluation of the Implementation of Children's Programmes

The Department had developed a monitoring tool which was used to monitor children's institutions countrywide. Through such monitoring visits, the Department had been able to provide technical and financial support to institutions that were caring for children countrywide.

2. Co-ordination

Your Committee was informed that in order to enhance the coordination in the implementation of programmes relating to orphans and vulnerable children in Zambia by different stakeholders, the Ministry of Gender and Child Development had constituted the National Steering Committee on orphans and vulnerable children comprising representatives from key line ministries, the United Nations, partners, civil society organisations, church mother bodies and other partners dealing with orphans and vulnerable children in Zambia. The main function of the National Steering Committee on orphans and vulnerable children was to advise the Government on matters pertaining to orphans and vulnerable children and to ensure coordination of implementation of programmes for orphans and vulnerable children by different stakeholders.

3. Challenges

Your Committee learnt that among the challenges facing the Department were the following:

- i) high poverty levels in the country which was contributing to the increase in the number of vulnerable children, including children who were found on the streets;
- ii) inadequate funding to enable the Ministry undertake programmes aimed at addressing the problem of vulnerable children, especially children living on the streets; for example, in 2014, the Department received less than 25% of its approved funding under the street children rehabilitation and reintegration programme, such that, the Department could not execute its planned countrywide exercise of removing children from the streets;
- iii) inadequate structure to ensure effective coordination of the implementation of children's programmes countrywide; although Cabinet had approved a structure that increased the number of personnel, Treasury authority had not yet been granted, so recruitment could not be undertaken; and
- iv) inadequate transport, especially at provincial level, continues to hamper the operations of the Department.

COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

20. Your Committee notes the brief by the officials from the Ministry of Gender and Child Development. Your Committee further notes that the situation of children in Zambia is dire and worrisome. The life of the ordinary Zambian child is characterised by poor nutrition, limited access to education, lack of access to safe water and sanitation, poor access to health facilities, lack of necessary family support, disease and streetism, to mention but a few. Your Committee is, further, appalled that the Department could receive as little as 25% of its approved budget in 2014 under the Street Children Rehabilitation and Reintegration Programme. Your Committee finds this level of funding to such a priority Programme unacceptable. In this vein, your Committee notes that the Ministry and the Child Development Department in particular, faces an uphill battle even to make slight

improvements to the plight of the Zambian child. In order to enhance the effectiveness of the Department of Child Development Ministry, some urgent measures should be taken. Your Committee, therefore, recommends as set out below.

- a) **Prioritisation of children's programmes** - the Government must prioritise the plight of the Zambian child. In this light, the Government must improve funding to the Department in order to facilitate effective implementation of children's programmes.
- b) **Implementation of the new structure for the Ministry of Gender and Child Development** - the Government, through the appropriate authorities, must expedite the granting of treasury authority to enable the Ministry immediately implement the approved structure by recruiting the much needed personnel for the Department.
- c) **Improvement of Operations of provincial offices** - the Department's provincial offices should urgently be equipped with adequate transport so that they can effectively monitor child development projects and programmes for the benefit of Zambian children countrywide.
- d) **Enhancement of poverty reduction efforts** - poverty reduction efforts ought to be stepped up countrywide as poverty is one of the key contributing factors to children's vulnerability, especially streetism.
- e) **Availability of resources for children's programmes across sectors** - given that children's issues cut across sectors and ministries, there is need to develop a mechanism which will ensure that adequate resources are availed in a timely manner to all ministries dealing with children's issues for the effective implementation of children's programmes.

PART II – REPORT ON THE COMMITTEE'S FOREIGN TOUR TO KENYA

Background

21. Your Committee undertook a benchmarking tour to Kenya. Your Committee selected Kenya for its visit in recognition of the constitutional, judicial and electoral reforms

that that country has undertaken within the last decade. The objectives of the proposed benchmarking visit were to:

- (i) appreciate the incidence and extent of election-related conflicts in the Kenyan electoral process;
- (ii) find out the major causes of election-related conflicts in Kenya;
- (iii) understand the constitutional, legislative and regulatory landscape governing the handling of election-related conflicts in Kenya;
- (iv) appreciate the institutional arrangements in place for handling of election-related conflict in Kenya;
- (v) assess the effectiveness of the existing institutions in dealing with election-related conflicts;
- (vi) appreciate the measures taken to eliminate or at least minimise conflicts in the electoral process in Kenya; and
- (vii) study the mandate and broad operations of the Department responsible for child development in the Republic of Kenya with a view to appreciating the institutional set up and challenges, if any, facing the Department, and any possible solutions, thereto.

The key findings, observations and recommendations of your Committee during its visit to Kenya are summarised below. Your Committee met the organisations set out below.

(a) Independent Electoral and Boundaries Commission of Kenya

Your Committee learnt that Kenya had unsuccessfully attempted comprehensive constitutional reform from the time of her independence. In the run up to the 2007 national elections, the Electoral Commission was perceived to be weak and compromised by the Executive branch of Government. The Commissioners were appointed and removed from office by the President unilaterally. There was not even a provision for ratification of their appointments by Parliament. In the same vein, the electoral system was characterised by various forms of intimidation and subject to manipulation by the Government. Based on all these factors, the electoral system suffered a very low level of public confidence.

Further, stakeholders were unsatisfied by the manner in which the Electoral Commission managed the 2007 national elections and the stakeholders did not accept the outcome. Since the level of public confidence in the Judiciary was also at an all time low; the losers in the 2007 elections did not even bother to take their grievances to court as they felt that they could not receive justice. Therefore, post-election violence ensued and eventually Kenya settled for a negotiated Unity Government in order to avert civil war. After this, progress was made towards a new constitution and the process was inclusive of all stakeholders. In 2010, the new constitution of Kenya was promulgated which changed the governance system of the country.

With the realisation that there was need to have a strong and truly independent electoral commission to ensure proper administration and management of the electoral process, the Constitution of Kenya (2010) provides the legal framework under which the Independent Electoral and Boundaries Commission (IEBC), among other institutions, was established. The details of the structure and operations of the IEBC are to be found in Act No 24 of 2011. The Electoral Commission was thereafter dissolved and all employees, including cleaners, were sent home, and the institution started afresh with the 2013 election being the first election to be administered by the IEBC. Since the 2010 Constitution effectively divided Kenya into 47 Counties, each led by a Governor, during the 2013 elections, for the first time in the history of Kenya, six elective positions were filled (President, Members of Parliament, Senators, Governors, County Women Representatives and Ward Councillors).

As part of the reform process, the IEBC was one of the Commissions created under Article 15 of the Constitution of Kenya. These are popularly referred to as “Article 15 Commissions”. The Constitution also provides for the mode of appointment of office holders of those Commissions as well as the procedure for removal. Under those provisions, Commissioners of the IEBC serve for a 6 year non-renewable term, and enjoyed security of tenure.

The mode of appointment and removal of IEBC Commissioners as provided under the 2010 Constitution is set out below.

- i) A Selection Panel is set up made up of: 1 member nominated by the Judiciary; 1 member nominated by the law society; 1 representing women's groups; 1 representing professional societies, 2 women appointed by the President and 2 men appointed by the President.
- ii) The Selection Panel is subjected to vetting by Parliament through the relevant portfolio Committee (Justice and Legal Affairs Committee). The members of the Selection Panel are empowered to elect a Chairperson from amongst themselves.
- iii) The Selection Panel, once appointed, advertise the vacant positions in the Commission (Chairperson, Vice Chairperson or Commissioner). Any Kenyan citizen was free to apply for the position as long as they met the requisite qualifications.
- iv) Applicants have to provide clearance certificates issued by the tax authorities, relevant professional bodies, the anti corruption agency, the police, the boards of the universities at which they studied certifying that they had cleared their university loans, the credit reference bureau among others.
- v) Shortlisted candidates are publicly interviewed by the Selection Panel, and the interviews were not only widely advertised but also carried live in the print and electronic media. Members of the public were requested to send in any comments or questions they may have.
- vi) Selection Panel recommends 13 names to the President, who in turn sends the names to Parliament for confirmation.
- vii) Parliamentary confirmation hearings are to be held in public and widely advertised.
- viii) Candidates are confirmed individually; Parliament could reject or confirm some or all of them.
- ix) Removal from office of a Commissioner could only be initiated by a Petition to Parliament, which is to be heard by the relevant (Justice and Legal Affairs) Portfolio Committee of the House. These hearings are also open to the media and the public, and should be widely advertised.

- x) If the Petition succeeded, Parliament was expected to send a report to the President who was then required to appoint a tribunal (headed by a Judge) to consider the removal of such a Commissioner.
- xi) The Tribunal's hearings also are to be open to the public and widely advertised for public participation.
- xii) Tribunal's decision was carried into effect.

The IEBC has 17 Regional Coordinators based permanently in all the regions of the country, and 290 Constituency Election Coordinators. These were employed on permanent and pensionable basis, hence the IEBC has a permanent presence in the regions and constituencies. Temporary staff are employed during elections, and in addition to being paid some modest allowances, they were also issued with a certificate at the end of the contract period. Additionally, once the IEBC has vacancies, those who had been engaged as temporary employees were given first consideration for permanent and pensionable employment.

Your Committee was informed that as regards the electoral process itself, there was previously not much utilisation of information communication technology (ICT), as a result, the process was inefficient and sometimes inaccurate. There was also considerable mistrust between the erstwhile Electoral Commission and various stakeholders, especially the political parties, mainly due to lack of clear and accurate information. Currently, the IEBC engaged political parties on a continuous basis through the Political Parties Liaison Committee, especially on the need to campaign peacefully and to promote an atmosphere of peaceful co-existence by sensitising their supporters on the provisions of the Electoral Code of Conduct, as well as undertaking Voter Education.

Your Committee noted that it was critical to enhance the levels of trust through increased transparency in the operations of the electoral management body, especially with regard to the handling of election results. The use of results forms which were signed by both electoral officials and political party agents helps to foster trust and acceptance of results. While results were electronically transmitted in the last election in Kenya to enhance

efficiency, the physical results were the conclusive ones, and there was 100% accuracy between the electronically transmitted results and those on the physical documents.

It was noted that voters and the media were also critical stakeholders in the electoral process. There was, therefore, need for continuous public education on the need to maintain peace and stability (civic education) and voter education – members of the public must be aware that they had a duty to ensure a successful electoral process and what role they could play in the process, including registering, participating in campaigns, voting, accepting the results. Further, it was observed that elections were not an event but a process, and it was not only for the Electoral Commission; all other players (CSOs, FBOs, the business community, the media and the general public) should be engaged to bring their comparative strengths to bear on the process for the national good.

Your Committee learnt that election matters in Kenya were provided for in one consolidated law. This was the *Elections Act, No 24 of 2011*, which also contained the *Electoral Code of Conduct* as the Second Schedule. Your Committee was informed that various challenges had been encountered after the promulgation of the Constitution and it was hoped that more legal reform would take place before the next elections, which were due in 2017. Fifteen of the sections in the Elections Act provided for electoral offences. The electoral law was strictly enforced and the IEBC was empowered to warn, prosecute or disqualify those who committed electoral offences. In this regard, quite a number of persons, including some officials of the Commission had since been prosecuted. As regards abuse of public resources, your Committee was informed that public officers were required to declare all public assets in their custody and it was the duty of the IEBC to monitor and ensure that public resources were not abused for political purposes. A number of politicians had since been arrested for abuse of public property under these provisions. Additionally, police officers deployed to serve during elections were appointed officers of the Commission for the limited period when they would be undertaking those duties, and were amenable to prosecution by the Commission if they committed an electoral offence.

It was further observed that the Electoral Code of Conduct bound all stakeholders (political parties, observers, NGOs, FBOs) to ensure free and fair elections through the various

election-related activities they were involved in. The Code of Conduct provides for very stiff penalties for breach, hence it acts as a deterrent against its would-be offenders.

Dispute Resolution Mechanisms

The Elections Act provides for an elaborate dispute resolution mechanism which deals with various disputes arising at different levels.

i) Dispute Resolution Committee

This Committee was a quasi judicial body set up under the Commission. It is responsible for settling disputes arising around the electoral process prior to the election. The Chairperson of the Committee is a Commissioner who is an advocate of the High Court of not less than 10 years standing at the Bar. Persons dissatisfied with its decisions can appeal to the High Court, failing which its decisions are binding. The Committee can warn the party in breach of electoral rules, impose fines or disqualify candidates and/or parties from participating in the election. Fines collected by the Committee were remitted to the Registrar of the High Court. Under the Regulations made by the Commission, all disputes considered by the Committee must be heard and determined within 7 days.

ii) Code of Conduct Enforcement Committee

This was a Committee under the IEBC. The Committee operates from the date of dissolution of Parliament up to Election Day. It is empowered to consider breaches of the Electoral Code of Conduct. A breach of the Electoral Code of Conduct by a candidate sponsored by a political party is imputed to the political party and any punishment imposed for such breach affected both the candidate and the sponsoring party.

iii) The Judiciary

The Judiciary, guided by the Constitution, is responsible for consideration of all election related disputes arising after an election. These include disputes such as those relating to the tallying of results, alleged corruption, among others. As far as the timeframe for

consideration of Presidential election petitions is concerned, the Constitution provides that a Presidential election petition must be heard and determined within a period of 14 days while all other election related disputes must be determined within 6 months and all appeals arising therefrom had to be determined within a further 6 months. With regard to the 2013 election, this timeframe was strictly adhered to. To facilitate this, the law provides that the Chief Justice must appoint an Election Petitions Committee of Judges to hear and determine all election petitions. These Judges are, during this period, exclusively assigned to handle election petitions.

iv) Peace Committees

These Committees exist at Constituency level to resolve less serious disputes or conflicts without necessarily invoking the dispute resolution mechanisms at national level of even the Judiciary.

v) The Office of the Registrar of Political Parties

This office is an independent institution set up under an Act of Parliament for the purpose of ensuring interparty and intraparty democracy was upheld. It is meant to avoid manipulation of the operations and registration of political parties. It is also mandated to resolve or minimise differences between political parties by brokering talks between or among them where necessary.

Other Good Provisions and Practices

Some other good practices observed by your Committee are set out below.

- An Inter Agency Committee on Election Preparedness had been set up which comprised IEBC, Police Inspector General, Chief Justice, Director of Public Prosecutions, representative of the Ethics and Anti Corruption Commission, among others, to ensure coordination and information sharing.
- Introduction of transparent ballot boxes.

- The IEBC always reserved a special day to meet with the media practitioners to familiarise them with the provisions of the law in relation to the election, and remind them of their responsibility therein.
- Voter education is one of the mandates of the IEBC and specific times were set aside for the last elections to undertake it. However, it mostly intensified in the last few months before the elections. It covered both the rules relating to the conduct of the elections, but also the process of voting itself to ensure that members of the public could effectively participate in the poll. Civil society groups complemented the work of the Commission in this regard, and they were required to use only the voter education curriculum developed by the IEBC. Adherence to the IEBC voter education curriculum was one of the conditions imposed by the IEBC before any organisation could be accredited to observe elections in Kenya.
- As the law provides for continuous voter education, the IEBC offices were open countrywide for this and other purposes. However, it has been observed that the uptake of this service was very low and the pace only picked up once an election was imminent. The IEBC is, therefore, in the process of developing a strategy where one month every calendar year would be dedicated to voter registration with specific announcements being made to invite members of the public to access this service.
- The new Constitution of Kenya provides for Kenyans serving prison sentences to be allowed to vote while progressively arrangements should be made for Kenyans living outside the geographical boundaries of the territory to be allowed to vote as well. In this light, prisoners were allowed to vote in the referendum on the Constitution and it was envisaged that they would be allowed to vote in the next election in 2017. As for those living in the diaspora, only those within the East African Community were allowed and facilitated to vote in the last election, but the IEBC was hopeful that progressively, those in other countries could be allowed to vote as well.

Challenges

The promulgation of the Constitution had given rise to some challenges in terms of implementation. One of the key challenges was the Constitutional provisions that a Presidential Election Petition must be heard and determined within 14 days. In this regard,

it was noted that an aggrieved party was allowed to file a petition within 7 days of the grievance, while the respondent had 3 days in which to file a response. On the eleventh day, a pre-trial conference had to be held with all the parties, and that left the Court with only 3 days in which to hear and determine the matters. Some concerns had been raised by the Judges, especially in light of the fact that election petitions could be quite voluminous. The concerns were mostly around the quality of the judgments that could be rendered in the circumstances. It was further noted that in the 2013 Presidential Election Petition, the Supreme Court merely announced its decision without giving reasons, which should not be the case in a Supreme Court Judgment.

Another challenge was the huge financial outlay and the complicated logistical arrangements required to facilitate the prison and diaspora votes. There was, in this regard, need for careful logistical and financial planning if this was to be effectively and efficiently facilitated.

(b) Justice and Legal Affairs Committee of the National Assembly of Kenya

The Committee on Justice and Legal Affairs was established under the Standing Orders of the Assembly, and is mandated to look after matters relating to constitutional affairs, administration of justice including the Judiciary. This means that the Committee oversees the activities of the Office of the Director of Public Prosecutions, the Gender Commission, Independent Elections and Boundaries Commission, the Ethics and Anti Corruption Commission and all other Commissions, to review the appointments and consider petitions for the removal of office bearers of various Commissions set up under the laws of Kenya.

It was noted that although the Constitution of Kenya provides that no one gender should at any one time occupy more than two thirds of the decision making positions in any government institution, this has not been achieved from the last elections as women were still under represented in elective positions. There has, therefore, been some calls for further amendments to the Constitution so as to provide for quotas and ensure equitable representation of both men and women. Be that as it may, there has been an improvement in the representation of women as compared to the past. In any case, there was a Supreme

Court ruling indicating that Parliament was in breach of the Constitution by failing to enact necessary legislation to progressively facilitate equitable representation. The Court ordered that Parliament must comply with the constitutional provisions by enacting the necessary legislation before the end of September, 2015. In a related development, the Supreme Court has ruled that the administration of the Constituency Development Fund (CDF) was not in compliance with the provisions of the Constitution, as the Constitution provided that such funds be disbursed to the newly created County Governments and not to Members of Parliament. It was, further, a breach of the Constitutional principle of separation of powers for legislators to receive Government funding and execute programmes and projects. The Court Ordered allowed a transition period of one year, but ordered that after one year, Parliament should be compliant with the provisions of the Constitution by either ensuring that the administration of the CDF was compliant with the provisions of the Constitution or disbanding CDF altogether. Parliament has since appealed the decision.

Your Committee also learnt that while radical constitutional change may be necessary sometimes, it was important to carefully plan how such changes could be carried into effect so as not to overstretch the economy with unsustainable demands on resources. For example, in the case of Kenya, the new Constitution has expanded the size of Parliament through the creation of the Senate. It was felt that perhaps this was one area that could have been handled differently as it had created an immediate huge cost on scarce financial resources, as well as infrastructure and human resources required to facilitate the operations of the new House of Parliament.

Additionally, the constitutional review process should be very consultative, transparent and inclusive. In this regard, thorough consultations should be undertaken regarding all the key proposals with all key stakeholders and consensus reached so that the final product could truly be a people driven constitution. In this regard, it was stated that the constitution should not be rushed but should be the outcome of a well thought out and diligently carried out process. Your Committee further learnt that it was necessary to structure and guide the constitutional review process through appropriate legal provisions, which should dictate the time frames for all the activities in the process, otherwise the process may be left to the whims of a few individuals.

As regards judicial and electoral reform, your Committee learnt that in order to foster confidence in the justice system and the electoral process by all stakeholders, the Judiciary and the electoral management body must be autonomous both financially and administratively. Loss of confidence in the Judiciary and the electoral management body could be fatal to an otherwise excellent justice and/or electoral system. In the same vein, the electoral management body must also be quick to address any concerns that stakeholders may raise, including ensuring proper voter identification, avoidance of delays in voting and announcement of result, improved handling of election results, among other things which may put the process in jeopardy.

With regard to the constitutional provisions on the appointment of Cabinet outside Parliament, your Committee learnt that this was a double-edged sword as on one hand it allowed Parliament the leeway to budget in the manner it saw fit and effectively undertake checks and balances on the Executive in a truly independent manner and without let or hindrance. On the other hand, it meant that the Ministers were not always available to address the urgent concerns that Members of Parliament may have in their constituencies.

Your Committee also learnt that following the promulgation of Kenya's new Constitution in 2010, public participation in Parliamentary work had improved tremendously, especially through presentation of petitions on the removal of Commissioners from the Commissions created by the Constitution. In fact, it was noted that a member of the public could even petition the court for the dissolution of Parliament if Parliament failed to enact legislation that it was required to enact under the Constitution.

(c) Commission for the Implementation of the Constitution (CIC)

Your Committee learnt that the Constitution of Kenya (2010) was developed with participation of the people of Kenya. Under the Constitution, the people remained supreme and sovereign, and merely delegated their supremacy to the various arms of government. It was stated that the Constitution of Kenya was a negotiated document and went to great detail as regards the issues it provided for. In particular, throughout its text, the

Constitution provides for the rights of the people (such as the right to participate in various public processes, the right to information and the right to freedom of assembly, among others) and specified the few circumstances in which these rights could be derogated. The Constitution also defines leadership and recognizes that the two levels of leadership (national and county government) are distinct but interdependent. The Constitution of Kenya deals with devolution of power and this is one of its most transformative provisions. It effectively divides the country into 47 Counties. To coordinate the devolution process, an Inter Governmental Relations Act has been enacted.

The Commission for the Implementation of the Constitution (CIC) was established in the Sixth Schedule to the Constitution. It was included in the Constitution for historical reasons. It has been observed that many good provisions had existed in the previous Constitution but had not been implemented. Therefore, the CIC was meant to be an independent body to protect and safeguard the Constitution and ensure that its provisions with regard to devolved government, protection of the sovereignty of the people and the observance of democratic values were implemented until the Constitution was entrenched and had a life of its own. The CIC was established to exist for a five year period after the promulgation of the new Constitution, which period would end in 2015. The Commissioners of the CIC were appointed through a transparent and public process like all other Article 15 Commissions, and could be removed in the same way. Your Committee was further informed that the CIC has endeavoured to cultivate and maintain public confidence by always remaining unanimous in its public statements and adhering to the provisions of the law in its decisions

In light of the objectives for which it was set up, the CIC's role is to pursue the enactment of various pieces of legislation as set out in the Fifth Schedule to the Constitution. The Constitution itself, and each of the laws made to facilitate the implementation of the Constitution has provisions for offences and the CIC has relied on these to ensure that its mandate was fully executed. The CIC can go to court, and has done so in the past, to demand compliance with the Constitution where necessary. It was noted that in the case of the provisions on gender parity and CDF, while the Court has ruled that Parliament acted

unconstitutionally, it has been practical and innovative by allowing a time frame for compliance.

The CIC was required to report regularly to the President and the people of Kenya through Parliament on progress in the implementation of the Constitution and does in fact do so quarterly and annually.

Challenges being faced by the CIC

One of the key challenges being faced by the CIC in executing its mandate is the transfer of functions to the County Governments. The initial plan was not to transfer all functions to all the Counties at the same time. Rather, this was to be done in a phased manner, depending on the capacity of the County concerned. However, it was argued that such a move would send mixed messages to the people, and political considerations were brought to bear on this process. Therefore, the transfer of functions was done at the same time, within three months after the elections of 2013. The question of capacity of some Counties to perform the functions transferred to them was a concern in this regard.

Further, it has been noted that some national government institutions continued to perform functions which had been devolved to county governments, resulting in duplication of activities and wastage of resources. Additionally, some bad practices such as corruption, were also devolved to the County governments and the people tended to accept the bad practices due to ignorance of their own power to hold the Government to account.

It was noted that the provision on gender representation in decision-making positions was quite difficult to enforce in light of the fact that there was no procedure elucidated for its implementation. To ensure that this provision was implemented, the matter was taken to the Court and the Supreme Court has since ruled that Parliament must enact the necessary legislation to facilitate the implementation of the provision. Another provision that requires elaboration in legislation was the issue of intra party democracy, and in particular how long a person should have been a member of a political party before he could vie for elective office or be appointed to a position within the party.

It was noted that the firm view of the CIC was that the 14 days given by the Constitution for the Supreme Court to hear and determine presidential election petitions was adequate and no amendment to the provision was necessary, even though the CIC was aware that some sections of society have expressed anxiety on the provision. The CIC has called for efficiency by all concerned to ensure that this provision is fully and effectively implemented, as it is meant to ensure that electoral disputes were expeditiously resolved and avert anxiety in the nation.

(d) Kenya National Police Service

Your Committee learnt that the mandate of the Kenya National Police Service is law enforcement, fighting crime, investigating alleged criminality and prosecuting offenders. Previously, the operations of the Police Service were characterised by victimisation and brutality against citizens and Kenyan citizens has little if any confidence in the Service. This was largely because the Republican Constitution at that time watered down the rights of citizens as it had too many derogations from those rights. However, after the promulgation of the Constitution of Kenya in 2010, there has been a paradigm shift in the operations of the Service since the derogations on the rights of citizens were watered down while the rights were enhanced and guaranteed. There was only one general derogation from the rights guaranteed in the Bill of Rights. Further, most Kenyans had been sensitised about their rights and were able to demand them, even through court action. In addition, all officers in the Kenya National Police Service have been sensitised about the rights of citizens and the fact that the role of the police was to facilitate the enjoyment of rights by Kenyans. For example, a Police Officer could not detain a person for more than 24 hours without taking the detainee to court. To ensure this, the Judiciary has introduced the system of a Weekend Duty Judge, so there was no reason for keeping suspects in custody over the weekend.

In terms of administration of the *Public Order Act*, your Committee learnt that the National Police Service of Kenya, while aware of the rights of citizens, was also alive to the need to maintain law and order in order for all citizens to fully enjoy their constitutionally guaranteed rights. In this regard, the law in Kenya requires convenors of various meetings,

including political meetings, to give three days notice to the Police of their intention to convene a public meeting. This requirement has to be met even during the election campaign meetings; although it does not entail that the Police license public assemblies. On the contrary, the purpose of the notice was to allow the police to make necessary security arrangements for the meeting. The Police Service do not generally cancel meetings. However, it was stressed that, if the Police have reason to believe that the meeting may degenerate into a disorderly assembly or activity was likely to take place which would endanger public safety, it was possible for a meeting to be cancelled. Such situations were handled in close consultation with the convenors of the meeting. Similarly, where more than one political party organised meetings at the same venue at the same time, efforts were made by the Police to get one party to cancel, postpone or shift its meeting to another venue in order to avoid clashes between rival supporters. Generally speaking, the Police Command understood that it was not within their power to license meetings as this was a constitutional right of any citizen. During the 2013 election campaigns, only one meeting was cancelled countrywide on account of it having been scheduled to take place at the same time and venue as that of another party's meeting.

During public assemblies, the police also play a role by screening those attending the meeting to ensure that no persons carried dangerous articles or weapons which could pose a danger to the security of those in attendance at the meeting. The National Police Service had also undertaken various sensitisation activities among political parties to ensure that they conducted peaceful campaigns.

During the election period, the Kenya National Police Service engaged Special Forces to enhance its numbers to meet the mammoth task of policing the electoral process. In this regard, it was explained that the officers who were temporarily appointed as police officers were officers already serving in the other disciplined forces such as the Prisons Service, the Wildlife Services and National Youth Service among others. Special Forces were not appointed from outside the existing government structure, so the people appointed for this purpose were not perceived to be cadres from political parties. It was stressed that if members of these Special Forces breached the law, they were amenable to the law like regular Police officers. It was stressed that the Police Service collaborated closely with other

Government law enforcement agencies during the electoral process. However, the IEBC's dispute resolution mechanisms related to civil only, and all criminal matters fell to the Police Service to take necessary action. The Police effected arrests and prosecuted offenders in collaboration with the Office of the Director of Public Prosecutions, as the case required. Efforts were always made to resolve electoral offences within the election period and so far this had been done.

As regards the operation of the media, your Committee learnt that the new Constitution of Kenya was not favourable to activities such as inciting hatred and related practices. The role of the National Police Service was to check and ensure that no media house or practitioner engaged in practices or made statements that could undermine national security or public safety. Where a media house breached the limits, timely action was always taken by requesting the media house or practitioner to retract the offensive statement. Through this consultative process, the media house or practitioner was shown the error of their ways and rectifying the problem without necessarily abrogating the right of the public to information. The Police Service also interacted regularly with the Media Council and the Editors' Guild, two bodies which were responsible for overseeing the operations of the media to ensure that they operated within their ethical boundaries.

Your Committee further learnt that Kenya had in the recent past witnessed an increase in the levels of gender based violence. However, there was no evidence as to whether this was an actual increase or the incidence merely appeared to be on the upswing because of increased sensitisation and reporting of such matters by members of the public.

(e) The Directorate of Children's Services

Your Committee learnt that 52% of the population of Kenya was made up of children below 18 years. Of these, almost 4 million were orphans and vulnerable children (OVC). Further, between 1 and 2 million children were out of school and around 300,000 children and their families worked on the streets of Kenya. Be that as it may, between 15 and 20 million children were in school at any given time. One of the biggest problems that affected children was orphanhood, so the Department had developed a Social Cash Transfer

Programme for OVC. An amount of between 57 and 58 billion Kenyan Shillings is spent on this programme per annum.

Kenya has also established the National Council for Children's Services (NCCS) as the apex body for development and implementation of the country's Child Policy. The Chairperson of the Council is appointed by the President. The Directorate of Child Services was the secretariat for the NCCS.

Under the Council of the Directorate of Child Services, various programmes were undertaken as set out below.

Rehabilitation Programme – This programme targets children who came in conflict with the law. Under this programme, the children are detained for up to three years in a rehabilitation school. During this time, education, food and skills training is provided to them. The older ones are prepared for the world of work while being exposed to education. Between 3000 and 4,000 children have gone through this programme every year.

Remand Homes – Children who had come in conflict with the law but who were still going through court processes are directed to these Homes by the Directorate. The state looks after these children in these Homes until the court decide where they go at the end of the court process.

Child Protection: Toll Free Line – The Directorate has set up a Toll Free Line where children or other interested parties can report cases of abuse or other problems that children may be facing in the communities. Some of the issues that were quite prominently reported on the Toll Free Line were female genital mutilation and early, child or forced marriages. This service enable the Directorate to facilitate child protection.

Children's Parliament – This was an activity organised by the Children's Services Directorate and fully sponsored by the Government. As part of this activity, children from all parts of the country assemble and deliberate on matters of concern to them. They are escorted to

participate in this activity by trained chaperones. This activity is not only a measure of child protection but also acts as a means to deliver civic education and to prepare the children for leadership.

Area Advisory Councils – These are formed under the NCCS to cascade its policies and implementation mechanisms to lower levels.

Child Care and Protection Officers – These cover a multiplicity of actors in the justice system including police officers, prison officers and magistrates among others. All these are incorporated in the child care and protection system in order to draw on their comparative strengths. There are also some volunteer child care and protection officers.

Streetism – The Directorate ran a Children Rehabilitation Programme, managed by the Children Rehabilitation Board. The Board was responsible for ensuring that children were removed from the street and resettled in appropriate circumstances. But the issue of streetism was complicated because different children took to the streets for different reasons (drug addiction, fast money, unsuitable home environment, etc). There were both pull and push factors at play, hence there was no one size fits all solution to the problem. Merely removing the children from the street may not resolve the problem as they may simply go back. There was need for a long term strategy to deal with the family set up so that the children could have a more comfortable environment to go back to. This calls for long term socio-political and financial commitment from all concerned.

OVC Cash Transfer Programme – This programme is specifically targeted at OVC in a quest to enable these children meet their basic needs and continue to attend school. There was an elaborate, computer based procedure for identification of eligible children and households in order to avoid favouritism in the identification process. The funds are disbursed either directly through banks or through their agents such as shop owners.

The Directorate of Children's Services collaborates closely with other players in order to implement the Alternative Family Care Programme, enforce the moratorium on international adoptions and participate in various activities such as the commemoration of

World Orphans Day. The Directorate also carries out inspections of Children's Homes run by non-state organisations to ensure that these Homes meet the set standards.

(f) The Office of the Director of Public Prosecutions

Your Committee learnt that the office of the Director of Public Prosecutions (ODPP) is established under Article 157 of the Constitution of the Republic of Kenya. This Article also entrenches the independence of the ODPP and spelt out its mandate. The ODPP employs over 900 officers based around the country in the counties. It is hoped that the full complement of 1,200 staff countrywide could be attained in the not too distant future to enable the ODPP undertake all prosecutions countrywide. In this vein, training for all officers of the ODPP was on-going, as well as attachments to various agencies which carry out prosecutions to ensure that the newly recruited Prosecutors are thoroughly inducted in their work. This notwithstanding, the ODPP was fully aware that criminal justice was a chain which was as strong as the weakest link, and that when one agency is weak, the whole process was weakened, the ODPP participated and would continue to participate in inter-agency cooperation and coordination on electoral related offences in order to enhance transparency, professionalism, expedient and effective execution of the relevant agencies' inter-related mandates. The collaboration mechanism involved the following institutions and their respective roles:

- ODPP – prosecution of criminal offences and directing investigations;
- IEBC – investigation and prosecution of electoral offences under the Elections Act;
- NCIC – investigation of offences under the NCIC Act, 2008;
- National Police Service – investigations and providing security; and
- Private entities and private persons – resource mobilisation and information sharing.

Your Committee was further informed that the ODPP collaborated and cooperated with other agencies in the areas of investigations, training, sharing of resources and prosecution. The ODPP also coordinated with various non-state actors such as the media and civil society.

The ODPP was also a member of the Judiciary Working Committee on Election Preparedness. It is also reported that the ODPP has since developed a Manual for Prosecutors on election offences. Using this manual, all officers in the field are able to carry out analysis of matters reported to them and to pick the appropriate charge. The development of the manual has also assisted to weed out cases which are not strictly election offences, allowing for quick disposal of election-related cases and increasing the conviction rates as the correct charges are used.

Your Committee was informed that during election season, the ODPP set election secretariat at both the headquarters and the county offices, which operated on a 24-hour basis. The mandate of this Secretariat was to ensure close liaison with all key stakeholders, such as the IEBC, the Judiciary, the Police, the NCIC, the Ethics and Anti Corruption Commission (EACC); and administration of ODPP. The secretariat was also responsible for receiving and acting on complaints in the form of letters, phone calls, e-mail; personal visits as well as media reports. The secretariat also received reports of arrests from the Police and a complaint list of all cases reported to the Police arising out of the concluded voter registration, nomination exercise, campaign period, election and post-election period.

The secretariat was also mandated to take appropriate action on the complaints and/or reports received. This action included acknowledging receipt of the complaints, evaluating and analysing the complaints, directing the relevant investigative agencies to investigate and report back within two days, receiving files from the investigative agencies, perusal and giving directions within two days, holding regular consultations with the investigators, prosecution of the election-related offences and handling of the related electoral applications in all courts, data collection, collation, analysing and dissemination of the election and related offences cases. It was stressed that the ODPP endeavoured to conclude all election related matters within the election period or soon thereafter as the nature of these matters required that they be expeditiously handled. The justice delivery system has also garnered support from the Kenya Law Society, so lawyers always attended hearings and represented their clients, which contribute to quick dispensation of justice. This has contributed to the restoration of public confidence in the institutions involved in justice delivery.

Challenges

Your Committee learnt that some challenges were encountered in the execution of the mandate of the ODPP in relation to the electoral process. These included inadequate resources such as transport, ICT facilities, finances and human resources. Other challenges were overlapping mandates which could lead to competing agendas, security concerns, conflicting interests, and lack of accountability. Also of concern was the need to address the special needs of the victims of crime and procuring the attendance of witnesses, which could also be a challenge.

Successes Recorded

Your Committee was informed that since adopting this collaborative approach to handling election-related conflicts, some successes had been recorded by the ODPP in executing its mandate as far as elections were concerned. In this regard, it was noted that the work of the ODPP contributed greatly to the credibility of the 2013 elections. It has also been noted that there was a marked reduction in election malpractices and violence, and has resulted into quick dispensation of justice. Further, this mechanism has greatly strengthened the inter-agency relationship even beyond the elections, and has led to sharing of facilities which enhances availability of resources.

(g) The Institute for Education in Democracy (IED)

The Institute for Education in Democracy (IED) is a leading non-state actor working in the area of human rights and electoral process. Part of its work is to contribute to the improvement of the electoral process through research, advocacy for and participation in legal reform efforts, improved electoral management and administration. Because of the leadership of IED, civil society is currently better organised and could effectively use Statistical Election observation methods (popularly known as parallel vote tabulation or PVT). IED was a member of the Judiciary Working Committee on Election Preparedness.

Your Committee learnt that IED is concerned about issues of eligibility and time frame for voter registration, inclusivity and participation of women, youth and persons with disability in the electoral process and the accuracy of the voters' register. IED also pays particular attention to the statistics pertaining to registered voters per County and voter turnout during elections, so that they can follow up the areas where there was need to improve the registration process and identify reasons for poor voter turnout in some areas.

Your Committee was informed that currently, IED was undertaking an assessment of the interaction of political parties with the Political Parties Act. There was a concern that most political parties were not adhering to the law, and the assessment was aimed at determining whether the failure to adhere to the provisions of the law was due to shortcomings in the law itself or mere lack of internal democracy within the parties. Your Committee was informed that as a non-state actor, IED acts as the eyes of the Kenyan citizens into the electoral process as well as other democratic processes. IED also facilitates citizens' participation in the democratic processes of the country through its public sensitization programmes. Through these programmes, the citizens are also empowered to demand their human rights and hold their government to account in its activities.

(h) The Judiciary

Your Committee was informed that prior to the coming into effect of the 2010 Constitution, public confidence in the Judiciary was at an all time low. It was also noted that before the promulgation of the Constitution, there was no time limit for determination of electoral disputes and as a result, the matters took inordinately long to be disposed of, and in many cases the decisions came so late in the day that there was effectively no justice delivered. In terms of Judicial Reforms, it was noted that after the new Constitution came into effect, there was a process of vetting of all sitting Judges. To this effect, a Vetting Board was appointed to hear and determine complaints against Judges. Once the Vetting Board found a particular individual unsuitable to serve on the Bench, the individual was retired. The decision of the Board was final. Part of the reform also entailed that the individual who was holding the office of Chief Justice during this time had to retire six months after the new Constitution came into effect.

Following the promulgation of the Constitution in 2010, a number of demands were placed on the Judiciary with regard to the determination of election-related matters. In particular, strict deadlines for determination of these matters were prescribed by the Constitution. In order to be able to meet these demands, a Judiciary Working Committee on Election Preparedness was set up within the Judiciary as an administrative measure. This Committee had representation from Judges of the Supreme Court, the Court of Appeal, the High Court and Magistrates. It was also realised that the cases over which the Judiciary was to preside in such a limited period of time would be numerous, hence it was resolved that all local government election petitions would be heard by the subordinate courts. Accordingly, an appropriate amendment was made to the Electoral Act to facilitate this resolution. The Judiciary also undertook massive training of judicial officers at various levels in the handling of electoral petitions, and a post-mortem of how petitions arising from the 2013 elections had been handled is currently underway. However, all the election petitions were concluded within the prescribed periods. Additionally, the Chief Justice issued a practice note that all cases involving electoral offences must be fast tracked. In any case, the Judiciary is concerned about the 14 day period provided for determination of Presidential petitions as it may compromise the quality of the decision. The Judiciary is of the view that the period be increased to at least 30 days.

As regards financial autonomy, your Committee learnt that once the Judiciary prepared its budget, it was a charge on the consolidated fund and was disbursed to the Judiciary directly and the Judiciary expended it in accordance with its own plans without interference, except to account for the funds in the normal way through the office of the Auditor General.

Your Committee further learnt that the appointment of the Chief Justice and Judges was done by the Judicial Service Commission through a transparent and public process which culminated into candidates being vetted by the relevant Parliamentary Committee. After this selection and vetting process, the final list of candidates was sent to the President for swearing in. It was stressed that the President was expected to merely swear in the selected person and he had no discretion to refuse to swear in any of the candidates at all. However, there was no time frame within which the swearing in should take place, which was observed as a lacuna in the law. Incidentally, since the last election, some 25 Judges

had been selected and their names sent to the President for swearing in, but for over a year the President had not sworn them in, until a few months ago when he swore in 12, with 13 still pending to be sworn in.

COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

22. Your Committee makes the observations and recommendations set out below.

- i) **Legal protection of the constitution review process** - Your Committee notes that the Constitution review process in Kenya was fully governed and protected by law. Clear legislative provisions dictated the various stages and time frames through which the process was carried out. Your Committee strongly recommends that the Zambian Government immediately initiates appropriate legislative provisions to protect the current constitutional review process from undue compromise and manipulation.
- ii) **Inclusivity in the constitution review process** - Your Committee notes that the Constitution of Kenya (2010) was developed through an inclusive process. All sections of Kenyan society and interest groups were availed an opportunity to participate in the process. As a result, not only are the ordinary citizens of Kenya knowledgeable about the provisions of the Constitution, but it also enjoys full legitimacy. Your Committee therefore, recommends that the Constitution review process in Zambia be fully inclusive of all sections and interest groups in order to ensure the legitimacy of the final document.
- iii) **Need to carefully plan the constitution review process** - Related to the above, your Committee notes that there is need to carefully plan the constitution review process and schedule all necessary activities properly so as not to compromise its efficacy, for example by rushing the process.

- iv) **Sovereignty and rights of the people** - From the interactions of your Committee with various stakeholders, it became apparent that the supremacy and sovereignty of the people of Kenya, not the state institutions, is paramount under the 2010 Constitution. It was stressed that the people merely delegated their supremacy and sovereignty to the various arms of government and institutions of state. Further, the Constitution of Kenya is a negotiated document and goes into great detail as regards the issues it provides for. In particular, weaved throughout the text of the Constitution is the entrenchment of the rights of each Kenyan person with only limited and very specific circumstances in which these rights can be derogated from. Your Committee recommends that as Zambia reviews her Constitution, no effort should be spared to ensure that the sovereignty and the rights of the people of Zambia are emphasised, and that all Government functionaries are aware that their principal duty is to facilitate the enjoyment of those rights.
- v) **Comprehensive and strong legislative environment to underpin implementation of the constitution** - Your Committee observes that as regards the electoral process, a strong legislative framework is important, that is to say the Constitution, statutes and regulations issued thereunder must be clear, categorical and provide necessary powers to the relevant authorities (especially the electoral management body) to effectively deal with breaches of electoral law and regulations. Your Committee observes that the handling of electoral disputes in Kenya is efficient and effective, and the time frames for disposal of matters as provided in the law are strictly adhered to. The decisions of the institutions charged with dispute resolution are enforced. It is notable that these institutions are given wide powers to deal comprehensively with a diversity of disputes. At national level, the Dispute Resolution Committee is a quasi-judicial body set up under the Commission. Persons dissatisfied with the decisions can appeal to the High Court, failing which its decisions are binding.

Your Committee recommends that the Zambian Constitution review process should be comprehensive enough to enable electoral reform such that the ECZ is

empowered to fully take charge of the entire electoral process and deal promptly and fully with any breaches of electoral law and procedures. This will entail the ECZ being given quasi-judicial powers and having the capacity to impose fines and disqualify candidates and political parties from the election where these are found to have committed major transgressions of the electoral rules.

vi) **Need to entrench ideals such as decentralisation through constitutional review**

- Your Committee notes that one of the most transformative provisions of the Constitution of Kenya is that on the devolution of power. The Constitution also defines the leadership of the country and recognises that the two levels of leadership (national and county government) are distinct but interdependent. To allow for proper coordination of the devolution process, an Inter Governmental Relations Act has been enacted pursuant to the Constitution. Your Committee strongly recommends that the Zambian Government should take advantage of the constitutional reform process to entrench the decentralisation process through appropriate provisions.

vii) **Need for a constitution implementation body** - Your Committee applauds the

establishment of the CIC in Kenya to protect and safeguard the Constitution and ensure that its provisions with regard to devolved government, protection of the supremacy and sovereignty of the people and the observance of democratic values are implemented until the Constitution has a life of its own and is entrenched in the daily practices of all Kenyan institutions and individuals. Your Committee calls for the establishment of a similar body in Zambia with similar powers in order to ensure that the Constitution, once passed, is fully implemented.

viii) **Restoration of public confidence in the Judiciary through reform** - Your

Committee notes that following the 2007 disputed elections, the losers of the elections refused to go to court, citing lack of confidence in the Judiciary. This was an indictment on the third arm of Government and doubtless contributed to the post-election violence that ensued. Your Committee further notes that as

part of the judicial reform process, Kenya took the unprecedented action of purging the Judiciary through vetting of sitting judges. In this way, the Judiciary got rid of those Judges who were perceived by the Kenyan public to be incompetent or corrupt and not fit to hold the office of Judge. Your Committee, cognisant of the low levels of public confidence in the Judiciary in Zambia, recommends that similar action be taken to purge the Zambian Judiciary and restore public confidence in the institution.

- ix) **The Police and the need to ensure enjoyment of constitutional rights** - Your Committee notes that there has been a paradigm shift in the operations of the Kenya National Police Service following promulgation of the Constitution of Kenya in 2010. It is clear that the Kenya National Police Service is acutely aware of the sovereignty and the rights of Kenyans, which have been enhanced and guaranteed in the Constitution, while the derogations on those rights are severely watered down and limited to very specific circumstances. Similarly, all officers in the Kenya National Police Service have been sensitised about the rights of citizens and the fact that the role of the police is to facilitate the enjoyment of rights by Kenyans and not to stifle them in the name of national security. Your Committee, therefore, calls upon the Police Command in Zambia to make concerted efforts through sensitisation and training of police officers to ensure change in the attitude of Zambian police officers. In particular, your Committee implores the Zambia Police Force to sparingly use the *Public Order Act* to stop or prevent public assemblies, and even then only where any other action would be inimical to national security.
- x) **Public sensitisation on constitutional matters** - Your Committee is impressed by the level of public knowledge on Constitutional matters in Kenya and notes that because the members of the public are knowledgeable about their constitutional rights, they are able to demand them, even through court action. Your Committee implores the Government to seriously embark on a nationwide civic education campaign to ensure that all Zambians understand and appreciate the human rights, and can demand them.

- xi) **Process of appointment/removal of key constitutional office holders** - Your Committee observes that the process of appointment of persons to serve as Commissioners on Constitutional Commissions (such as the Electoral Commission, the Ethics and Anti Corruption Commission, Judicial Service Commission including Judicial Officers) in Kenya is transparent and open to public participation, inclusive and, to all intents and purposes, independent of interference from sectarian interests. This also applies to the process of removal from office. Your Committee, therefore, recommends that a similar arrangement be introduced in Zambia so as to restore public confidence in the constitutional commissions, most of which are expected to play a watchdog role but are suffering from a dearth of public confidence.
- xii) **Engagement between political stakeholders and Electoral Commission** - Your Committee observes that continuous engagement and liaison between ECZ and various political players is necessary in the management of the electoral process. In this regard, your Committee recommends that the electoral management body must keep an open line of communication at all times throughout the electoral cycle between itself and other stakeholder in the process so as to avoid misunderstandings, conjecture and suspicion.
- xiii) **Enhancement of the role of political parties in democratic processes** - Your Committee notes that Kenya has an Office of the Registrar of Political Parties. This is an independent institution set up under an Act of Parliament for the purpose of ensuring that interparty and intraparty democracy is upheld and to avoid manipulation of the operations and registration of political parties for personal or sectarian interests in order to ensure that political parties can champion and advance the cause of a democratic culture. In this light, the Office is also mandated to resolve or minimise differences between political parties by brokering talks between or among them where necessary. Your Committee recommends that an equivalent to the Office Registrar for Political Parties be set up in Zambia in order to minimise the incidence of intra and inter party differences.

- xiv) **Role of the Office of the Director of Public Prosecutions in the electoral process** - Your Committee notes that the Office of the Director of Public Prosecutions (ODPP) is an active member of various Committees involved in election preparedness and collaborates closely with other agencies, including the media and civil society, in the areas of investigations, training, sharing of resources and prosecution. Your Committee calls for close collaboration between the Zambian National Prosecution Authority and other agencies involved in the management of elections. This will help expedite the disposal of election related matters before the courts of law.
- xv) **Development of a Manual for election offences** -Your Committee notes with appreciation the initiative taken by the Office of the Director of Public Prosecutions (ODPP) of Kenya in developing a manual for prosecutors on election-related offences. In this regard, your Committee calls upon the Zambian National Prosecution Authority to consider developing a similar instrument in order to further expedite disposal of election-related cases and increase the conviction rates as the correct charges will be used.
- xvi) **Rights-based approach to children’s issues** - Your Committee observes that the setting up Kenya of the National Council for Children’s Services whose Chairperson is appointed by the President, as the apex body for development and implementation of the country’s Child Policy, has raised the profile and prominence of the Council and children’s issues in general. In this regard, Kenya’s rights based approach to the implementation of its Child Policy is admirable. Your Committee calls upon the Government to raise the profile of children’s issues on the national agenda and bring them into sharper focus as a matter of urgency as these are issues of a very serious nature. In particular, your Committee wishes to see increased and direct engagement in child affairs at the highest levels of Government.
- xvii) **Challenges in implementing the new constitution in full** - Your Committee notes that some challenges have been encountered in implementing the Constitution

of Kenya, especially with regard to the costs of the decentralised Government and all the institutions that have been created under the 2010 Constitution. This is a reality and a matter of serious concern, which the Government of that country is currently grappling with. There have also been challenges encountered with regard to the period of time in which the Presidential Election Petition has to be concluded, with the Judiciary itself calling for an amendment to the Constitution to enlarge the time frame. In light of these challenges, your Committee recommends that the Government should carefully consider the implications of the proposed provisions in the new Zambian Constitution and examine the feasibility of implementing them at the same time. This will avert a situation where provisions in the Constitutions cannot be implemented and remain mere rhetoric. Your Committee strongly recommends in this regard that the Government must segregate the provisions so that some of them are implemented progressively while others are implemented upon the Constitution taking effect.

Your Committee further makes the following housekeeping recommendations following its tour to Kenya:

- i) the Committees of Parliament should be empowered to interact more regularly with the Ministries and/or institutions they oversee, especially during the budget sessions;
- ii) the powers of Parliamentary Committees must be enhanced so that they are more effective in their oversight role;
- iii) to enhance effectiveness, each Committee of Parliament must be closely involved in consideration of appointments for ratification of appointments as well as all Bills that relate to matters falling within their mandate; and
- iv) the establishment of the Parliamentary Service Commission should be expedited.

Your Committee resolves that these recommendations be referred to the Committee on Reforms and Modernisation for necessary action.

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 THIRD SESSION OF THE ELEVENTH NATIONAL ASSEMBLY

23. Your Committee considered 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.

PART I

Consideration of Topical Issues

JUDICIAL REFORMS IN THE JUSTICE SYSTEM IN ZAMBIA

24. Your Committee's responses to the Executive's responses on the recommendations of your previous Committee on this matter are as set out below.

Committee's Observations and Recommendations

(i) Policy and/or Legislative Framework Underlying current Judicial Reforms

Your previous Committee had implored the Government to financially support the efforts aimed at providing research assistance to all adjudicators, computerisation of the records of the Judiciary, training of judicial officers and review of the civil procedure rules, among others.

Executive Response

It was reported in the Action-Taken Report that the Judiciary had appointed researchers for the Judges and the first phase of the computerisation project was successfully concluded. Further, the Subordinate Court Rules, High Court Rules and Supreme Court Rules were revised in order to provide for electronic filing of court documents. The Ministry of Justice continued to facilitate the needs of the Judiciary and financing was

provided to the greatest extent possible, taking into account the competing needs of the nation. In addition, the legal and Justice Sector Reform Commission was in the process of inquiring into the legal and justice sector in order to recommend areas for reform.

Committee's Observations and Recommendations

Your Committee notes the submission and requests an update on the completion of the computerisation project and the comprehensive review of the civil procedure rules.

(ii) Appointment and Recruitment of Judicial Officers

Your previous Committee had noted that most of the recommendations for judicial reform hinged on constitutional reform. This meant that most of the key proposals on judicial and legal reforms could not be undertaken if the constitutional reform process was not successfully concluded. Your previous Committee, therefore, called upon the Government to expeditiously lead and facilitate the conclusion of the constitution review process and, by implication, the judicial reform process. The judicial reform process, like the constitution review process, should be transparent and take account of the views of all stakeholders, especially with regard to critical issues such as transparent appointment procedures, security of tenure and remuneration of judicial officers.

Executive Response

It was reported in the Action-Taken Report that the Draft Constitution was submitted to the Ministry of Justice and a cabinet memorandum had been prepared for consideration by Cabinet. The Legal and Justice Sector Reforms had also been initiated through the appointment of the Legal and Justice Sector Reforms Commission.

Committee's Observations and Recommendations

Your Committee notes that the Draft Constitution has since been released for further public debate. However, your Committee urges the Executive to actively move the Constitutional Review process to its logical conclusion. In this regard, your Committee calls upon the

Executive to prepare and table appropriate legislation which would provide a roadmap and time frames for the conclusion of this important national exercise.

(iii) Backlog of Cases

Your previous Committee had recommended that, as a matter of urgency, there should be an amendment of the law to provide for the appointment of High Court Commissioners for a period of no more than three years, for the purpose only of addressing this problem of case backlog.

Executive Response

It was reported in the Action-Taken Report that the Constitution currently provides for the appointment of High Court Judges and there was no provision for the appointment of commissioners. The appointment of Commissioners may, therefore, only be considered and effected where the Constitution permitted this. The Judiciary had, however, continued to take deliberate steps to reduce the backlog including the setting up of specialised divisions such as the commercial list, the establishment of the small claims courts and promotion of alternative dispute resolution.

Committee's Observations and Recommendations

Your Committee notes that measures such as setting up of the Commercial List, Small Claims Court and promotion of Alternative Dispute Resolution, which were aimed at addressing the backlog of cases before the courts, have not achieved the intended purpose and are unlikely to do so. Your Committee, therefore, is of the view that that the problem of case backlog has reached crisis proportions and is a very imminent threat to the already waning public confidence in the judicial system. In this vein, your Committee reiterates its earlier recommendation that the relevant legal and, if necessary, Constitutional provisions be amended to facilitate the appointment of High Court Commissioners for a limited period of, say, three years to facilitate clearing of the case backlog and improve justice delivery.

Your previous Committee had recommended that the jurisdiction of the Subordinate Courts should be revised expeditiously so that the delays of cases tried by the Subordinate

Courts on account of the requirement for the High Court to confirm the convictions and sentence the convicts could be eliminated.

Executive Response

It was reported in the Action-Taken Report that the Legal and Justice Sector Reforms had also been initiated through the appointment of the Legal and Justice Sector Reform Commission and among its terms of reference was the recommendation of reforms for improved access to justice, including revision of the jurisdiction of the courts.

Committee's Observations and Recommendations

Your Committee notes the response, but reiterates that the status quo is unacceptable and there is need to urgently revise the jurisdiction of the Subordinate Courts so as to forestall the current delays in getting convictions confirmed and convicts sentenced by the High Court.

(iv) Operational Independence of the Judiciary

Your previous Committee was of the view that judicial officers must be encouraged, through continued awareness of the importance of abiding by the Judicial Code of Conduct, to ensure that they conducted themselves independently, impartially and with integrity. In this vein, judicial officers should ensure that they exercised professionalism while matters were before them, to avoid unnecessary adjournments and delays. In particular, your committee noted that courts located in remote areas were more prone to unprofessionalism and failure by officers to abide by the Code of Conduct.

Your Committee had, therefore, recommended that such courts must be placed under stricter supervision by senior officers in charge.

Executive Response

It was stated in the Action-Taken Report the supervision of the courts was continually

being improved in order to ensure professionalism and increased access to justice.

Committee's Observations and Recommendations

Your Committee resolves to request a report on the specific measures that have been put in place to ensure close supervision of judicial officers so that professionalism can be maintained in the Judiciary.

Your previous Committee had recommended that a system should be introduced where the performance of judicial officers would be assessed on a frequent basis through peer reviews or the compiling of accountability reports of such types as other jurisdictions had implemented. Such a system should be designed with targeted consequences for erring officers.

Executive Response

It was reported in the Action-Taken Report that there were a number of review mechanisms of judicial performance including appraisal of performance of judicial officers and the possibility of complaints with the Judicial Complaints Authority and Tribunals to look into judicial conduct based on certain complaints.

Committee's Observations and Recommendations

Your Committee, while noting the response, is concerned that the current review mechanisms have not yielded the intended results and reiterates the need for enhanced measures in terms of peer reviews and accountability reports. Your Committee will await a progress report on the new performance review mechanisms for judicial officers.

Your previous Committee had recognised the inadequacy of the funding to the Judiciary over the years, which had practically crippled the Institution's operations. Your previous Committee had recommended that the fiscal autonomy of the Judiciary should be firmly established to allow for enhanced independence of the institution and in order to remove the perception and possibility that the Executive can influence the judicial process by the hold they may have on the availability and disbursement of funds to the Judiciary.

Committee's Observations and Recommendations

Your Committee notes that the poor funding situation, coupled with poor infrastructure in the Judiciary, has compromised not only the autonomy of the Judiciary but ultimately justice delivery. Your Committee reiterates that the poor funding of the Judiciary is so serious that it is crippling the institution's operations and undermining public confidence in it. Your Committee requests a progress report on the specific practical measures being taken to improve funding to the Judiciary in the short to medium term.

v) Training of Magistrates

Your previous Committee had observed with concern that there was no dedicated judicial college for Judges or Magistrates to train them in various aspects of the performance of their functions. This was anomalous and should be urgently rectified through the design and implementation of training modules and related training materials for lawyers and judicial officers as a follow up to and taking into account the work already done by experts on Legal and Judicial Education, Situational and Gap Analysis engaged by the Access to Justice Programme under the Ministry of Justice.

Executive Response

It was reported in the Action-Taken Report that the work that had currently been conducted was being incorporated into the training modules and the development of the curriculum was being done in line with the strategic plan.

Committee's Observations and Recommendations

Your Committee notes the response and requests a progress report on the development of the training modules. More importantly, your Committee seeks to find out when the training of Judges and Magistrates is expected to commence.

vi) Sustainability of the Judiciary computerisation project

Your previous Committee, while applauding the initiative of computerising records in the

Judiciary, was disappointed that the computerisation project (ZAJIS) had been donor funded. Your Committee noted that this project was too important to be left to donor funding. Your Committee had recommended that in order to promote the independence of the Judiciary and ensure the roll out and sustainability of the computerisation project, the Government should take over funding of this project with immediate effect.

Executive Response

It was reported in the Action-Taken Report that the computerisation of the Judiciary, although initially facilitated through the support of the cooperating partners, was a Government initiative which would be continued by the Government and whose sustainability was being assured specifically through measures to implement Zambia's e-Government strategy generally.

Committee's Observations and Recommendations

Your Committee is dissatisfied over the fact that a general response has been given to a very specific recommendation and therefore, requests a categorical response as regards what practical measures are being undertaken to ensure the roll out and sustainability of the computerisation project.

vii) Recognition of the role of Magistrates in justice delivery

Your previous Committee was in complete agreement with the assertion that Magistrates tended to be forgotten in the discourse relating to judicial independence and judicial reform. Your Committee had strongly recommended that the role played by Magistrates be given due recognition as it was critical to the proper dispensation of justice. Your Committee recommended that the legal provisions relating to security of tenure, conditions of service, career progression, among others, for the Judges of High Court and Supreme Court must also apply, *mutatis mutandis*, to Magistrates.

Executive Response

It was reported in the Action-Taken Report that the terms and conditions of service of the Judiciary would be examined and the appropriate recommendations made.

Committee's Observations an Recommendations

Your Committee is concerned as regards the generality of the response on this matter and seeks a more specific response as regards the time frame for the review of the terms and conditions of service, particularly in relation to Magistrates.

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

Committee's Observations and Recommendations

25. Your previous Committee had made observations and recommendations set out below.

i) Training of law enforcement officers in the handling of GBV

The Government should step up the training of law enforcement officers on how to deal effectively with violence against women and girls. Your previous Committee had strongly recommended that the syllabus for training of law enforcement officers, especially the Police, should, forthwith, include a component on this subject. In the same vein, state prosecutors and other service providers involved in GBV case management should also be adequately trained. These would include the health personnel, court staff, community services and social welfare officers and Magistrates.

Executive Response

It was reported in the Action-Taken Report that the Zambia Police had stepped up the training of both investigating officers and Public Prosecutors, to enhance their skills of

investigation and prosecution of cases of violence against women and girls and how to deal with child witnesses. Sixty (60) Public Prosecutors had been trained this year alone by the National Institute of Public Administration and further twenty five (25) officers comprising of both investigators and prosecutors had been sponsored to the Zambia Institute of Advanced Legal Education. The Police Training syllabus was also undergoing review to include GBV Case Management. This was being done in collaboration with the Curriculum Development Centre under the Ministry of Education.

Committee's Observations and Recommendations

Your Committee commends the Government for including training in handling of GBV cases for investigating officers and prosecutors. However, your Committee requests an update on the measures being taken to train other relevant personnel such as health workers, court staff, community services and social welfare officers, and Magistrates and any other public officials who are involved in GBV case management.

Your previous Committee had recommended that adequate transport and other necessary equipment for follow-up and effective prosecution of cases of violence against women and girls should urgently be acquired by the Government. In the same vein, the establishment of the Forensic Science Laboratory should be expedited.

Executive Response

It was reported in the Action-Taken Report that efforts were being made to procure the necessary transport and other equipment for follow up and effective prosecution of cases of violence against women and girls. The establishment of the forensic science laboratory had been made one of the priority areas. Tender Procedures for construction of the laboratory had already begun, some laboratory equipment had also been acquired and some officers already trained. The existing forensic sciences laboratory at Police Headquarters had been enhanced and the Deoxyribonucleic Acid (DNA) finger printing component added. This component would be operational by

November, 2014.

Committee's Observations and Recommendations

Your Committee requests to be availed information as regards whether an appropriate budgetary provision had been made for the procurement of transport and other equipment necessary for follow up and effective prosecution of GBV cases countrywide. Further, your Committee seeks a progress report on the construction of the forensic science laboratory alluded to in the response.

ii) Establishment of safety centres countrywide

Your previous Committee had recommended that the Government must take urgent measures to establish safety centres countrywide in order to prevent further suffering and trauma by the victims of GBV.

Executive Response

It was reported in the Action-Taken Report that the mandate for establishing safety centres fell under the Ministry of Community Development, Mother and Child Health in line with the *Anti-Gender Based Violence Act No. 1 of 2011*. Currently, the Government had established one place of safety in Mansa. However, there were plans to progressively establish at least one place of safety in each of the other provinces countrywide.

Committee's Observations and Recommendations

Your Committee requests a progress report on the implementation of the plan to establish places of safety for GBV victims and survivors in the provinces.

iii) Accessibility of various service providers

Your previous Committee had recommended that the Government should take all necessary measures to improve accessibility of various service providers around the country such as the Legal Aid Board and Victim Support Unit.

Executive Response

In response, it was stated in the Action-Taken Report that the Government, through the Ministry of Gender and Child Development had commissioned a mapping exercise of all the service providers with the view of enhancing accessibility of services by the survivors of GBV. This would feed into the National Referral System that would point the survivors to the available services including that of Legal Aid Board and Victim Support Units countrywide.

Committee's Observations and Recommendations

Your Committee requests a report on the conclusion of the mapping exercise of all service providers and whether the National Referral System is operating effectively.

iv) The role of traditional leaders in the fight against GBV

Your previous Committee had stated that since traditional leaders had clearly been identified as a critical resource in the fight against GBV, your Committee was of the view that the Government should provide the necessary financial and material resources for the training of customary and traditional leaders on the negative impact of violence against women and children as well as on inheritance and succession practices that protected women's and girls' rights.

Traditional and local court leaders should also be trained in human rights and the law to ensure that their adjudication conformed to statutory and international human rights standards.

Executive Response

It was reported in the Action-Taken Report that the Government would continue orienting, training and sharing best practices with the traditional leaders on all matters of human protection, especially when it came to women and children. The Government had high regard for traditional leaders and valued their contribution to the fight against gender based violence. For this reason, the Government would

endeavour to train the Chiefs in relevant subjects on the importance of peace and inclusiveness in order to promote development in the Chiefdoms. The training in human rights and legal matters therefore, was of utmost importance in the Ministerial calendar.

Committee's Observations and Recommendations

Your Committee requests to be availed the orientation and training plan for traditional leaders in law, GBV and human rights as per the Ministerial calendar alluded to.

v) Development of Rules of Court for the Anti-GBV Act

Your previous Committee had also recommended that the Government should ensure the development of Rules of Court on the procedure and form of commencement of actions under the *Anti GBV Act, No 1 of 2011* to make it fully operational.

Executive Response

It was reported in the Action-Taken Report that the Anti-Gender Based Violence committee had prepared draft rules of court to support the Act and these were subjected to stakeholder consultation and had since been submitted to the Ministry of Justice for drafting and publication.

Committee's Observations and Recommendations

Your Committee requests an update on the development of the Rules of Court regarding the procedure and form of commencement of actions under the *Anti GBV Act, No 1 of 2011*.

vi) Operationalisation of the Anti-GBV Fund

Your previous Committee had called upon the Government to operationalise the Anti-GBV Fund so that victims of GBV could start benefiting from the provisions of the Act. Your previous Committee had also reiterated that relevant ministries must move expeditiously to establish shelters across the country for GBV survivors so that they can

be removed from abusive environments, facilitated to undergo psycho-social counselling and have access to life skills.

Executive Response

It was stated in the Action-Taken Report that the comments of your Committee were noted. The Anti-Gender Based Violence Committee established under the *Anti-Gender Based Violence Act No. 1 of 2011* would monitor the establishment and management of such shelters in accordance with the mandate of the Ministry of Community Development, Mother and Child Health.

Committee's Observations and Recommendations

Your Committee is dissatisfied with this response as it does not address the recommendation. Your Committee reiterates its request for an update on progress made towards the establishment of victims' shelters, including the expected timeframe for the completion and full operationalisation of all the shelters across the country.

vii) Establishment of Fast Track Anti-GBV Courts

Your previous Committee had recommended that the Government should engage the Judiciary to speed up the establishment of special fast track courts; particularly to deal with cases of gender based violence on selected days of the week so that such cases could be disposed of quickly.

Executive Response

It was reported in the Action-Taken Report that the Judiciary established a technical committee to deal with the creation of fast track courts and this committee had undertaken a number of study tours to determine best practice and had been working to facilitate the establishment of fast track courts to deal with gender based violence.

Committee's Observations and Recommendations

Your Committee notes the response and awaits an update on concrete progress made so far towards the establishment of the Fast Track Anti-GBV Courts.

viii) Amendment of the Penal Code

Your previous Committee had strongly recommended that the review of the *Penal Code* should take on board all the provisions of the *Anti- Gender Based Violence Act* and also provide for the offence of sexual harassment against persons (not only children).

Executive Response

It was reported in the Action-Taken Report that the Zambia Law Development Commission was currently undertaking a project to review the Penal Code in order to take into account the various changes that have taken place in Zambia's legal framework. Generally, part of the focus of the proposed changes was to harmonise the Penal Code with the various pieces of legislation, including the *Anti- Gender Based Violence Act*.

Committee's Observations and Recommendations

Your Committee requests to be availed a progress report on the revision of the Penal Code to take into account the various areas of concern that have been raised.

ix) Domestication of regional and international human rights instruments

Your previous Committee had recommended that international and regional human rights instruments that Zambia had signed and ratified should be domesticated into national law and a time frame for domestication of such instruments once signed and ratified should be set.

Executive Response

It was reported in the Action-Taken Report that the Government was continuing the process of law revision, including enhancing the procedures for domestication of international instruments and development legislation that would regulate the process of ratification and domestication of international instruments.

Committee's Observations and Recommendations

Your Committee welcomes the proposal to develop legislation that would regulate the process of ratification and domestication of international instruments and requests that a progress report be submitted to your committee.

x) Conclusion of the constitutional review process

Your previous Committee had recommended that the process of adoption of the draft Constitution which contained progressive provisions aimed at promoting social, economic and cultural rights, especially for women, and which had proposed to drop the controversial Articles 23(4) (b and c) which were discriminatory against women be expedited.

Executive Response

It was reported in the Action-Taken Report that the Government was continuing with the process of giving its citizens a Constitution that would stand the test of time and continued to take steps that this process was concluded as expeditiously as possible.

Committee's Observations and Recommendations

Your Committee reiterates that there is need for a roadmap in the Constitution Review process and speedy conclusion of the process.

PART II

LOCAL TOUR REPORT

26. In accordance with its programme of work, your previous committee undertook a local tour to Kabwe, Ndola, Kitwe, Solwezi, Mwinilunga and Lusaka. The purpose of the local tour was to better understand the current operations of the courts and obtain first hand information on the challenges they faced with a view to making recommendations as to how best the courts' operations could be improved upon in order to help improve justice delivery.

Committee's Observations and Recommendations

Following the local tour, your previous Committee had made the observations and recommendations set out below.

xi) Inadequate funding to the Judiciary

Your previous Committee had found that the biggest problem facing the Judiciary at the moment was inadequate funding. Your previous Committee had, therefore, strongly recommended that the Government should revisit the current financing arrangements for the Judiciary in order to make it truly autonomous and vibrant.

Executive Responses

It was reported in the Action-Taken Report that the Government continued to find more effective ways to finance the operations of the Judiciary, including fully funding the Judiciary budget as requested and allowing the Judiciary to retain certain fees for its operations. Therefore, the Judiciary was autonomous, particularly with regard to its operations and that the Executive did not interfere with its operations. In terms of the budget requirements however, it was important to note that resources were limited, while the demands from the three arms of Government were numerous, hence the Treasury was faced with the challenge of having to match all the requirements within the available resource.

The Treasury had, however, been progressively addressing the challenges being faced by the Judiciary, including those relating to infrastructure development, dismantling of arrears, equipping new court buildings and recruitment of essential staff, among others.

Further, efforts were being made to enhance the overall domestic resources mobilisation to ensure that the revenue base was broadened so that these financing challenges could be addressed.

Committee's Observations and Recommendations

Your Committee reiterates that the general response given to its recommendation is unacceptable. Your Committee is of the view that the poor funding of the Judiciary is so serious that it is crippling the institution's operations and undermining public confidence in the Institution. This requires urgent and specific action. Your Committee requests a progress report on the matter.

xii) Security of Judicial personnel

Your previous Committee had observed that the question of personal security of the judicial officers while at work had not been adequately addressed. Your Committee called upon the Government to provide adequate personal security to all judicial officers during their performance of duties.

Executive Response

It was stated in the Action-Taken Report that the Government and the Police had taken note of the lapses in the personal security of Judicial Officers and was working on modalities to improve both the personal security of Judicial Officers and court premises. Formation of a unit specifically dedicated to Judiciary security was under consideration.

Committee's Observations and Recommendations

Your Committee resolves to await an update on the establishment of a security unit specifically dedicated to Judiciary security.

xiii) Accessibility of court facilities to persons with disabilities

Your previous Committee had recommended that the Judiciary must take deliberate measures to make court facilities countrywide accessible to persons with disabilities without delay.

Executive Response

It was reported in the Action-Taken Report that the new courts which were being constructed by the Judiciary were accessible to persons with disability, especially in light of the enactment of the Persons with Disabilities Act, which provided for the development of infrastructure which ensured full participation of persons with disabilities in all areas of their lives, including access to courts.

Committee's Observations and Recommendations

Your Committee reiterates the need for all court facilities countrywide, not only the newly constructed ones, to be accessible to persons with disabilities. Your Committee therefore, requests for a report on how the Judiciary plans to address this concern in the shortest possible time.

xiv) Establishment of appropriate facilities for juvenile offenders

Your previous Committee had recommended that the Judiciary must establish appropriate facilities for juvenile offenders, child witnesses and victims of gender based violence.

Executive Response

It was reported in the Action-Taken Report that the Judiciary had been developing infrastructure that was more conducive for juveniles and participating in diversion programmes in order to avoid placing juveniles in custody where possible.

Committee's Observations and Recommendations

Your Committee requests a further report on this recommendation as the response does not address the concern as regards lack of facilities for child witnesses and victims of gender based violence.

xv) State of Judicial infrastructure

Your previous Committee had observed that the state of judicial infrastructure was not only shocking, but also unacceptable. Your Committee, therefore, implored the Government to urgently embark on a special infrastructure development programme for the Judiciary to enable the institution construct appropriate juvenile justice facilities, facilities for child witnesses, exhibit rooms, court rooms, Judges and Magistrates' chambers and office accommodation for support staff.

Executive Response

It was stated in the Action-Taken Report that the Judiciary continues constructing various infrastructure in accordance with its strategic plan and various government initiatives such as the access to justice programme, which provided for the development of various new buildings for use by the courts and other stakeholders.

Committee's Observations and Recommendations

Your Committee seeks to be informed as to what practical measures, such as budgetary provisions, have been taken in the quest to ensure that appropriate infrastructure is constructed for the Judiciary to effectively perform its functions.

xvi) Career progression for Magistrates

Your previous Committee had agreed that there was need to reconsider the career progression of Magistrates in general. In particular, the issue of long-serving Magistrates who were not qualified advocates should be revisited with a view to opening up a route for them to progress beyond the level of Magistrate Class I in their careers. Your previous

Committee called upon the Judicial Service Commission (JSC) to consider serving Magistrates for elevation to the higher bench in order to avoid frustrating these officers since they had a legitimate expectation to progress in their chosen career.

Executive Response

It was reported in the Action-Taken Report that the Judiciary had always had a policy of promoting professional Magistrates from the lower bench to the higher bench and this policy had been implemented based on merit. Various Magistrates had, therefore, been elevated from the Subordinate Courts to the High Courts.

Committee's Observations and Recommendations

Your Committee is concerned that its recommendation with regard to the need for the Judiciary to facilitate career progression for Magistrates who were not qualified advocates has been ignored in this response. Your Committee resolves to seek a specific response to this matter.

xvii) Payment of housing allowances to Magistrates

Your previous Committee had called upon the Judiciary to, henceforth, pay the housing allowances due to Magistrates in accordance with their conditions of service and allow them to rent houses befitting their status and avoid the embarrassment of being evicted from rented houses on account of non-payment by the Judiciary.

Executive Response

It was reported in the Action-Taken Report that the Judiciary continued to look into the improvement of the welfare of Magistrates and in particular to harmonise their remuneration in accordance with Government's harmonised salary implementation strategy.

Committee's Observations and Recommendations

Your Committee wishes to be availed a report on whether housing allowances due to Magistrates are currently being paid to them in accordance with their conditions of service. The report should be accompanied with appropriate evidence.

xviii) Magistrates residential complex in Lusaka

As regards the Magistrates' residential complex in Lusaka, your previous Committee observed with concern that the location of the Complex was not conducive for adjudicators. Your Committee strongly reiterated that the Judiciary should facilitate the immediate relocation of the Lusaka based Magistrates from the area.

Executive Response

It was reported in the Action-Taken Report that the relocation of Magistrates and other officers was being facilitated as expeditiously as possible and the office accommodation in all areas where courts were established continues to be upgraded.

Committee's Observations and Recommendations

Your Committee requests a full report on the relocation of the Magistrates from the Thornpark Residential Complex in Lusaka, including appropriate evidence to this effect.

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

Your previous Committee had called upon the Government to urgently revise the *Judges (Conditions of Service) Act, Chapter 277* of the Laws of Zambia so as to include provisions for Magistrates' conditions of services.

Executive Response

It was reported in the Action-Taken Report that the conditions of service of the Magistrates continued to be examined and dealt with in accordance with the pay policy and the harmonised government framework for salaries.

Committee's Observations and Recommendations

Your Committee reiterates the need for the full recognition of the role played by Magistrates as adjudicators, and emphasises the call for urgent inclusion of Magistrates' conditions of service in the *Judges' (Conditions of Service) Act, Chapter 277* of the Laws of Zambia.

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

27. During its local tour, your previous Committee made certain findings, observations and recommendations with regard to the enforcement of the law relating to violence and harassment against women and girls.

Committee's Observations and Recommendations

In light of its findings, your previous Committee had recommended as outlined below.

i) Need to decentralise police operations

Your previous Committee had recommended that the Government should urgently decentralise the operations of the police so that they provide a service closer to where the people live so that police services were accessible, especially in the rural areas.

Executive Response

It was reported in the Action-Taken Report that the Government, through the Zambia Police, was making efforts to have a permanent presence in all the areas of the country. As

a mitigation measure, in areas where police stations were far from the community, the Police provided transport to victims of crime and witnesses were possible.

Committee's Observations and Recommendations

Your Committee resolves to request an update on the practical measures being taken to ensure that law enforcement services through the Zambia Police are provided as close to the communities as possible. In this light, your Committee wishes to be apprised as what budgetary allocation has been made towards these efforts in the 2015 financial year.

ii) Need to strengthen and integrate traditional court system into formal justice structure

Your previous Committee had recommended that the Government should consider strengthening and integrating the traditional courts in the formal justice structure so that these could be supervised to ensure that they implement the law correctly.

Executive Response

It was reported in the Action-Taken Report that the Government had given consideration to the increased utilisation and formalisation of traditional courts and continued to engage stakeholders on the role of traditional courts in the judicial system of Zambia.

Committee's Response

Your Committee wishes to be apprised as regards the outcome of the Government's stakeholder engagement on the increased utilisation and formalisation of the traditional courts in the judicial system.

PART III

CONSIDERATION OF OUTSTANDING ISSUES IN THE ACTION-TAKEN REPORT ON THE COMMITTEE'S REPORT FOR THE SECOND SESSION OF THE ELEVENTH NATIONAL ASSEMBLY

28. Your previous Committee considered the Action-Taken Report on the Report of the Committee 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)

- i) Your previous Committee had recommended that the Government, through the Ministry of Education, should as a matter of urgency undertake physical inspections of all universities in the country, especially private universities, with the view to assessing whether or not they met the minimum universal standards expected of a university, and to bring them into conformity with the provisions of the *Higher Education Act* of 2013. Your previous Committee resolved to await an update on whether the physical inspection of all public and private universities had been done.

Executive Response

It was reported in the Action-Taken Report that the physical inspection of all public and private universities would be undertaken within the framework of the Higher Education Authority which was yet to be operationalised.

Committee's Observations and Recommendations

Your Committee resolves to request a progress report on the matter.

- ii) Your previous Committee had recommended that enrolment into the various schools of law should be done as per universal standards whereby students first went through the humanities or already had a first degree.

Your previous Committee resolved to await an update on efforts being made to ensure admission criteria into various law schools are in accordance with universal standards.

Executive Response

It was reported in the Action-Taken Report that the Government took note of your previous Committee's observation and indicated that inspections of all public and private universities to ensure that various schools of law adhere to the universal standards would be considered once the Higher Education Authority was operationalised.

Committee's Observations and Recommendations

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

Your previous Committee had recommended that, as a matter of urgency, the Government should punish universities which were violating universal standards as they were extorting millions of kwacha from students who genuinely wanted to be educated, but could not afterwards put their qualifications to use for want of sound qualifications.

- iii) Your previous Committee resolved to await a detailed report on the punitive measures that had been taken by the Higher Education Authority against universities that had not met the required standards.

Executive Response

In response, it was stated that the Government noted your Committee's recommendation that punitive measures should be taken by the Higher Education Authority against Universities that did not meet the required standards. However, the Higher Education Authority (HEA) had not yet been operationalised to undertake such measures within the stipulated legal framework.

Committee's Observations and Recommendations

Your Committee resolves to await a progress report.

- iv) Your previous Committee had recommended that the system being used in Uganda, where students were divided into groups called 'firms' with a lecturer as overseer of the group, be adopted in Zambia. Each firm would then be given or subjected to the same exercises, tests, moots and any other material considered relevant to their training, upon which they shall be examined throughout the course and at the end of the course. Your previous Committee took note of the response, and resolved to await a progress report on the implementation of the ZIALE Strategic Plan with regard to review of duration, syllabus and structure of the LPQE course.

Executive Response

It was reported in the Action-Taken Report that the status remained the same. Consultations were still being conducted on the possible new curriculum for the LPQE Course as this was linked to restructuring the course. Implementation depended on the recruitment of full-time lectures which was hampered by budgetary constraints.

Committee's Observations and Recommendations

Your Committee resolves to seek an update on when this exercise is expected to be completed and when the new system will be implemented.

- v) Your previous Committee had recommended that ZIALE should urgently iron out all the administrative challenges that were encumbering the operations of the Accreditation Committee so that it could commence its work, including scrutinising the applicants' degree certificates. Your previous Committee resolved to await a progress report on the finalisation of the Accreditation Regulations to facilitate the commencement of operations of the Accreditation Committee.

Executive Response

It was reported in the Action-Taken Report that the development of Accreditation Regulations was progressing steadily. The Council of ZIALE considered the latest draft Accreditation Regulations at its meeting held on Thursday 28th August, 2014. The Regulations would be submitted to the draftspersons for further refinement, taking into account the views of the Council. The draft regulations had set out minimum standards which all schools of law or institutions offering training in law would have to meet.

Committee's Observations and Recommendations

Your Committee notes the submission and resolves to await a progress report on the finalisation of the Accreditation Regulations.

- vi) Your previous Committee had recommended the introduction of a pre-entry examination for all applicants to the Bar course, to be prepared and administered by the Ministry of Justice in conjunction with LAZ. While noting the submission, your previous Committee wished to get an update on the introduction of the pre-entry examination for all applicants to the Bar Course.

Executive Response

It was stated in the Action-Taken Report that the Pre-entry Examination Committee had been set up and it has commenced its work. It was expected that the Committee would complete its preparations in time for implementation of the pre-entry examination for the 2015-2016 academic year.

Committee's Observations and Recommendations

Your Committee resolves to await an update on the commencement of the pre-entry examinations.

- vii) Your previous Committee had recommended that the Rules should be amended so that students could be credited with the subjects they had passed and only be made to repeat the ones they failed. Your previous Committee resolved to await a progress report on the revision of the Student Rules with particular regard to students being credited with subjects that they have passed and only being made to repeat those they have failed.

Executive Response

It was reported in the Action-Taken Report that the development of new Students Rules was still an on-going exercise. In this regard, the current rules were still applicable. However, in order to help more learner legal practitioners qualify for the Bar, ZIALE had, since 2013, adopted a practice of allowing students remaining with only one subject after three attempts to sit for a “fourth attempt”. Ordinarily, such students should proceed on the 5-year ban for failing to clear all the subjects after three sittings. Further, students returning from the 5-year ban or who had had their 5-year ban abridged, were required to attempt only the number of subjects. When a student completes their 5-year ban or it is abridged, they were entitled to another three attempts to clear the LPQE.

Committee’s Observations and Recommendations

Your Committee notes the response and requests an update on the progress made towards revision of the students’ rules.

- viii) Your previous Committee had recommended that once ZIALE had revised the course as proposed above, there would be no need for the five year ban, as students would be made to repeat at the continuous assessment stage. Your previous Committee resolved to await an update on the matter of the five year ban.

Executive Response

It was stated in the Action-Taken Report that as the revision of Student Rules had not

yet been completed, the 5-year ban was still applicable. However, as indicated earlier, ZIALE is now allowing students remaining with only one subject or course after three attempts to sit for a “fourth attempt”. Petitions from students remaining with only one course to clear to be allowed to try a fourth time had been favorably considered. This discretion had been exercised by the ZIALE Council in accordance with the proviso to Rule 23(4) of the Students Rules of the Legal Practitioners Act Chapter 30 of the Laws of Zambia, which states:

Provided the, except with the permission of the Council granted as a result of his petition, a student who has thrice taken or retaken the examination or any part thereof, and failed to complete it, shall not be allowed, within five years of his attempt, to retake the examination or any Head thereof.

Further, the Attorney General, who was Chairperson of the ZIALE Council, had in the recent past, abridged the 5-year ban in deserving cases in accordance with Rule 31 of the Student Rules aforesaid, which states:

Subject to the Attorney General, who is Chairman of the ZIALE Council may, at his discretion, in any particular case, extend or abridge any times laid down by these Rules.

Based on the foregoing, it was clear that even as the 5-year ban was being debated, ZIALE had already moved to relax its enforcement in meritorious cases.

Committee’s Observations and Recommendations

Your Committee notes the submission and urges the ZIALE Council to expedite the process of revising the student’s rules, particularly with regard to the five (5) years ban.

- ix) Your previous Committee had urged ZIALE to adjust the operating time of the Library to accommodate the students’ schedule of attachment in the morning and classes in the afternoon. A late closing time would be ideal. Your previous Committee reiterated the need to adjust the operating hours of the Library at ZIALE as a matter of utmost urgency.

Executive Response

It was reported in the Action-Taken Report that the extended opening hours of the library had been implemented during study breaks and examination time. During those times, the Library was open up to 20 hours in the evening. ZIALE Management was still working on a lasting arrangement which should see to it that the Library opened for a longer period during the entire duration of the LPQE Course.

Committee's Observations and Recommendations

Your Committee notes the submission and reiterates the need to keep the Library open through-out the duration of the LPQE course. Your Committee will await a progress report on the matter.

CONCLUSION

29. Your Committee wishes to pay tribute to all the stakeholders who appeared before it and tendered both oral and written submissions. It also wishes to thank you, Mr Speaker, for the invaluable guidance provided throughout the Session. Your Committee also appreciates the services rendered by the Office of the Clerk of the National Assembly.

Your Committee is hopeful that the observations and recommendations contained in this Report will be favourably considered and implemented by the Executive in the interest of our country.

May, 2015
LUSAKA

Mr J J Mwiimbu, MP
CHAIRPERSON

APPENDIX 1

List of Officials

Mr S C Kawimbe, Principal Clerk of Committees

Ms M K Sampa, Deputy Principal Clerk of Committees

Mr F Nabulyato, Committee Clerk (SC)

Ms C Musonda, Assistant Committee Clerk

Mr G Zulu, Assistant Committee Clerk

Ms S E Mwale, Stenographer

Mr R Mumba, Committee Assistant

Mr C Bulaya, Committee Assistant

Mr M Chikome, Parliamentary Messenger