



**REPUBLIC OF ZAMBIA**

**REPORT**

**OF THE**

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

**FOR THE**

**FIRST SESSION OF THE TWELFTH NATIONAL ASSEMBLY  
APPOINTED ON THURSDAY, 6<sup>TH</sup> OCTOBER, 2016**

***Printed by the National Assembly of Zambia***

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**REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, GOVERNANCE,  
HUMAN RIGHTS, GENDER MATTERS AND CHILD AFFAIRS FOR THE  
FIRST SESSION OF THE TWELFTH NATIONAL ASSEMBLY APPOINTED  
ON THURSDAY, 6<sup>TH</sup> OCTOBER, 2016**

*Consisting of:*

Mr C L Bwalya, MP (Chairperson); Ms E Phiri, MP; Mr T C Ngulube, MP; Mr C Nanjuwa, MP; Mrs P G M Jere, MP; Mr M Jere, MP; Mr H Shabula, MP; and Mr K A Mukata, MP.

The Honourable Mr Speaker  
National Assembly  
Parliament Buildings  
**LUSAKA**

Sir,

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

**Functions of the Committee**

2. In addition to any other duties placed upon it by the Honourable 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:

- (i) study, report and make appropriate recommendations to the Government through the House on the mandate, management and operations of the Government ministries, departments and agencies under their portfolio;
- (ii) carryout detailed scrutiny of certain activities being undertaken by the Government ministries, departments and agencies under

- their portfolio and make appropriate recommendations to the House for ultimate consideration by the Government;
- (iii) make, if considered necessary, recommendations to the Government on the need to review certain policies and certain existing legislation;
  - (iv) examine annual reports of Government ministries and departments under their portfolios in the context of the autonomy and efficiency of Government ministries and departments and determine whether the affairs of the said bodies are being managed according to relevant Acts of Parliament, established regulations, rules and general orders;
  - (v) consider any Bills that may be referred to it by the House;
  - (vi) consider International Agreements and Treaties in accordance with Article 63 of the Constitution;
  - (vii) consider special audit reports referred to it by the Speaker or an order of the House;
  - (viii) hold public hearings on a matter under its consideration, where appropriate; and
  - (ix) consider any matter referred to it by the Speaker or an order of the House.

### **Meetings of the Committee**

3. Your Committee held eighteen meetings during the year under review.

### **Programme of Work**

4. Your Committee adopted the programme of work as set out below.

- (i) Consideration of the Action-Taken Report on the Report of the Committee for the Fifth Session of the Eleventh National Assembly.

- (ii) Consideration of the topical issue: The Extractive Industry Activities on Human Rights: The Case of Zambia's Mining Sector.
- (iii) Local tour.
- (iv) Consideration of the draft Committee Report for the First Session of the Twelfth National Assembly.

### **Arrangement of the Report**

5. Your Committee's Report is organised in two parts: Part I deals with the deliberations of your Committee arising from the oral and written submissions from various stakeholders. It also includes the findings from the local tour and public hearings; and Part II outlines your Committee's consideration of the Action-Taken Report on the Reports of your previous Committee.

### **Procedure adopted by the Committee**

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

## **PART I**

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

#### **Background to the study**

7. Your Committee, recognising that the extractive industry is a critical factor in economic development and also recognising the



negative impacts of extractive industry activities on human rights, found it imperative to undertake this study in order to appreciate the human rights implications of mining activities in Zambia.

### **Witnesses**

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

- (i) Ministry of Mines and Minerals Development.
- (ii) Ministry of Commerce, Trade and Industry.
- (iii) Ministry of Lands and Natural Resources.
- (iv) Ministry of Justice.
- (v) Ministry of Labour and Social Security.
- (vi) Ministry of Gender.
- (vii) Ministry of Community Development and Social Welfare.
- (viii) Ministry of Local Government.
- (ix) Ministry of Chiefs and Traditional Affairs.
- (x) Office of the Vice President (Department of Resettlement).
- (xi) The Human Rights Commission.
- (xii) Zambia Environmental Management Authority.
- (xiii) Mine Workers Union of Zambia.
- (xiv) University of Zambia, School of Mines.
- (xv) University of Zambia, School of Law.
- (xvi) Zambia Land Alliance.
- (xvii) Oxfam.
- (xviii) Action Aid.

### **Summary of Submissions**

8. The submissions of the stakeholders on the subject matter are summarised below.

### **Human rights risks and impacts**

Your Committee was informed by the stakeholders that the impacts of extractive industry activities on human rights were both positive and

negative in nature. The positive impacts were mainly economic through the creation of jobs for citizens and revenue to the Government through taxes. As to the negative impacts, your Committee heard that the main environmental problems associated with the mines and mining were pollution of air, water, soil and land degradation. The stakeholders elaborated the negative impacts as set out below.

- (i) **Air Pollution** – Generally, ambient air quality in Zambia was good except in mining areas such as Ndola, Kitwe and Mufulira on the Copperbelt where mining activities had negatively impacted on the quality of air. The sources of air pollution were mainly from refineries and smelters. Air pollution, specifically sulphur dioxide, had a negative effect on human health with respiratory elements being the most reported. Air pollution also led to acid rain which affected crop yields and caused property damage.
- (ii) **Water Pollution** – Pollution of rivers from mining activities through discharge of acidic effluents caused serious effects on human life and the environment. Farmers could not grow basic crops such as cabbage, tomatoes and maize. On the Copperbelt, pollution from tailing dams had contaminated the water supply for local communities. The Kafue River on the Copperbelt was said to be the most polluted river in Zambia.
- (iii) **Environmental Legacies from historic mining** – Environmental problems directly linked to historical mining operations on the Copperbelt and Kabwe in Central Province were largely related to geotechnical integrity of waste dumps. It was estimated that about 10,000 hectares of land on the Copperbelt was covered with mineral waste and thus represented a “loss of opportunity” for the local population in terms of other land use such as agriculture, forestry, housing and ranching.

Your Committee was also informed that an estimated 10,000 hectares of land on the Copperbelt was covered in mineral waste, which included twenty-one waste rock dumps, nine slag dumps and more than forty-five

tailings dams, which could not be used by local people for farming, forestry, ranching or settlements.

Your Committee also heard that in North-Western Province, mining operations caused environmental, social and economic changes that negatively affected local communities. For example, it had caused a rise in HIV/AIDS, crime and safety issues, loss of employment in traditional businesses, an increase in rentals due to increase in the demand for housing, a greater number of vehicles on the road resulting in road destruction, dust and noise pollution, an increase in the prices of food and other social problems. The increase in population density also contributed to an increase in competition for land and deforestation.

As regards to labour related impacts, your Committee was informed that mining in Zambia had recorded incidences of violation of workers' rights. The violations had mostly affected the freedom of association and collective bargaining, unsafe working conditions resulting in accidents and fatalities. Issues of freedom of association and collective bargaining had mostly been common with contractor employees. Most contractors engaged by the mining companies offered poor conditions of service and in some cases, inhibiting their workers from forming or joining labour unions. This was so because most contractor workers were employed on short term contracts; they were prevented from joining labour unions and participating in collective bargaining were unable to bargain for better conditions of service.

### **International human rights framework**

Your Committee was informed by the stakeholders that the obligation to protect the rights of victims of violations was affirmed in several international and regional human rights instruments, in particular the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), and the African Charter on Human and People's Rights (ACHPR).

The stakeholders explained that the African Charter enumerated the traditional list of civil and political rights, but also included economic, social and cultural rights and third generation rights of solidarity. Included in this last category was an explicit right of peoples to a general satisfactory environment favourable to their development. They noted that Article 24 of the Charter provided that all peoples had a right to a general satisfactory environment favourable to their development. This provision imposed clear obligations upon a Government. It required the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.

The stakeholders also noted that in 2011, the United Nations Human Rights Council unanimously endorsed the United Nations Guiding Principles on Business and Human Rights, a set of guidelines that operationalised the UN framework and further defined the key duties and responsibilities of States and business enterprises with regard to business-related human rights abuses. The Guiding Principles affirm that under existing international human rights law, States had the duty to protect workers against human rights abuses by all actors in society, including businesses. This meant that States were required to prevent, investigate, punish and redress human rights abuses that occurred in domestic business operations including that of the extractive industry.

The stakeholders, however, expressed concern that some provisions of the above instruments had not been domesticated. The International Covenant on Economic, Social and Cultural Rights (ICESCR) was particularly highlighted as it provided for adequate protection against violation of economic, social and cultural rights as they were highly likely to be violated under such business activities. They also expressed concern that no deliberate steps had been taken to domesticate the UN Principles on Business and Human Rights which could go a long way in keeping in check human rights abuses arising from business activities.

### **Legal, policy and institutional framework governing investments and mining in Zambia**

Your Committee was informed that Zambia had put in place laws with progressive provisions and established institutions meant to minimise the negative impacts of extractive industry activities on human rights. The major laws and institutions were discussed as set out hereunder.

**(i) The Constitution of Zambia (Amendment) No. 2 of 2016**

Your Committee was informed that the Constitution has progressive provisions for the management and development of the environment. For example, Article 255 provided for the principles of environmental and natural resources management and development. One of the key principles was the *Polluter Pays Principle* which entailed that a person responsible for polluting or degrading the environment was responsible for paying for the damage done to the environment. More importantly, Article 256 of the Constitution placed a duty upon every person to cooperate with State organs to maintain a clean, safe and healthy environment.

**(ii) Mines and Minerals Development Act No. 11 of 2015**

Your Committee heard that Section 87 of the *Mines and Minerals Development Act No. 11 of 2015*, contained very progressive provisions on environmental protection that only required effective enforcement mechanisms. The provisions were consistent with international law, particularly the “Polluter Pays Principle.”

In this regard, the stakeholders appealed to the Government to ensure that the provisions of the law were strictly enforced so that the affected areas were restored and cleaned up. This would prevent the reoccurrence of what happened with the old mines where no attempts were made to restore the environment.

**Mining Licensing Committee**

Your Committee also heard that the *Mines and Minerals Development Act No. 11 of 2015*, provides for a Mining Licensing Committee responsible for, among others, consideration of applications for mining

rights and non-mining rights and grant, renew or refuse to grant or renew mining rights and non-mining rights. It was also responsible for termination, suspension or cancellation of mining rights and non-mining rights. The Mining Licensing Committee was an interdisciplinary committee consisting of the following members appointed by the Minister:

- (a) four Directors from the Ministry of Mines and Minerals Development;
- (b) one representative each from the Ministries responsible for: (i) the environment; (ii) land; (iii) finance; and (iv) labour; and
- (c) a representative of: (i) the Attorney-General; (ii) the Zambia Development Agency; and (iii) the Engineering Institution of Zambia.

The stakeholders noted that the Mining Licensing Committee presented a critical opportunity for ensuring human rights due diligence before mining rights were recommended.

Some stakeholders, however, expressed concern that the Mining Licensing Committee was dominated by civil servants and left out key institutions such as the Zambia Environmental Management Agency (ZEMA), the Human Rights Commission and non-governmental organisations who had a daily engagement with human rights issues. In this regard, the stakeholders recommended that the composition of the committee be enriched with representation from these important institutions in order to benefit from their knowledge and experience in human rights.

The stakeholders also expressed concern that although the Committee provided an opportunity to do a thorough due diligence on the applicant companies' human rights record, this was not taken advantage of.

***Mines Safety Department (MSD)***

Your Committee heard that the Ministry of Mines and Minerals Development through the Mines Safety Department (MSD), was

responsible for all matters pertaining to the enforcement of environmental and occupational safety and health standards in exploration, mining and processing of minerals throughout the country. This responsibility was shared with the Zambia Environmental Management Agency (ZEMA), Ministry of Labour and Social Security (MLSS), and Ministry of Health. ZEMA was responsible for approving the Environmental Impact Assessments and monitoring implementation of the same. The MLSS was responsible for ensuring the enforcement of workers' rights in the mines. The Ministry of Health was in charge of annual medical examinations for workers.

Most stakeholders, however, bemoaned the fact that the Mines Safety Department and the above institutions did not have adequate capacity in terms of human resource and equipment to effectively carry out their respective mandates.

### **(iii) Environmental Management Act No. 12 of 2011**

Your Committee was informed that the Act provides for an integrated environmental management and the protection and conservation of the environment and the sustainable management and use of natural resources. It also provides for the preparation of the State of the Environment Report, environmental management strategies and other plans for environmental management and sustainable development. It further provides for the conduct of strategic environmental assessments of proposed policies, plans and programmes likely to have an impact on environmental management. It also provides for public participation in environmental decision-making, access to environmental information and established the Environment Fund, among other things.

#### ***Environmental Impact Assessment***

Your Committee heard that in terms of Section 29(1) of the *Environmental Management Act, No. 12 of 2011*, ZEMA was empowered to ensure that those undertaking development projects, including mine developers, conducted an environmental and Social Impact Assessment (ESIA) and submit an Environmental Impact Statement (EIS) together with the Environmental and Social Impact Management Plan (ESIMP).

Submission of these documents enabled ZEMA to assess whether impacts resulting from the project and mitigation measures proposed would be sufficient to warrant approval of the project. Your Committee also learnt that the Act further provided in Section 29(4) that the Agency could not grant an approval in respect of a project if the agency considered that the implementation of the project would bring about adverse effects or that the mitigation measures may be inadequate to satisfactorily mitigate the adverse effects of the proposed project.

The stakeholders explained that in terms of Section 115, appeals or reviews could be lodged with the Minister who may, *inter alia*, allow the application or appeal wholly or in part or dismiss the application or appeal. Any person aggrieved with the decision of the Minister may appeal to the High Court within thirty (30) days of the decision. They gave an example of the case of *Zambia Community Based Natural Resource Management Forum and 5 others v. Attorney General and Mwembeshi Resources Limited* where after ZEMA disapproved a project in 2012 and the Minister overturned the decision of ZEMA upon appeal.

The stakeholders stated that the *Environmental Management Act, No. 12 of 2011* had some weaknesses set out below.

- (a) The Act did not provide for and lacked clarity on decision-making powers of affected members of the community in the process of environmental and social impact assessments especially in approval of projects that affected them.
- (b) The Act had no provisions on resettlement and compensation of communities affected by mining investments.
- (c) The Act focused more on environmental rights at the expense of social and cultural rights.
- (d) Many stakeholders lacked understanding of the law resulting in the Zambia Environmental Management Agency encountering difficulties in enforcing its provisions



- (e) The Act empowered the Minister to overrule the decision rendered by ZEMA, a professional body.

***Public participation***

The stakeholders informed your Committee that the other progressive provisions in the *Environmental Management Act* were sections 91, 92, 93 and 94, which provided for public participation, public hearings, public reviews and regulations relating to public participation. This gave an opportunity to the public to express their views on the projects before they were approved.

The stakeholders, however, were concerned that there were no requirements by ZEMA for mine developers to carry out a detailed human rights due diligence. Secondly, they felt that environmental impact assessments generally focused more on environmental issues with little or no attention paid in most cases to social and cultural impacts. The stakeholders were also concerned that public participation in ESIA hearings did not refer to international human rights constituent principles of Free, Prior Informed Consent (FPIC) which had almost become a peremptory norm with regard to decision-making related to environmental and social impacts.

The stakeholders were further concerned that in all the stages of mining investment, there was only one well defined point in the process where there was a mandatory requirement for an environmental and social impact assessment and that was before commencement of construction. All latter stages of mining investment up to closure and reclamation had no mandatory consultation requirements.

***Zambia Environmental Management Agency (ZEMA)***

Your Committee heard that one progressive provision in the Act was that it established the Zambia Environmental Management Agency whose function was to ensure the sustainable management of natural resources and protection of the environment, and the prevention and control of pollution.

The stakeholders, however, expressed concern that the Zambia Environmental Management Agency had not been effective in carrying out its mandate of monitoring and enforcing the law. They highlighted the weaknesses and bottlenecks set out hereunder.

- (a) The Agency was heavily understaffed and could only manage a few of its responsibilities in a satisfactory way.
- (b) The Agency lacked equipment to use in order to carry out its mandate satisfactorily.
- (c) Lack of coordination between ZEMA and other institutions involved in environmental management and compliance such as Department of Mines Safety in the Ministry of Mines, the Water Resources Management Authority (WARMA).

**(iv) Lands Act, Chapter 184 of the Laws of Zambia**

Your Committee was informed that the *Lands Act* provides, among others, for the continuation of leaseholds and leasehold tenure; provides for the continued vesting of land in the President and alienation of land by the President; provides for the statutory recognition and continuation of customary tenure; provides for the conversion of customary tenure into leasehold tenure; and establishes a Land Development Fund.

The stakeholders submitted that most controversies impacting on human rights emanated from acquisition of land under the customary land tenure system. They explained that the *Lands Act* under section 7(1) recognised the continuation of customary land tenure. However, when a piece of land became subject to leasehold title, customary rights ceased to exist on that piece of land. They pointed out that at law, customary land tenure did not confer ownership rights, rather it protected the rights to use and occupy designated land. They stated that the *Lands Act* under section 8(1) provided that a holder of customary land rights may convert to leasehold tenure not exceeding ninety nine years on submission of an application.

Your Committee was further informed that in terms of section 8(2) of the *Lands Act*, the conversion of land rights from customary land tenure to leasehold tenure could only be effected following approval granted by the chief and the local authority in the area where the land was to be converted. Additionally, section 8(3) provided that no title other than the right to the use and occupation of any land under customary tenure claimed by a person, shall be valid unless it has been confirmed by the chief and a lease granted by the President. Upon the reading of these sections, the stakeholders were of the view that the granting of such discretionary powers to a single traditional leadership hierarchy, rendered such approvals susceptible to abuse.

The stakeholders were also concerned that the *Lands Act* did not provide sufficient transparency and accountability mechanisms to guarantee protection of the rights of people in the process of customary land alienation. The stakeholders, therefore, were of the view that there should be a review of the land legislation to encourage renting of customary land as opposed to conversion of land tenures because once land was converted to statutory tenure it could never be reconverted to customary tenure.

### ***Resettlement and compensation***

Your Committee was informed that the Government had put in place two instruments approved in 2015, to guide the resettlement and compensation for the development induced displaced persons. These were the Guidelines for the Compensation and Resettlement of the Internally Displaced Persons (IDPs) of 2015 and the National Resettlement Policy of 2015. The Guidelines identified rights and guarantees which were relevant to the protection of local people from displacement and their protection and assistance during displacement. Your Committee heard that more importantly, the Guidelines were consistent with international human rights and international humanitarian law.

The stakeholders, while appreciating that the Guidelines were consistent with international human rights and international humanitarian law, expressed concern that the Guidelines were not

backed by any piece of legislation which undermined their enforcement and applicability. They further expressed concern that the Guidelines were largely seen as a preserve of the Disaster Management and Mitigation Unit (DMMU) and only applied in situations of disaster.

The stakeholders further expressed concern that despite being a custodian of the above policies, the Department of Resettlement was not represented on the Mining Licensing Committee which seemed to be a misnomer as the Department could be of helpful on issues to do with resettlement and compensation.

**(v) Zambia Development Agency Act, No. 11 2006**

The *Zambia Development Agency Act* established the Zambia Development Agency as a one stop facility which would ensure, among other matters, client focus, dialogue with the private sector and creation of confidence in public sector support for business; attraction and facilitation of inward and after care investment; to provide and facilitate support to micro and small business enterprises; to promote exports and globalisation; to streamline bureaucratic procedures and requirements faced by investors; to facilitate industrial infrastructure development and local services; to promote Greenfield investments through joint ventures and partnerships between local and foreign investors; and to promote and encourage education and skills training in order to increase productivity in business enterprises.

Your Committee heard that the ZDA was responsible for issuance of investment licences for mining activities. The said licences incorporated conditions that required environmental impact assessment studies.

The stakeholders were, however, concerned that it was not part of the focus at this stage to undertake a detailed human rights due diligence to establish the prospective investor's record in as far as respect for human rights was concerned.

**(vi) Employment Act, Chapter 268 and the Industrial Labour Relations Act, Chapter 269 of the Laws of Zambia**

Your Committee was informed that the various mining companies operating in Zambia must adhere to employment laws in Zambia. In this regard, the *Employment Act* regulates the employment of persons, makes provision for the engagement of persons on contracts of service and provides for the form of and enforcement of contracts of service, and makes provisions for the protection of wages of employees. The *Industrial and Labour Relations Act* on the other hand provides for, among others, the settlement of collective disputes, strikes, lockouts and essential services. It further provides for the settlement of disputes between an employer and employee.

The stakeholders, however, expressed concern that there were reports of poor working conditions and poor safety standards for miners, such as exposure to toxic chemicals and minerals. They also highlighted that in some cases, Zambian workers were not paid a proper living wage commensurate to the nature of their jobs and their input. This had an impact on their livelihoods in terms of access to certain social requirements such as education and decent housing.

Your Committee was also informed that other violations had mostly affected the freedom of association and collective bargaining and unsafe working conditions resulting in accidents and fatalities. Your Committee heard that most contractors engaged by the mining companies had been found to offer poor conditions of service and inhibiting their workers from forming or joining labour unions. Further, the workers were employed on short term contracts which prevented them from joining labour unions and participating in collective bargaining.

**(vii) The Occupational Health and Safety Act, No. 36 of 2010**

The *Occupational Health and Safety Act, No. 36 of 2010* provides for the health, safety and welfare of persons at work, provides for the duties of manufactures, importers and suppliers of articles, devices, items and substances for use at work, and provides for the protection of persons,

other than persons at work, against risks to health or safety arising from, or in connection with, the activities of persons at work.

**(viii) The Water Resources Management Act, No. 21 of 2011**

Your Committee heard of the *Water Resources Management Act, No. 21 of 2011*, prohibits water pollution and criminalises it regardless of whether a person acted intentionally or not. The stakeholders, however, expressed concern at the lack of capacity of water bodies to carry out effective monitoring and inspection.

**Way forward**

9. The stakeholders proposed the measures set out below.
  - (a) The Government should take steps to domesticate the UN Guiding Principles.
  - (b) The Government should create a human rights monitoring framework housed within the Human Rights Commission to monitor local and foreign business compliance with existing and upgraded human rights guidelines for the extractive industry with appropriate sanctions for erring companies according to the laws of the Republic of Zambia.
  - (c) The Government should support the Human Rights Commission particularly in the area of funding in order that it discharges its functions more effectively, contribute to monitoring of human rights obligations at home and internationally and more importantly that it becomes closer to the people in keeping with the expanded mandate through the amended Republican Constitution, particularly under Article 230.
  - (d) The Government should consider creating a multi-stakeholder process that includes mining communities, CSOs, and mining

- worker unions to identify specifically the human rights issues affecting these stakeholders, and design a process of legal and legislative reform to address the gaps.
- (e) The Government should put measures in place for people affected by mining activities to have access to justice.
  - (f) The Government should implement appropriate mineral revenue sharing mechanisms aimed at increasing benefits from natural resources with communities and mitigate the negative impacts of the extractive industry, particularly in communities where mining was taking place.
  - (g) The Government should take policy measures to ensure that human rights of women, youths and other vulnerable and marginalised groups were at the centre in investment decisions.
  - (h) Measures should be put in place to simplify the relevant legislation governing the extractive industry and have it available in local languages and user friendly formats for affected communities.
  - (i) The Government should take steps to improve coordination between or among institutions involved in environmental management and compliance. In this case, between ZEMA and the Mines Safety Department.
  - (j) The Government should take measures to enhance ZEMA's institutional capacity in terms of manpower and technical capacity so that it can effectively enforce the existing environmental legislation and regulations.
  - (k) The Government should amend the *Environmental Management Act* so as to remove the ministerial intervention in the Environment Impact Assessment process.

### **Committee's Observations and Recommendations**

10. From the foregoing submissions, your Committee observes that there exists a comprehensive international human rights framework to which Zambia is a signatory. The framework aims at protecting human rights from the impact of extractive industry activities. Your Committee also notes that Zambia has a legal system which contains progressive provisions including the *Constitution of Zambia*, the *Environmental Management Act No. 12 of 2011* and the *Mines and Minerals Development Act, No. 11 of 2015*. The Country has also put in place policies on resettlement and compensation which have very progressive provisions that are in line with international law.

Your Committee's observations and recommendations on specific issues are set out hereunder.

- (i) Your Committee observes that the Zambia Development Agency's primary focus is to attract investment into the country and as a result, no attention is paid to issues of protection of human rights from business activities. For, example, no due diligence is undertaken to establish whether the prospective investor has a good record in respecting human rights and in observing sustainable business practices.

Your Committee, therefore, recommends that the Government should consider amending the *Zambia Development Act* to make it mandatory for a human rights due diligence to be undertaken before a mining company can be registered and allowed to operate in Zambia.

- (ii) Your Committee notes that the composition of the Mining Licensing Committee, under the Ministry of Mines and Minerals Development, is too skewed towards civil servants thereby leaving out key stakeholders such as civil society organisations who could speak on behalf of the people.

Your Committee, therefore, urges the Government to consider reviewing the composition of the Mining Licensing Committee in



order to include members from the private sector and other relevant players such as the Department of Resettlement in the Vice President's office.

- (iii) Your Committee is concerned that although Zambia has ratified a lot of international instruments that promote and protect human rights, these have not been fully domesticated.

Your Committee, therefore, urges the Government to take deliberate steps to domesticate the UN Guiding Principles and other international instruments that Zambia has ratified.

- (iv) Your Committee expresses concern that Zambia does not have a human rights enforcement and monitoring framework thereby resulting in uncoordinated efforts by State agencies such as the ZEMA, MSD and the Department of Labour.

Your Committee, therefore, urges the Government to consider creating a human rights monitoring framework to monitor local and foreign business' compliance with existing and upgraded human rights guidelines for the extractive industry with a requirement of annual returns on performance in observing human rights.

- (v) Your Committee concurs with the stakeholders that most State agencies such as ZEMA, MSD, WARMA and the Department of Labour lack capacity in terms of manpower and technical capacity to effectively carry out their respective mandates. These institutions, for example, are unable to conduct regular inspections and do not have adequate equipment to match that of the institutions to be inspected.

Your Committee, therefore, recommends that the Government takes steps to improve support to the Human Rights Commission and other state agencies such as ZEMA, MSD, WARMA and the Department of Labour in order for them to discharge their

functions more effectively and contribute to the promotion and protection of human rights.

- (vi) Your Committee notes that although casualisation was outlawed by the *Employment (Amendment) Act No. 15 of 2015*, the use of contractors in the mining sector has continued to be a conduit for the exploitation of workers. Most contractors engaged by the mining companies have been found to offer poor conditions of service. Further, workers are employed on short term contracts which prevents them from joining labour unions and participating in collective bargaining.

Your Committee, therefore, urges the Government to take further measures to ensure the protection of human rights of contractors' workers by making the parent mine company liable for any human rights violations by contractors.

- (vii) Your Committee is concerned that many stakeholders and communities lack understanding of the *Environmental Management Act* and other laws relevant to the extractive industry which results in enforcement agencies encountering difficulties in enforcing its provisions.

Your Committee, therefore, recommends that the Government should put in place measures to simplify all the relevant legislation on the extractive industry activities and have it available in local languages and user-friendly formats for affected communities.

- (viii) Your Committee is in agreement with the stakeholders that the penalties paid by entities found to have damaged or polluted the environment are not punitive enough to deter would be offenders.

Your Committee, therefore, recommends that the Government should review the law with a view of stiffening the penalties paid by offenders in order to serve as an effective deterrent.

- (ix) Your Committee notes that there is only one well defined point in all the stages of mining investment when there is a mandatory requirement for an environmental and social impact assessment to be undertaken which is before the commencement of construction. As a result, there is little opportunity to assess the actual damage being occasioned by mining activities and the effectiveness of the measures being implemented to restore the environment and avert human right abuses.

Your Committee, therefore, urges the Government to consider amending the *Environmental Management Act* to provide for additional mandatory impact assessment at regular intervals in subsequent years following the commencement of the business activity.

- (x) Your Committee is concerned that while the resettlement and compensation guidelines are consistent with international human rights and international humanitarian law, in terms of enforcement and applicability, the guidelines are not backed by any piece of legislation.

Your Committee, therefore, urges the Government to enact relevant pieces of legislation on resettlement and compensation in order to enhance enforcement of the provisions of the two policies.

- (xi) Your Committee observes that little attention is being paid to human rights implications by small-scale mining activities. Your Committee is concerned that most small scale mines are not compliant with health and safety regulations such as the requirement for regular health checkups and testing for their employees.

Your Committee, therefore, urges the Government to support small-scale mining companies to enable them provide a safe and healthy work environment for workers and abide by other relevant laws.

## **REPORT ON THE LOCAL TOUR**

11. Your Committee undertook a tour of selected mines on the Copperbelt and North-Western Provinces to have an on the spot check on the impact of mining activities on human rights. Your Committee also held three public hearings in Mufulira, Chingola and Kalumbila to get input from members of the public on the subject matter. Further, a stakeholders meeting was held in Kabwe in order to receive an update on the lead situation in the District.

The following mines were visited:

- (i) Luanshya Copper Mines;
- (ii) Mopani Copper Mines;
- (iii) Konkola Copper Mines;
- (iv) Lumwana Mine;
- (v) Kansanshi Mine; and
- (vi) Kalumbila Mine.

The objectives of the tours were: firstly, to assess the human rights risks and impacts associated with mining in Zambia; and secondly, to find out whether mining companies were compliant with the law pertaining to the promotion and protection of human rights.

Your Committee's findings are set out hereunder.

### **Kabwe stakeholders meeting**

- (a) Although Kabwe Mine was closed in 1994, there has been continued reports of high levels of lead contamination due to lack of cleanup activities by the relevant authorities.
- (b) The major environmental problem is contamination of soil resulting from smelting and dust emissions from waste dumps. High concentration of lead in the soil, consumption of contaminated vegetables, inhalation of lead rich dust and usage of lead polluted

water leading to higher concentrations in the blood of citizens living in Kabwe.

- (c) Children are particularly vulnerable to toxic effects of lead and suffer severe and permanent health ailments which influence the development of the brain and nervous system.
- (d) Although several studies have confirmed the existence of high levels of lead contamination, there still exists a significant information gap as to how many people are affected. This can be attributed to lack of mechanisms and local capacity to monitor and capture relevant information on the lead situation.
- (e) The World Bank financed Copperbelt Environmental Project (CEP), which ran from 2003 to 2011, was an attempt to create capacity and awareness in addressing some environmental risks. It also involved the treatment of children with elevated levels of lead and conducting regular lead blood testing. However, the closure of the project in 2011, meant that there was lack of resources to continue with the interventions.
- (f) As a mitigation and long term measure, the World Bank was financing another project named the Zambia Mining and Environmental Remediation and Improvement. The objective of the project was to reduce environmental health risks to local populations in highly polluted mining areas in Chingola, Kabwe, Kitwe and Mufulira. The Project was worth USD 65.5 million of which US\$16.5 million was earmarked for Kabwe.

### **Committee's Observations and Recommendations**

Your Committee expresses concern that although the problem of lead pollution has affected Kabwe for a long time, there still exists an information gap regarding the magnitude of the impact on the citizens on account of lack of local capacity to measure and capture the information on the population. Your Committee is also concerned that there has been no deliberate efforts from the authorities to minimise the

health risks from the lead pollution. Your Committee is, however, pleased to learn about the World Bank funded project whose objective is to reduce health risks of the affected people in Kabwe and other critically polluted areas. Your Committee, therefore, urges the Government to ensure that local capacity is built, in terms of human resource technical capacity, to deal with the situation. Your Committee further urges the Government to put measures in place to promote further research for the country to fully appreciate the magnitude and impact of the lead pollution.

**China Non-Ferrous Metal Mining (Group) Company (CNMC) Limited – Luanshya Copper Mines**

- (a) CNMC Luanshya Copper Mines Plc is a joint company of China and Zambia with share holding of 80 percent and 20 percent, respectively.
- (b) The Mine has a workforce of about 3,000 staff of which 100 are expatriate employees.
- (c) The most significant pollution risk was pollution of water from the leaching process as the Mine did not run a smelter. In this regard, the Mine had invested about US\$7 million to lay down an impermeable plastic lining at the Mulianshi tailing dump area to avert water pollution.
- (d) To reduce the effect of dust pollution associated with open pit mining, the Mine had installed four dust collecting units in the crushing plant.
- (e) The Mine had a parallel staff structure, in management and technical positions for Zambian and expatriate workers, whereby there are two persons per position.
- (f) The Mine was running Corporate Social Responsibility activities which included running Roan United Football Club, a hospital, a trust school, and a craft school. It also sponsored prevention and

cure activities of HIV and malaria as well as local infrastructure improvement.

### **Committee's Observations and Recommendations**

Your Committee observes that the Mine has created a significant number of jobs for local people. Your Committee also notes the various measures the Mine has put in place to avert water and air pollution. It also notes the various social responsibility activities being undertaken by the Mine. Your Committee is, however, concerned that the parallel staff structure for local and expatriate being employed for management and technical positions may not be in line with Zambian policy whose emphasis is for the Zambians to understudy the expatriates with a view of taking over. In this regard, your Committee urges the Government to carry out further investigations on this matter and ensure that the system being employed at the Mine is in line with Zambian laws and policies.

Your Committee is also concerned that the Mine does not have a comprehensive plan to prepare for the restoration of the mine area once the mine life comes to an end. Your Committee, therefore, urges the Government to engage the Mine on the need to come up with a comprehensive proactive restoration plan aimed at repairing the environmental damage caused by its activities.

### **Mopani Copper Mines**

- (a) The Company is jointly owned by Glencore International, First Quantum Mines and ZCCM-IH.
- (b) Mopani has since 2000 invested over US\$3 Billion in upgrading the inherited infrastructure in order to sustain current production levels while in 2012, shareholders approved a US\$1.6 Billion for

- investment in new projects to extend the life of the Mine to twenty-five years.
- (c) The current labour force stood at 13,708 of which 5,636 were direct employees while 8,075 were employed by contractors.
  - (d) In 2015, Mopani developed a model integrating safety work principles, culture, behaviour, processes and systems as well as catastrophic hazards. As regards the people, the Mine's goal is to ensure that employees and contractors are trained, competent and efficient enabling them to meet their targets. In this regard, the Mine runs a training centre for skills development.
  - (e) The Mine had reduced air pollution by improving sulphur capture to up to 95 percent which was only 2 percent short of the internationally accepted standard of 97 percent.
  - (f) To avert water pollution, the Mine undertook continuous monitoring of quality of waste water existing plant.
  - (g) To avert air pollution resulting from dust at the tailing dumps, the Mine has embarked on progressive revegetation of dump slopes.
  - (h) Thermal conditions underground were sometimes not good for the safety of the workers. As a result, the company conducted daily assessments of air velocity, dry and wet bulb temperature measurements for routine reporting and remedial measures.
  - (i) In respect to the cracking houses in Kankoyo attributed to the mining activities, your Committee was informed that claims could not be validated as mining activities were taking place at more than 100 metres underground.
  - (j) According to the agreement of sale, the Mine was not responsible for the environmental damage that occurred in the past.

### **Public Hearing in Mufulira**



The meeting was attended by eighty-five members of the public who raised the concerns set out below.

- (a) Local people were not seeing the benefits from the Mine and called upon the Government to consider restoring the revenue sharing mechanism that was in the repealed *Mines and Minerals Development Act of 2008 Minerals Act*.
- (b) Miners working underground were being subjected to inhuman conditions due to poor ventilation.
- (c) Roads in Mufulira were in a poor state largely due to the heavy trucks carrying copper from the Mine.
- (d) Local contractors were generally having a problem to register with the Mine due to the cumbersome procedures that had been introduced by the Mine.
- (e) Mufulira residents were not receiving preferential treatment in accessing employment resulting in majority of the jobs being taken by people from outside the District.
- (f) While appreciating Corporate Social Responsibility programmes being undertaken by the Mine, this was too little to make an impact as it had remained only a small percentage of the budget.
- (g) The Mine acquired large tracks of land within the District which had remained unutilised for over seventeen years which the Mine should consider releasing for other community needs.
- (h) The schools and clinics sponsored by the Mine were exclusively based in high cost residential areas thereby disadvantaging the majority of the residents that reside in high population density areas.

- (i) Kankoyo residents complained of numerous problems ranging from frequent noise from rock blasting, air pollution from sulphur-dioxide emission, cracking of houses and general destruction of the surroundings.

### **Committee's Observations and Recommendations**

Your Committee notes that the Mine has created thousands of direct jobs and indirect contractor jobs. It further notes that the Company has invested significantly in upgrading the mine's infrastructure and in new projects aimed at extending the life of the Mine. Your Committee further notes that by investing in the state of the art smelter sulphur capture, the Mine had significantly reduced air pollution. Your Committee further notes the various measures the Mine has put in place to improve safety of workers in the Mine. Your Committee also notes that the Mine has been implementing numerous Corporate Social Responsibility programmes for the local community.

While noting the above, your Committee raises the concerns set out below.

- (a) Your Committee notes that the risk of air pollution through sulphur dioxide has not been eliminated completely and there is still room for further improvement towards the internationally acceptable standard of 97 percent sulphur capture.

Your Committee, therefore, urges the Mine management to continue working towards attaining the internationally acceptable sulphur capture standard of 97 percent in order to completely eliminate the risk of air pollution. Your Committee further urges the Government to continue monitoring air pollution levels at the Mine in order to ensure compliance.

- (b) Your Committee notes that there are complaints about underground thermal conditions which are not conducive for workers' health due to poor ventilation.

Your Committee, therefore, urges the Mine to put measures in place to ensure thermal conditions underground are controlled in order not to expose the miners to inhuman conditions. Your Committee further urges the Government through the Mine Safety Department to carry out further investigations on the matter to establish the correct position on the thermal conditions underground.

- (c) Your Committee is concerned with the plight of Kankoyo residents, a community that has been impacted negatively by mining activities through numerous problems ranging from frequent noise from rock blasting, air pollution from sulphur-dioxide emissions, cracking of houses and general destruction of the surroundings.

Your Committee, therefore, urges the Government to engage the Mine management in order to find a lasting solution to the plight of Kankoyo residents by relocating the affected residents to an alternative land.

- (d) Your Committee notes complaints by the local communities in respect to access to jobs and procurement contracts. Your Committee is of the view that local communities should be accorded the opportunity to work with the mines in their localities in order to uplift their living standards.

Your Committee, therefore, urges the Mine management to put measures in place to enhance transparency in the engagement of suppliers through improved engagement with local suppliers. Your Committee also urges the Mine to come up with deliberate policies to employ local people.

### **Kalumbila Mine**

- (a) The Mine is being developed by First Quantum Mine through its subsidiary company Kalumbila Mines Ltd (KML).

- (b) In addition to several hundreds of contract jobs, the Mine had employed a total of 2,405 employees of which 2,258 are Zambian while 147 were expatriates.
- (c) To minimise environmental damage, the Mine had embarked on a progressive rehabilitation programme that included tree planting.
- (d) To avoid water pollution, the Mine had put in place a holistic water monitoring mechanism and two dams had been constructed.
- (e) Iron had been detected in the boreholes constructed by the Mine for the community and tests were being undertaken to address the matter.
- (f) To reduce air pollution through dust from the open pit, stockpiles and gravel roads, the Mine had paved some roads and water bowsers were being used to suppress dust.
- (g) Being a Greenfield project, over 600 families had been resettled at an alternative piece of land. In this regard, over 630 houses were built in a settlement area that included two clinics, two schools and seven churches. Further, thirty-six boreholes had been sunk and 60 km of roads constructed. Approximately 2000 beneficiaries received cash compensation averaging K29,000 per person. Further, compensation was paid in respect of loss of crops, trees, livestock, and access to graves that had been fenced off by the mines.

### **Public Hearings in Kalumbila**

- (a) Local people submitted that they were not benefiting much from the Mine because it preferred to employ persons from outside the District. They called on the Mine management and the Government to consider opening a vocation training centre to help train local youths who could in turn work in the mine.

- (b) The community was experiencing water challenges as the underground water resources had been affected by mining activities.
- (c) The area had experienced an upsurge in crime ever since the Mine opened. They called on the Mine management and the Government to take steps to redress the situation.
- (d) Despite the increase in population, both health and school facilities had become limited and therefore, the need to take deliberate steps to expand the facilities. The community particularly called for the construction of a boarding school in the area.
- (e) Scholarships for school going children were restricted to schools run by the Mine thereby leaving out many vulnerable children in the chiefdom. The residents appealed to Mine management to extend scholarships to other parts of the chiefdom.
- (f) Although people that were displaced by the Mine were relocated, the compensation received and the houses built did not meet international standards.
- (g) The Mine should invest in roads as the trucks carrying copper were responsible for the damage caused.
- (h) Because Corporate Social Responsibility programmes were erratic, the Community sought to sign a Memorandum of Understanding with the Mine but this was turned down.

### **Committee's Observations and Recommendations**

Your Committee notes that the Mine has created a significant number of direct and indirect contractor jobs. Your Committee also notes that the Mine has resettled and compensated the local people who were

displaced to pave way for mining activities. Your Committee observes that in order to minimise environmental damage caused by mining activities, the Mine has embarked on a re-vegetation programme through tree planting.

Your Committee, however, expresses the concerns set out below.

- (a) Your Committee notes that there is an apparent hostile relationship between the Mine and the local community on account of the local people not being accorded preferential treatment in respect to access to jobs and procurement contracts.

Your Committee, therefore, recommends that the Government should work with the Mine to put measures in place to enable local people draw full benefits from the Mine through employment opportunities. Your Committee further urges the Mine to consider supporting skills training for local people by either opening its own skills training school or through supporting existing training schools in the region. The Mine should also help build capacity of local entrepreneurs to enhance their capacity to deal with the Mines as suppliers.

- (b) Your Committee observes that the boreholes sunk for the resettled families have elevated levels of iron which could be harmful to the health of the consumers.

Your Committee, therefore, urges the Government to strictly monitor the water quality control measures that the Mine has put in place in order to protect the rights of local people. Furthermore, the Government is urged to carry out independent studies to verify the elevated levels of iron in the boreholes that the Mine has sunk for the local people.

- (c) Your Committee notes that the local people had, through a compensation agreement, forfeited access to the grave site which has been fenced off by the Mine. Your Committee is concerned,

however, that this will impact negatively on the cultural rights of the affected people to pay respects to their dead relatives.

Your Committee, therefore, appeals to the Mine to consider allowing the local people periodic access to sites.

### **Kansanshi Mine**

- (a) The Mine is owned and operated by Kansanshi Mining PLC of which 80 percent is owned by a First Quantum Mine subsidiary while the remaining 20 percent is owned by the Government of Zambia through ZCCM-IH.
- (b) The Mine runs an open pit mine and operates a smelter which means that there exists air and water pollution risks. In this regard, the Mines had put in place environmental monitoring mechanisms for both surface and ground water including sixty-eight boreholes sunk as monitoring points. For air control, the mine runs fifty-six air quality monitoring stations.
- (c) The Mine has a strict effluent management system to ensure zero effluent discharge levels were attained. It was reported that in the last five years, only two incidences of effluent overflow had been reported both of which were as a result of storm water overflows.
- (d) In order to help address grievances, the Mine had put in place a grievance mechanism that included holding of regular community meetings.
- (e) The Mine has created 4,500 direct and 4,000 contractor jobs, respectively.
- (f) The Mine has a localisation programme for jobs where Zambian workers were made to understudy foreign experts with a view of taking over the positions once they were ready.

- (g) In respect to Corporate Social Responsibility programmes, the Mine has invested in agriculture, education, health, livelihoods, local business development, sports and infrastructure development. In agriculture, the main highlight was support to conservation farming where about 27,000 farmers had been trained and 2,500 were on a four year input support programme.
- (h) In education, the Mine has sponsored a text book project which had so far benefitted twenty-eight schools. Other support has included training for teachers, provision of desks, and school sports. The Mine also runs school bursaries and feeding programmes for vulnerable children.
- (i) In health, the Mine has supported the rehabilitation of Solwezi Hospital including the upgrade of the operating room and maternity ward. The Mine has also built a new anti-gender based violence centre at the hospital. Other support went to areas such as HIV/AIDS, STIs, malaria and prevention and cure activities.
- (j) The Mine was also sponsoring community sports that included football and cycling.
- (k) In order to enhance local participation in mine activities, the Mine has embarked on a local business development programme involving the training of MSMEs to build their capacity in such aspect as tendering processes and banking.
- (l) In order to help alleviate accommodation problems and help develop the district, the Mine embarked on a housing project where so far 642 housing units had been built. The houses were for sale to employees and members of the public.

### **Committee's Observations and Recommendations**

Your Committee notes that the Mine has created a significant number of jobs and has paid significant amounts of taxes to the Government over the years. Your Committee also notes that the Mine has a deliberate



localisation plan that enables Zambian employees to understudy expatriates with a view of taking over which is in line with Government policy. Your Committee also notes that there are two major environmental risks namely air and water pollution and notes the measures the Mine has put in place. Your Committee further notes that the Mine has put in place dispute resolution mechanisms aimed at addressing community grievances. Your Committee urges the Mine to continue implementing measures to ensure air and water pollutions is kept within acceptable standards. Your Committee also urges the Mine to expand its corporate social responsibility programmes so as to benefit more local people.

### **Lumwana Mine**

- (a) Lumwana Mine has created about 3,700 jobs of which 1,700 were direct jobs while 2,000 were indirect contractor jobs. Of these jobs, 96 percent were occupied by Zambians and 4 percent by expatriates. Of the jobs reserved for Zambians, about 60 percent of the jobs by agreement come from the three chiefdoms in the area.
- (b) As an open pit mine, air pollution through dust was a risk. The Mine has been using molasses to compact the roads and suppress the dust both in the Mine and in the compound. The Mine has also employed wet drilling techniques and has created dust monitoring points.
- (c) In order to restore the damaged environment, the Mine had an active programme aimed at restoring the land to avert long lasting environmental damage that was experienced on the Copperbelt. The Mine has started a tree planting programme and was conducting research on local species of trees that could grow and flourish on waste dumps. It was noted, however, that burying the pit was not part of the restoration plan.
- (d) To support local development, the Mine has established and contributes to a trust fund run by the local people in the three surrounding chiefdoms.

- (e) The Mine has investment in various Corporate Social Responsibility programmes including education programmes such as construction and rehabilitation of classroom blocks, teacher houses and provision of scholarships for vulnerable children. The Mine sponsors Lumwana Radians Football Team playing in Zambia's Premier League.
- (f) Uranium which was being mined did not pose any health risks or hazards because the quantities were insignificant and it was not being processed.
- (g) On the reported cracking of houses in Kaumuna Village near the Mine, it was reported that once complaints were received, the Mine Safety Department carried out an investigation which confirmed that the cracks were as a result of blasting at the Mine. However, the Mine carried out its own investigation and disputed the MSD finding and appealed to the Minister responsible for mining in 2014. The response from the Minister had not been received.

### **Committee's Observations and Recommendations**

Your Committee notes that the Mine has created a significant number of jobs and that a percentage of the jobs created have, by agreement with the local chiefs, been reserved for the local people. Your Committee also notes that the Mine has created a Trust Fund run by the local people in order to meet their community needs. Your Committee further notes that the Mine has embarked upon a restoration programme to repair the environmental damage caused by mining activities.

Your Committee observes as set out below.

- (i) Your Committee is concerned that although assurances were rendered by the Mine management that the Uranium being mined at the Mine does not pose any environmental or health risks because it is being kept in its mined state and not being processed,

your Committee is alive to the fact that this is a subject of great concern to many Zambians.

Your Committee, therefore, urges the Government to carry out a detailed study on the matter and inform the nation on the state of affairs including the safety of workers. Your Committee also urges the Government to ensure that the situation is strictly monitored.

- (ii) Your Committee is concerned that the case of Kaumuna Village near the Mine whose houses were allegedly affected by mining activities has remained unresolved since 2014. Your Committee is of the view that grievance mechanisms should work in a timely manner so that justice is not delayed. Your Committee, therefore, urges the Ministry of Mines and Minerals Development to ensure that the matter is addressed without further delay.
- (iii) Your Committee notes with concern that the restoration plan for the Mine does not include the restoration of the pits. Your Committee urges the Government to work closely with the Mine to come up with a comprehensive restoration plan to repair the entire mine environment at the Mine.

### **Konkola Copper Mines**

- (a) The Mine currently employs 11,452 employees of which 6,618 were direct employees while 4,834 were indirect contractor workers with only forty-five expatriate employees.
- (b) The Mine works closely with the water utility company in the area to ensure quality control through regular testing. In this regard, the Mine has installed four solar boreholes to monitor water quality.
- (c) Although the company policy was to ensure zero discharges into the water bodies, spillages were experienced from time to time and when this happened, the accident was immediately reported to ZEMA and other relevant authorities. The Mine always had lime in

identified risk sites such as the Mushishima stream for prompt reaction wherever there was an accident.

- (d) Air pollution had almost been eliminated upon the commissioning of the state of the art smelter at the Mine which had improved sulphur capture to up to 99.6 percent.
- (e) The Mine was compliant with the requirement to test all employees for silicosis on an annual basis.
- (f) The Mine sponsors Corporate Social Responsibility programmes in health, education, sustainable livelihoods and sports. In health, the Mines runs two hospitals and several clinics providing subsidised medical services to over 60,000 persons per year. It also funds HIV/AIDs and malaria prevention and cure programmes.
- (g) In education, the Mine runs two trust schools providing education to up to 2000 pupils. Other programmes included computer literacy programmes, classroom construction and scholarship programmes for vulnerable students. The Mine also sponsors the Kitwe Trades School which trains an average of 200 artisans each year.
- (h) In sport, the Mine sponsors three football teams in top leagues in Zambia, namely Nchanga Rangers, Konkola Blades and Nampundwe FC. The Mine also sponsors other sports such as golf.
- (i) There are rampant illegal mining activities by unemployed youth made possible by the market created by private small-scale smelters on the Copperbelt.
- (j) In order to restore the damaged environment, the Mine has embarked on a tree replanting project and so far 2,500 trees imported from India had been planted on waste dumps on a pilot basis.

### **Public Hearing in Chingola**

- (a) Residents complained of the frequent pollution of the water at Mushishima Stream. They also complained that the boreholes sunk by the mines were also contaminated.
- (b) Houses in the Tsopano community were cracking from the impact of blasting. They requested the Government and the Mine management to relocate them to alternative places.
- (c) The Government should consider restoring the sharing mechanism that was in the repealed *Mines and Minerals Development Act of 2008*.
- (d) The *Environmental Management Act* did not have an effective redress system for victims of environmental damage. The Act should be revisited to introduce stiffer penalties and effective measures for compensation.
- (e) Local contractors were being discriminated against in favour of those from outside the District. They called on the Mine to involve the Chingola Contractors Association in order to promote transparency. They also called upon the Government and the Mine management to come up with empowerment programmes for SMEs in order for them to benefit from the mines.

### **Committees Observations and Recommendations**

Your Committee observes that the Mine is one of the biggest employers in Zambia. Your Committee notes further that in order to reduce air pollution, the Mine has built a state of the art smelter which has significantly reduced air pollution. In order to restore the damaged environment, the Mine has embarked on a tree planting exercise.

Your Committee raises the concerns set out below.

- (i) Your Committee notes that the potential for water pollution from overflows and spillages in streams such as the Mushishima stream still remains.

Your Committee, therefore, urges the Government to ensure that the Mine puts in place stringent measures to prevent water pollution of the nearby water bodies.

- (ii) There is rampant illegal mining on the Mine thereby risking the lives of the illegal miners and other mine employees.

Your Committee, therefore, urges the Government to work with the Mine to end illegal mining activities on the Mine.

- (iii) The plight of Tsapano community whose houses are cracking from the effects of blasting has remained unattended to for a long time.

Your Committee, therefore, recommends that the Government should engage the Mine to help address the plight of the Tsapano community by relocating them to an alternative piece of land.

- (iv) Your Committee notes complaints of lack of transparency in the way the Mine is dealing with local contractors.

Your Committee, therefore, urges the Mine to work with the Chingola Contractors Association in order to address complaints of discrimination from local contractors.

- (v) Your Committee is concerned that air pollution through dust still remains a potential risk.

Your Committee, therefore, urges the Government to ensure that the Mine puts in place comprehensive measures to prevent air pollution through dust control.

## **PART II**

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

**THE ELEVENTH NATIONAL ASSEMBLY APPOINTED ON THURSDAY, 24<sup>TH</sup>  
SEPTEMBER 2015**

**The Death Penalty in Zambia**

12. Your previous Committee had recommended that, in the event that Zambia upholds the retention of the death penalty, Zambia should review the Penal Code to ensure that the death penalty is imposed only for the most serious crimes, and that certainty should be in the law as to whether or not the death sentence is mandatory for a particular crime. As for the case of murder, there is also need for certainty with regard to what constitutes extenuating circumstances for the purposes of sentencing.

It was reported in the Action-Taken Report that the process of reviewing the Penal Code was ongoing under the coordination of the Zambia Law Development Commission and wide stakeholder consultations were being conducted.

**Committee's Observations and Recommendations**

Your Committee requests for a progress report on the review of the Penal Code.

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

**A. THE CAUSES AND EXTENT OF TORTURE IN ZAMBIA**

**(i) Institutional Mechanisms for addressing Torture in Zambia**

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

It was reported in the Action-Taken Report that the Human Rights Commission had commenced the process of criminalisation of torture

and carried out country wide consultations with various stakeholders. Currently, the Human Rights Commission was working hand in hand with Zambia Law Development Commission in drafting a law that would criminalise torture. The Ministry of Home Affairs, as the lead Ministry had participated in the process and it was hoped that there would be a draft bill under the Ministry of Home Affairs for possible enactment before the end of 2016.

### **Committee's Observations and Recommendations**

Your Committee awaits a progress report on the enactment of a law to criminalise torture.

#### **(ii) Zambia's Reservation on Article 20 of UNCAT and failure to recognise competence of Committee against Torture**

Your previous Committee had observed that the Government had merely noted its recommendation without giving any explanation as to the action taken. In this regard, your Committee requested for an explanation.

In response, it was reported in the Action-Taken Report that the Zambia Law Development Commission (ZLDC) was working on a project for the criminalisation of torture and had been liaising with various stakeholders in order to finalise the same.

### **Committee's Observations and Recommendations**

Your Committee resolves to await a progress report.

#### **(iii) Limited mandate of the Human Rights Commission**

Your previous Committee had awaited a progress report with regard to clothing the Commission with quasi-judicial powers.

It was reported in the Action-Taken Report that currently the Commission did not have the power to prosecute matters before courts of law. Further, the amended Constitution established the Commission and provided for the prescription of the functions of the Commission



through an Act of Parliament. However, before the drafting of the Human Rights Commission Bill, there was need to consult stakeholders as to the extent of powers and functions the Commission must have. The consultations and the drafting were still underway. It was anticipated that the Commission would be provided with greater powers of enforcement. The Commission was hopeful that resources would be mobilised to facilitate the review of the *Human Rights Commission Act, No. 39 of 1996* (HRC Act) to bring it in line with the new provisions in the *Constitution of Zambia (Amendment) No. 2 of 2016*. It was hoped that the process would result in proposed amendments to the HRC Act that would clothe the HRC with quasi-judicial powers.

#### **Committee's Observations and Recommendations**

Your Committee notes the response and resolves to await a progress report on clothing of the HRC with quasi-judicial powers.

#### **(iv) Need to empower and equip law enforcement agencies to carry out torture-free investigations**

Your previous Committee had requested a progress report on the process of expanding the establishment of the Zambia Police Service.

It was reported in the Action-Taken Report that the expansion of the police establishment was on course. So far, the Zambia Police Service had developed the proposed establishment of the Service in which the number of investigators had been increased. Currently, the draft establishment was at Cabinet Office for perusal and further action.

#### **Committee's Observations and Recommendations**

Your Committee resolves to await a progress report on the expansion of the Police Service establishment.

### **B. MANAGEMENT OF CONFLICTS IN THE ELECTORAL PROCESS IN ZAMBIA**

#### **(i) Continuous voter registration**

Your previous Committee had awaited a progress report on the continuous voter registration exercise.

In response, it was reported in the Action-Taken Report that the Commission was yet to be funded to implement continuous voter registration. However, Government funded the Commission in 2015, to conduct voter registration in preparation for the 2016 general elections. The Commission managed to register over 1.6 million new voters out of the targeted 1.7 million.

### **Committee's Observations and Recommendations**

Your Committee notes that continuous voter registration is a requirement of the Law, therefore, a progress report is awaited.

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

### **COMMITTEE'S FOREIGN TOUR TO KENYA**

#### **(i) Restoration of public confidence in the Judiciary through reform**

Your previous Committee had requested for a progress report on measures being taken to restore public confidence in the Judiciary.

It was reported in the Action-Taken Report that currently, the judicial reforms were on-going. The main aim was to collect stakeholder's views on how best the judiciary could improve in the area of justice delivery in order to restore public confidence. The Legal and Justice Sector Reforms Commission was still undertaking consultation with stakeholders and was yet to collect submissions from the last provinces before conclusion of its report.

### **Committee's Observations and Recommendations**

Your Committee resolves to await a progress report on judicial reforms being undertaken.

**(ii) Enhancement of the role of political parties in democratic processes**

Your previous Committee had requested a progress report on the issue of the *Political Parties Act*.

It was reported that the Ministry of Justice was actively working on the *Political Parties Act*. The preparation of the draft bill was in progress and it would be sent to Ministry of Home Affairs for further consultation with their stakeholders before it was sent to Parliament.

**Committee's Observations and Recommendations**

Your Committee resolves to await a progress report *on the Political Parties Act*.

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

**JUDICIAL REFORMS IN THE JUSTICE SYSTEM IN ZAMBIA**

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

14. Your previous Committee while noting the response had urged the Government to prioritise the project and requested for a progress report on the releases of funds to the project by the Treasury.

It was reported in the Action-Taken Report that the electronic record and case management system had been introduced through the Zambia Justice Information System (ZAJIS). There was still a lot to be done as only ten courts and thirteen registries along the line of rail had benefited from this reform so far. The project was donor funded and the Government was committed to the implementation of the project in other parts of the country.

The Funding to the ZAJIS from 2010, to date was as follows:

	2010 (K)	2011 (K)	2012 (K)	2013 (K)	2014 (K)
<b>Counterpart/Treasury</b>	7,000,000.00	3,100,000	4,331,693.75	700,000	1,128,000
<b>Donor</b>	543,247.94	-	673,407.00	-	-
<b>Total Funding</b>	<b>7,543,247.94</b>	<b>3,100,000</b>	<b>5,005,100.75</b>	<b>700,000</b>	<b>1,128,000</b>

On the other hand, the computerisation project had three phases and two phases had since been completed. The two phases completed mainly involved the automation/computerisation of court rooms. Phase 3 which was yet to be up and running would involve electronic filing of all court documents, paying of licences and maintenance of the system.

#### **Committee's Observations and Recommendations**

Your Committee resolves to await a progress report on the implementation of phase 3 of the project.

#### **(ii) Operational Independence of the Judiciary**

Your previous Committee had requested a progress report on the development of the Performance Management System.

It was reported in the Action-Taken Report that the system was currently underway as a consultant had already been identified to help with the program, though it was mainly for support staff to help at the moment as the judges and the magistrates had their own code of conduct which was prescribed by statute and was currently undergoing review in light of the amendment of the Constitution.

#### **Committee's Observations and Recommendations**

Your Committee resolves to await a progress report highlighting completion of the process of developing the Performance Management System.

#### **(iii) Training of Magistrates**

Your previous Committee had requested a progress report on the preparation of modules and training of Judges and Magistrates.

It was reported in the Action-Taken Report that the preparation of training modules for the training of magistrates and judges was currently still underway as there was still a lot of background work and research to be done. Further, judges continued to undertake capacity building generally on various new areas of development of the law.

#### **Committee's Observations and Recommendations**

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

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

#### **(i) Establishment of Fast Track Anti-GBV Courts**

Your previous Committee had requested a progress report on the operationalising of the fast track GBV courts in Lusaka and Kabwe and establishment of fast track GBV courts in all provincial centres.

In response, it was reported in the Action-Taken Report that the anti-GBV fast track courts in Lusaka and Kabwe were now fully operational. Further, the Government had taken note of your Committee's concerns on the need to roll out the fast track anti-GBV courts in all the Provincial Centres.

#### **Committee's Observations and Recommendations**

Your Committee resolves to await a progress report on the establishment of Fast Track Courts in all provinces.

#### **(ii) Amendment of the Penal Code**

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

It was reported in the Action-Taken Report that the review and drafting was underway and stakeholder consultations were yet to be concluded by the Zambia Law Development Commission.

### **Committee's Observations and Recommendations**

Your Committee resolves to await a progress report on the revision of the Penal Code.

### **LOCAL TOUR REPORT**

#### **(i) Security of Judicial personnel**

Your previous Committee had resolved to await an update on the funding for the establishment of a security unit specifically dedicated to Judiciary security.

In response, it was reported in the Action-Taken Report that no funds had been received yet, but the Government would continue its effects to source the necessary funds.

### **Committee's Observations and Recommendations**

Your Committee resolves to await a progress report on the funding of the activity.

#### **(ii) Accessibility of court facilities to persons with disabilities**

Your previous Committee had requested for a progress report on the funding to make all courts to be accessible to persons with disabilities, in the shortest possible time.

It was reported in the Action-Taken Report that for more than three years, the Judiciary has had inadequate funding for infrastructure development and this had contributed to slow progress in putting up facilities to assist persons with disabilities to access court rooms. The Government, however, remained committed to ensuring that this process was concluded such as the new magistrate's complex in Lusaka

continued to be designed with access for person with disabilities in accordance with the *Persons with Disabilities Act No. 6 of 2012*. The Judiciary had continued to strive to make courts freely accessible to persons with disabilities as evidenced by the number of courts with special features such as ramps.

### **Committee's Observations and Recommendations**

Your Committee notes the submission and resolves to await a progress report.

#### **(iii) Establishment of appropriate facilities for juvenile offenders**

Your previous Committee had requested for a progress report on the measures being proposed to be put in place with regard to facilities for juvenile offenders.

It was reported in the Action-Taken Report that the Government had noted the challenges that were associated with juveniles in conflict with the law. The project of putting up facilities for juvenile offenders was ongoing and in the Kabwe GBV court, the facilities had been put in place. Further, the Judiciary in collaboration with the UN system in Zambia was mobilising resources to establish facilities for child witnesses and victims of Gender Based Violence to be rolled out in all the provinces.

### **Committee's Observations and Recommendations**

Your Committee resolves to await a progress report on the development of child friendly court infrastructure.

#### **(iv) State of Judicial infrastructure**

Your previous Committee had awaited a progress report on the funding to infrastructure development in the Judiciary.

It was reported in the Action-Taken Report that the Government was committed to ensuring that infrastructure for the judiciary was well

developed and would ensure that it was well funded for its many projects particularly infrastructure.

### **Committee's Observations and Recommendations**

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

#### **(v) Magistrates residential complex in Lusaka**

Your previous Committee had requested a full report on the relocation of the magistrates from the Thorn-park Residential Complex in Lusaka, including appropriate evidence to this effect.

In the Action-Taken Report, it was reported that there were still magistrates residing at the Thorn-park residential complex, but with the introduction of payment of housing allowances in May 2016, it was hoped that they would vacate the premises.

### **Committee's Observations and Recommendations**

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

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

Your previous Committee had reiterated the need for the full recognition of the role played by Magistrates as adjudicators and called for urgent inclusion of Magistrates' conditions of service in the *Judges' (Conditions of Service) Act, Chapter 277* of the Laws of Zambia and awaited a progress report on the matter.

It was reported in the Action-Taken Report that the negotiations were still ongoing.

### **Committee's Observations and Recommendations**



Your Committee resolves to await a progress report on the outcome of the negotiations and wishes to find out which stakeholders were involved in the negotiations.

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

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

- (i) Your previous Committee had awaited a progress report on the development of a new curriculum at ZIALE.

It was reported in the Action-Taken Report that a needs assessment was carried out in 2015, by an Ad-hoc Committee constituted to review the curriculum. The findings of the needs assessment awaited review by the Technical Committee constituted to review the curriculum. The Technical Committee would commence its sittings soon.

**Committee's Observations and Recommendations**

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

- (ii) Your previous Committee had requested for a progress report on the finalisation of the Accreditation Regulations at ZIALE.

It was reported in the Action-Taken Report that Statutory Instrument No. 86 of 2015, was issued by the Minister of Justice and the Committee would commence its activities as soon as the members of the Accreditation Committee were appointed. Nominations for members were currently being received.

**Committee's Observations and Recommendations**

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

- (iii) Your previous Committee had awaited a progress report on the commencement of the pre-entry examinations.

It was reported in the Action-Taken Report that the Pre-entry Examinations Committee concluded its work. However, the implementation of the Pre-entry Examinations had been deferred to facilitate a review of Student Rules which would expressly authorise the institute to implement the examinations.

#### **Committee's Observations and Recommendations**

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

- (iv) Your previous Committee had requested an update on the progress made towards revision of the students' rules.

It was reported that the ZIALE Council commenced the revision of the Student Rules on 12<sup>th</sup> March, 2016 and was in the process of completing the draft in conjunction with the Ministry of Justice.

#### **Committee's Observations and Recommendations**

Your Committee resolves to await a progress report on the finalisation of the revision of Student Rules and subsequently the commencement of the pre-entry examination.

### **Conclusion**

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

Your Committee is hopeful that the observations and recommendations contained in this Report will go a long way in improving the legal, governance, human rights, gender and child sectors in Zambia.

C L Bwalya, MP  
**CHAIRPERSON**

June, 2017  
**LUSAKA**

## **APPENDIX I**

### **List of Officials**

Mr S C Kawimbe, Principal Clerk of Committees

Ms M K Sampa, Deputy Principal Clerk of Committees

Mr F Nabulyato, Senior Committee Clerk (SC)

Mr S Chiwota, Committee Clerk

Mr G Zulu, Committee Clerk

Mrs R T Mwila, Stenographer

Mr C Bulaya, Committee Assistant

Mr M Chikome, Committee Assistant

Mr D Lupiya, Parliamentary Messenger