



REPUBLIC OF ZAMBIA

REPORT

OF THE

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

FOR THE

**FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY
APPOINTED ON THURSDAY, 24TH SEPTEMBER, 2015**

Printed by the National Assembly of Zambia

REPORT

OF THE

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

FOR THE

**FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY
APPOINTED ON THURSDAY, 24TH SEPTEMBER, 2015**

TABLE OF CONTENTS

No.	Paragraph	Page
1.	Composition of the Committee	1
2.	Functions of the Committee	1
3.	Meetings of the Committee	1
4.	Procedure adopted by the Committee	2
PART I		
The Death Penalty in Zambia		
5.	Submission by the Ministry of Justice	2
6.	Stakeholders' concerns	13
7.	Committee's observations	15
8.	Committee's recommendations	17
PART II		
9.	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	18
10.	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	32
11.	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	43
12.	Conclusion	45
13.	Appendix I – List of Officials	46

REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, GOVERNANCE, HUMAN RIGHTS, GENDER MATTERS AND CHILD AFFAIRS FOR THE FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY APPOINTED ON THURSDAY, 24TH SEPTEMBER, 2015

Consisting of:

Mr C Mweetwa, MP (Chairperson); Mr M A Malama, MP; Mr H Kunda, MP; Mr M Kapeya, MP; Mr B M Ntundu, MP; Ms V Kalima, MP; Ms M Miti, MP; and Mr S Masumba, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir

Your Committee has the honour to present its Report for the Fifth Session of the Eleventh 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) 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;
- (ii) 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;
- (iii) to make, if considered, necessary recommendations to the Government on the need to review certain policies and/or certain existing legislation; and
- (iv) 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 sixteen meetings.

PROCEDURE ADOPTED BY THE COMMITTEE

4. During the course of its deliberations, your Committee considered and adopted the following programme of work:

- (i) consideration of the Action-Taken Report on the Report of the Committee for the Fourth Session of the Eleventh National Assembly;
- (ii) topic on the death penalty in Zambia; and
- (iii) consideration of the Committee's draft report for the Fifth Session of the Eleventh National Assembly.

PART I

THE DEATH PENALTY IN ZAMBIA

SUBMISSION BY THE MINISTRY OF JUSTICE

5. Your Committee was informed that there are three offences that attract the death penalty in Zambia as set out below.

(a) Treason

The offence of treason is provided under Section 43 of the Penal Code, Chapter 87 of the Laws of Zambia.

(b) Murder

The offence of murder is provided under section 200 of the Penal Code and the sentence for the offence is provided under the subsequent section.

(c) Aggravated Robbery

The offence of aggravated robbery is provided under section 294 of the Penal Code and is only punishable by death where a firearm is used and grievous harm is done to any person in the course of the offence.

The Appropriateness of the Sentence on the Offence

Your Committee was informed that a number of arguments had been given for and against the death penalty as an appropriate sentence for the offences highlighted above. The arguments for the appropriateness of the death sentence are outlined below.

- (a) It was the ultimate warning against all crimes and therefore, acted as a deterrent. If would-be criminals know undoubtedly that they would be put to death should they be found guilty of the offence of murder, treason or aggravated robbery, many of them would be much less inclined to commit the aforementioned offences.
- (b) It was considered that would be criminals feared the death penalty (or capital punishment) more than they feared life imprisonment which would be the next best form of sentence for any of the above offences.

- (c) It provided closure for the victims. For example, for the offence of murder, a system in place for the purpose of granting justice could not do so for the surviving victims, unless the murderer himself was put to death. An execution engendered a feeling of relief for the victim at no longer having to think about the ordeal, a feeling which more often than not failed to arise while the murderer still lived on.
- (d) It incapacitated a criminal by permanently removing the worst criminals from society and thereby, ensuring safety for the rest of society.
- (e) It was a cost saving measure. The amount of money spent on long term imprisonment of a would-be criminal was much more than that which would be spent in executing a criminal for the highlighted offences.
- (f) In every society was placed a system which served as a guide, outlining the manner in which, among others, change could be sought be it in law or policy, or a change in Government. Therefore, the crime of treason, for example, disturbed this just order by taking away from people their lives, peace and liberties. As a result the deserved punishment, in order to protect society, was making the wrongdoer pay a price equivalent to the harm that had been occasioned by the wrongdoer and such price was death.

Your Committee was informed that, on the other hand, a number of arguments had been advanced against the death penalty as an appropriate sentence for the offences alluded to and these are listed below.

- (i) Putting to death a convicted criminal for any offence taught such a person nothing. Sentencing a person to life in prison was an even more appropriate sentence as the person learnt from the experience rather than ending such a life with no lessons learnt. Capital punishment removed the individual's humanity and with it any chance of rehabilitation and their giving something back to society.
- (ii) Capital punishment did not dissuade would-be criminals from committing crime. If it did, there would be no people committing murder or aggravated robbery that leads to a life harmed. In 2012, for example, the United States (where capital punishment is practiced) had a murder rate of 4.8 victims per 100,000-meaning that nearly 15,000 people were victims of homicide that year. Therefore, it was debatable as to whether capital punishment was really a deterrent as it did not seem to be changing any criminal's mind about killing innocent people.
- (iii) To inflict death on a convicted criminal was hypocritical of a society that denounces the practice of murder. By sentencing a person to death, society was essentially taking part in murder and not championing the right to life. If the goal of any punishment was to teach a would-be criminal not to commit a crime, then the justice system should more adequately teach the criminality of killing by refusing to partake in it.

- (iv) The methods of capital punishment were always cruel. There was no proof that any of the methods used did not inflict any pain at all as the only people who could say with all certainty were the persons who had been executed. Additionally, the methods used, be it lethal injection, electrocution, firing squad, hanging and gassing, all ran the risk of accidents. There was no such thing as a humane method of putting a person to death irrespective of what may be claimed.
- (v) There was a possibility that genuinely innocent people would be executed and there was no possible way of compensating them for this miscarriage of justice. Often, the only people who knew what really happened were the accused and the deceased. It then came down to the skill of the prosecution and defence lawyers as to whether there would be a conviction for murder or for manslaughter. It was, therefore, highly probable that people were convicted of murder when they should really have only been convicted of manslaughter.
- (vi) The argument of the death penalty as a cost saving measure in reality was not true due to the lengthy and complicated death penalty trials. Therefore, by the conclusion of the case on whether a person deserves death or life in prison, a lot more would have been spent which expense was a net expense to the State and the taxpayers.
- (vii) In a country such as Zambia, the poor were more likely to be hanged due to the fact that the poor were unable to get good defence lawyers to represent them. Money offered a person good defence and more often than not, without good defence, a person was likely to be convicted for a crime that they did not commit or to the extent that saves such a person from the death penalty.

Your Committee was informed that the appropriateness of the death sentence in reality hinged on a balance of probability, that was, on which side does the weight tilt. If it tilts more on the side for the death penalty, then it is an appropriate sentence, if not, then it is not. However, there had been many arguments given for and against it with some States moving towards the abolishment of the death penalty altogether.

With regard to aggravated robbery, the penalty turns on the use of a firearm or the infliction of grievous harm, and not on whether the offence actually causes death. Therefore, whether the offence, within the parameters set out by the law, should attract death was highly debatable.

The effectiveness of the death penalty in the Zambian context, in relation to deterrence as a theory of punishment in Criminal Law

Your Committee was informed that deterrence was the use of punishment as a threat to deter people from offending. It was often contrasted with retributivism, which holds that punishment is a necessary consequence of a crime and should be calculated based on the gravity of the wrong done. The concept of deterrence has two key assumptions and these are:

- (i) that specific punishments imposed on offenders deter or prevent them from committing further crimes; and
- (ii) that fear of punishment would prevent others from committing similar crimes.

Your Committee was informed that in Zambia, the effectiveness of the death penalty could be assessed with the help of statistics. Currently, there were about fifty-eight (58) persons who had been condemned to death from recent convictions. On 16th July, 2015, His Excellency, the President of the Republic of Zambia, Edgar Chagwa Lungu commuted the sentences of 332 prisoners awaiting death by hanging to life imprisonment. In December, 2013, there were 214 people on death row, following late President Michael Sata's commutation of 123 death sentences. The last known execution in Zambia was on 24th January, 1997, when eight prisoners were executed on the same day that President Fredrick Chiluba pardoned 600 inmates. Seven of the prisoners had been convicted of murder, and the eighth had been convicted of murder and armed robbery.

Your Committee was informed that the above statistics showed that, yearly there were over 100 prisoners being sentenced to death and awaiting execution. Therefore, the effectiveness of the death penalty as a deterrent (to prevent them from committing the offences for which the death penalty is imposed or to instil fear so as to prevent them from committing any of the aforementioned offences) was minimal. The reason for this was that three assumptions were made with the theory of deterrence, namely:

- (i) that people know what the penalties for crime are;
- (ii) that people have good control over their actions; and
- (iii) that people think through and make choices about their behaviour based on logic, not passion.

Usually, these three assumptions were not true and, therefore, though capital punishment was a consequence of murder, aggravated robbery and treason, people have and still commit these offences. Additionally, in countries like Zambia, people are more than likely not to know what the penalty for crimes are due to illiteracy.

The manner in which the death penalty is carried out in Zambia in relation to other jurisdictions and the impact of such process on human dignity

Your Committee was informed that section 303 of the *Criminal Procedure Code, Chapter 88 of the Laws of Zambia* provides:

“When any person is sentenced to death, the sentence shall direct that he shall be hanged by the neck till he is dead.”

Further, section 305 of the *Criminal Procedure Code* prescribes subsequent procedure to be followed upon the sentence of death being pronounced. Additionally the *Prisons Act, Chapter 97 of the Laws of Zambia*, sets out further requirements for prisoners under the death sentence such as the confinement of prisoners under sentence of death, persons who may have access to the condemned prisoner and the manner in which executions were to take place.

In comparison, Singapore and India, like Zambia, use the method of hanging to execute persons sentenced to death. In the United States of America, the methods of execution vary from State to State. The methods of execution used are lethal injection, hanging, electrocution and gas chamber.

Your Committee was informed that it had been argued that such processes violate the right to life which happens to be the most basic of all human rights. Additionally, methods such as hanging violate the right not to be subjected to torture and other cruel, inhumane or degrading treatment or punishment. It also undermines human dignity which is inherent to every human being. Hanging has also been considered to be a breach, in violation of the prohibition against torture under international human rights law.

The reason set forth for the consideration of the execution process as torture is that humans experience isolation as torture. Persons sentenced to death were often isolated without access to family, other prisoners, programming, or any other form of intellectual or social stimulation, along with the constant knowledge of the impending execution. The Committee Against Torture in its review of Zambia's compliance with the Convention Against Torture in 2008, expressed concern that the detention conditions suffered by prisoners on death row were so poor as to approach cruel, inhuman or degrading treatment. In particular, the Committee criticised overcrowding and the amount of time spent on death row.

Provisions of Regional and International Human Rights Instruments on the death penalty and the extent to which they are recognised in Zambia

Your Committee was informed of the relevant Regional and International Human Rights Instruments on the death penalty as set out below.

(a) The International Covenant on Civil and Political Rights (ICCPR)

The instrument commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. It is part of the International Bill of Human Rights. Part 3 (Articles 6 to 27) of the ICCPR lists the rights enshrined thereunder which include physical integrity, in the form of the right to life and freedom from torture and slavery. Article 6 of the Covenant recognises the individual's "inherent right to life" and requires it to be protected by law. It is a supreme right from which no derogation can be permitted, and must be interpreted widely. While the Article does not prohibit the death penalty, it restricts its application to the most serious crimes and forbids its use on children and pregnant women. Article 7 prohibits torture and cruel, inhuman or degrading punishment. This Article likewise, cannot be derogated from under any circumstances. Articles 6 and 7 provide as set out below.

Article 6

1. *“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*
2. *In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.*
3. *When deprivation of life constitutes the crime of genocide, it is understood that nothing in this Article shall authorise any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*
4. *Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*
5. *Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*
6. *Nothing in this Article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.”*

Article 7

“No one 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.”

A number of strict limitations under Article 6 are given on the imposition of the death penalty, which include-

- (i) the right to a fair trial before the imposition of the death penalty;
- (ii) limitation of the death penalty to only the most serious crimes;
- (iii) the prohibition against the imposition of the death penalty when other ICCPR rights have been violated;
- (iv) the right to seek pardon or commutation of a death penalty sentence;
- (v) the prohibition against the execution of persons who are under the age of eighteen at the time the offence was committed; and
- (vi) the prohibition against the execution of pregnant women.

The restriction on the imposition of the death penalty to the most serious crimes is an established principle of international law, but it lacks definition and agreement. In 1984, the Economic and Social Council published the *Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty*, which stipulated that the most serious crimes should not go beyond intentional crimes

with lethal or other extremely grave consequences. These safeguards are not legally binding, but they have been endorsed by the United Nations General Assembly, indicating strong international support. Similarly, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has stated that the death penalty should be eliminated for economic crimes, drug-related offences, victimless offences, and actions relating to moral values including adultery, prostitution and sexual orientation. However, this interpretation has been contested by a number of countries.

Your Committee was informed that regardless of the manner in which the Article is interpreted, it is clear that the death penalty should only be used as an exceptional measure, carried out under strict conditions.

Your Committee was informed that Zambia acceded to the ICCPR on 10th April, 1984, but has not yet ratified the same.

(b) Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

The Second Optional Protocol commits its signatories to the abolition of the death penalty within their borders. This protocol is made believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights; recalls Article 3 of the Universal Declaration of Human Rights and Article 6 of the ICCPR; notes that Article 6 of the ICCPR refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable; the parties are convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life; and the parties undertake an international commitment to abolish the death penalty.

Your Committee was informed that Zambia has neither acceded, signed nor ratified the said protocol.

(c) Universal Declaration of Human Rights (UDHR)

The United Nations has viewed the death penalty as a human rights issue since 1948, when it adopted the UDHR. Article 3 of the Universal Declaration of Human Rights clearly states that “everyone has the right to life”. The 1948 ratification of the UDHR led to 118 nations abolishing the death penalty over the course of the last 60 years. The UDHR convinced many nations to abolish the death penalty although it was not mandatory. As a result, some UN nations continue to use capital punishment, including Zambia.

The UDHR is, together with the ICCPR, part of the International Bill of Human Rights and the ICCPR treaty was forged from the founding principle of the UDHR under Article 3 which provides:

“Everyone has the right to life, liberty and security of person.”

(d) The African Charter on Human and People's Rights (ACHPR)

The ACHPR (also known as the Banjul Charter) is an international human rights instrument that promotes and protects human rights and basic freedoms in the African Continent. The Banjul Charter makes no mention of the death penalty, but Article 4 of the Charter provides:

"Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No person may be arbitrarily deprived of this right."

It has been argued that the use of the word "arbitrarily" echoes the wording of Article 6 of the ICCPR which indicates a prohibition of the arbitrary use of the death penalty. Additionally, the Charter incorporates the restrictions set out in Article 6 (though not with reference to the death penalty) such as the right to a fair trial. For example, Article 7 (1) provides:

"Every individual shall have the right to have his cause heard. This comprises:

- (a) the right to an appeal to competent national organs against acts violating his fundamental rights as recognised and guaranteed by conventions, laws, regulation and customs in force;*
- (b) the right to be presumed innocent until proven guilty by a competent court or tribunal;*
- (c) the right to defence, including the right to be defended by counsel of his choice; and*
- (d) the right to be tried within a reasonable time by an impartial court or tribunal."*

Your Committee was informed that Zambia signed the Charter on 17th January, 1983 and ratified the same on 10th January, 1984. It should be noted that the Charter does not oblige State Parties to abolish the death penalty and as a result, Zambia continues to sentence people to death. However, in so doing, Zambia is obliged to grant persons on death row a fair trial in accordance with Article 7 of the Charter.

(e) Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

Adjacent to the Charter, is the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa made pursuant to Article 66 of the Charter. The relevant provision of the protocol with regard to the death penalty is Article 4 (2) (j) which provides:

"States Parties shall take appropriate and effective measures to ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women."

Zambia signed the Protocol on 3rd August, 2005 and ratified the same on 2nd May, 2006. Thus, Zambia has the aforementioned prohibition enshrined in its laws.

(f) African Charter on the Rights and Welfare of the Child (ACRWC)

The ACRWC is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of children. The relevant provision, with regard to the death penalty, is Article 5 which provides:

1. *“every child has an inherent right to life. This right shall be protected by law;*
2. *States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child; and*
3. *death sentence shall not be pronounced for crimes committed by children.”*

Zambia signed the said Charter on 28th February, 1992 and acceded to the same on 2nd December, 2008. The Charter defines a child as a human being below the age of eighteen years. It is enshrined within the laws of Zambia, that the death sentence shall not be imposed on children.

Challenges associated with the administration and dispensation of justice, in relation to offences that attract capital punishment

- (a) One of the major challenges is that there are, currently, only two prisons for persons on death row in Zambia and these are Kabwe Maximum Security Prison and Kabwe Female Maximum Security Prison. These prisons had been described as death traps with overcrowding, malnutrition, rampant infectious disease, grossly inadequate medical care, and routine violence at the hands of prison officers and fellow inmates.

The prisons infrastructure was old and there was a great disparity between the total design capacity of the prisons when built and the numbers that are housed currently. This results in poor sleeping conditions as there was not enough space for prisoners to lie down comfortably. Ventilation in these buildings is poor resulting in inadequate flow of air. Water is unclean, rationed or unavailable and authorities do not provide soap, razors or sanitary pads for female inmates. Toilets were insufficient and filthy; and sewage systems were not properly maintained resulting in frequent blockages.

Additionally, malnutrition was the order of the day because the food provided was inadequate in quantity and quality. Most prisoners rely on relatives for proper meals. There was no separate diet for pregnant or nursing mothers. Coupled with this was the fact that there was inadequate clothing granted to inmates on death row and in winter, no warm clothes were provided. This affects an inmate’s health and sense of dignity.

Your Committee was informed that as a result of the above conditions and others not mentioned, there has been rampant outbreaks of diseases, including cholera and tuberculosis. In 2011, it was reported that 27% of inmates were living with HIV compared to national rates of 14%.

- (b) Physical abuse was often perpetrated on inmates by prison officials and fellow inmates. Additionally, inmates usually suffer sexual abuse and rape.
- (c) Your Committee was informed that three presidents in a row have opposed capital punishment and officially adopted moratoria. Late President Dr Levy Mwanawasa publicly vowed never to sign a death warrant during his tenure, which stretched from 2002, to his death in office in 2008. His successor, President Rupiah Banda, followed his footsteps promising to never sign a death warrant during his tenure. Likewise late President Michael Sata, personally opposed the death penalty and imposed a moratorium. Currently, His Excellency, President Edgar Lungu, commuted 332 death sentences in July, 2015 although a formal moratorium has not been pronounced on executions.

It was explained that in as much as moratoriums were seen as a positive action, in turn the country had a number of inmates who spent years on death row and were contributing nothing to society. Additionally, a lot of money was spent in the maintenance of these inmates in prison and the country had a large number of individuals that were not benefitting from correctional programmes.

The way forward on the death penalty in Zambia

Your Committee was informed that the upholding or abolition of the death penalty was an ongoing debate in a number of States, with a number of varying views being given for and against the imposition of it. In Zambia, the right to life is a fundamental right in accordance with the Constitution, Chapter 1 of the Laws of Zambia. Article 12 (1) of the Constitution provides:

“A person shall not be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.”

In the Zambian context, the right to life is not to be deprived intentionally with the exception of a sentence imposed by the court in respect of a criminal offence. The exception under the Constitution, therefore, does not prohibit the death penalty, but rather supports the death penalty in respect of category of criminal offences under the law in force in Zambia for which a person was convicted. The crimes that attracted the death penalty in Zambia are murder, treason and aggravated robbery. The imposition of the death sentence in the case of aggravated robbery under Zambian law was considered by the Human Rights Committee, established under Article 28 of the International Covenant on Civil and Political Rights. In the case of *Lubuto v. Zambia* (Communication No. 390/1990, U.N. Doc. CCPR/C/55/D/390/1990/Rev. 1 [1995]), the author of the communication, Mr Bernard Lubuto, was sentenced to death on 4th August, 1983, for aggravated robbery, committed on 5th February, 1980. On 10th February,

1988, the Supreme Court of Zambia dismissed his appeal. The author submitted that he was a victim of a violation by Zambia of Articles 6, 7 and 14 of the ICCPR.

Your Committee was informed that the issue that needed to be decided was whether the imposition of the death sentence was compatible with Article 6, paragraph 2 of the Covenant, which allows for the imposition of the death penalty only “for the most serious crimes.” It was decided that in the instant case, due to the fact that the use of firearms did not produce the death or wounding of any person and that the court could not under the law take these elements into account in imposing sentence, the Human Rights Committee was of the view that the mandatory imposition of the death sentence under the circumstances was a violation of Article 6, paragraph 2 of the ICCPR. As regards the violation of Article 14, the Human Rights Committee considered that the period of eight years between the author’s arrest in February, 1980 and the final decision of the Supreme Court, dismissing his appeal, in February, 1988, was incompatible with the requirements of Article 14, paragraph 3 (c). The Human Rights Committee further considered that the information before it was insufficient to establish a violation of Article 7 in the author’s case.

The Human Rights Committee, therefore, called upon the State party, in recognition of the State becoming a party to the Optional Protocol and recognising the competence of the Committee to determine whether there had been a violation of the Covenant or not and pursuant to Article 2, to provide within 90 days, information about the measures taken to give effect to the Human Rights Committee’s views.

Your Committee was informed that it had been argued that the imposition of the death penalty with regard to aggravated robbery turns on the use of the firearm and grievous harm being occasioned in the course of the offence and not on the death of the person. Therefore, it was considered not to be a “most serious crime” in accordance with Article 6 of the ICCPR. This could also be seen from the views of the Human Rights Committee alluded to above. However, what amounts to “most serious crime” as highlighted above lacked definition and agreement. As a result, what was considered a serious crime in one country for which the sentence of death upon conviction could be passed, would not be considered a serious crime in another country. Therefore, regardless of the criticism of imposing the death sentence for aggravated robbery, Zambia as a sovereign State had the right to decide what crimes were punishable by death. This was in line with the provisions of the constitution.

Zambia being a State Party to a number of international instruments, in imposing the death sentence, provisions of the ICCPR (such as Articles 6, 7 and 14), ACHPR, Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa and the ACRWC needed to be taken into consideration. Zambia should ensure adherence, for example, to the six restrictions under Article 6 of the ICCPR which are:

- (i) the right to a fair trial before the imposition of the death penalty;
- (ii) limitation of the death penalty to only the most serious crimes;
- (iii) the prohibition against the imposition of the death penalty when other ICCPR rights have been violated;
- (iv) the right to seek pardon or commutation of a death penalty sentence;

- (v) the prohibition against the execution of persons who are under the age of eighteen at the time the offence was committed; and
- (vi) the prohibition against the execution of pregnant women.

Additionally, there was need to ensure adherence to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in the methods and processes used in the execution of the death sentence. Zambia acceded to the aforementioned Convention on 7th October, 1998.

Your Committee was informed that taking into account the fact that successive Presidents of Zambia had not signed Death Warrants and additionally that the country was practicing a moratorium on the death penalty, there was need for debate on the appropriateness of the death penalty in the Constitution and a decision made by the people of Zambia in accordance with Article 79 of the Constitution, on whether or not to retain the death penalty in the Bill of Rights, Part III of the Constitution.

STAKEHOLDERS' CONCERNS

6. To further assist your Committee appreciate the subject matter, it invited the following stakeholders to provide both written and oral submissions:

- (i) Zambia Prisons Service Commission;
- (ii) Human Rights Commission;
- (iii) School of Law, University of Zambia;
- (iv) National Prosecution Authority;
- (v) Zambia Law Development Commission;
- (vi) Transparency International Zambia;
- (vii) Caritas Zambia/ Zambia Episcopal Conference;
- (viii) Evangelical Fellowship of Zambia;
- (ix) Council of Churches in Zambia;
- (x) Inspector General of Police;
- (xi) United Nations System; and
- (xii) Prisons Care and Counselling Association.

The views of the stakeholders are outlined below.

Arguments for the abolition of the Death Penalty	Arguments for the retention of the Death Penalty
The death penalty constitutes a gross violation of all fundamental human rights particularly, the right to life	In a just system, the perpetrator of the crime forfeits his/her rights when he/she forcibly, illegally, abuses or violates the rights of others. So, when he/she murders someone, he/she forfeits his own right to life because he/she shows contempt for the right to life of his/her victim.
The death penalty violates the right to freedom from torture and other forms of cruel, inhuman or degrading treatment or punishment, which is absolutely prohibited by Article 15 of the Zambian Constitution	In view of the poor prison facilities, including congestion, abolishing the death penalty would expose the country to egregious violations of its national, international, and regional human rights obligations to inmates not on death row resulting from overcrowding due to non execution of death row inmates
The death penalty is used disproportionately against the poor, the powerless, the marginalised without financial resources to hire a good lawyer, and it is also used to permanently silence political opponents or “trouble makers” whom repressive governments will want to eliminate	This form of punishment is justified on the ground that society needs to be purged of incorrigible, dangerous and undesirable persons and for the suppression of subversive activities and war on terrorism
<ul style="list-style-type: none"> ▪ Criminal justice systems are vulnerable to discrimination and error. The death penalty once carried out is irreversible and, therefore, not amenable to alteration where there has been miscarriage of justice. ▪ The safeguards of a fair trial, including presumption of innocence, competent defence, hearing within a short timeframe etc, could be compromised where the judicial system, and legal advisory services and representation are overburdened. 	The penal provisions warranting the death penalty have stringent in-built criteria that make it impossible for a diligent Court to erroneously sentence a person to death. This is more so for a person capable of being rehabilitated and reintegrated.
There is no evidence that the death penalty has a greater deterrent effect than life imprisonment.	The death penalty works as a deterrent to other would be offenders of serious crime
	The severity and finality of death is commensurate with the seriousness of murder, unwarranted grievous harm and usurpation of the Republic’s sovereignty.
The purpose of sentencing should be for reformation of the offender	The purpose of sentencing should be for punishing the offender.

COMMITTEE'S OBSERVATIONS

7. Your Committee makes the observations as set out hereunder.

(i) Moratorium on Executions in Zambia

Your Committee notes that the last known execution in Zambia was on 24th January, 1997 and that three Republican Presidents in a row have officially adopted moratoria. President Dr Levy Mwanawasa publicly vowed never to sign a death warrant during his tenure, which stretched from 2002 to 2008. President Rupiah Banda, followed this example promising to never sign a death warrant during his tenure. Similarly, President Michael Sata, personally opposed the death penalty and imposed a moratorium. The current Head of State, His Excellency, President Edgar Lungu, commuted 332 death sentences in July, 2015 though a formal moratorium has not been pronounced on executions.

In as much as the moratorium is seen as a positive step especially by abolitionists, this has resulted in the country having a large number of inmates spending many years on death row in terribly overcrowded and deplorable conditions. Amnesty International reports recorded that the condemned part of the Mukobeko prison was extremely unhygienic and inhabitable to the extent that death row convicts die of contagious diseases within few years of imprisonment. Additionally, these inmates on death row do not engage in any manual labour or recreational activities and are not contributing anything to society.

Crimes attracting the death Penalty

- A person convicted of murder *can* be sentenced to death under Zambian law, if there are no extenuating circumstances.
- Aggravated robbery in Zambia attracts the mandatory death sentence. Under section 294 (2) of the penal code, "the penalty for the felony of aggravated robbery is death."
- It is unclear whether treason as provided for under section 43 of the Penal Code, triggers a mandatory death sentence. Courts are not uniform in the interpretation of the language of the law as the legislative provision states that an individual who committed treason "*shall be liable to suffer death.*"

Your Committee notes that the determination of crimes that attract capital punishment is debatable. In this regard, a mandatory death sentence for aggravated robbery vis-a-vis the possibility of a death sentence for one who deliberately takes away the life of another is questionable. The uncertainty of whether or not the crime of treason attracts a mandatory death sentence is an issue. Your Committee also notes that treason is a political offence in many respects. This is evident in section 43 of the Penal Code. In an emerging democratic state such as Zambia, it would be easy to locate protests or other forms of divergence as treasonous acts resulting in people being sentenced to death for simply exercising their democratic right to protest.

(ii) Inadequate human and financial resources amongst criminal justice institutions

Your Committee is aware that key justice institutions such as the Judiciary, Zambia Police Service, Legal Aid Board, the Prisons Service and the National Prosecutions Authority are generally underfunded and understaffed. Not all the justice institutions exist in all the provincial centres of Zambia, let alone in the districts around the country. This slows down the pace at which the justice delivery system operates resulting in prolonged detentions of accused persons.

(iii) Conditions for Death Row Inmates

Your Committee observes that death row inmates in Zambia suffer indignity through inhumane conditions in prisons, which are characterised by overcrowding, scarcity of food, and limited opportunities for exercise and recreation. Death row inmates suffer mental anguish through the lengthy and anxiety-ridden wait for uncertain outcomes, isolation and drastically-reduced human contact. The length of time and conditions on death row, have been the subject of comment by the Human Rights Committee.

(iv) Bail and Bond Laws

Your Committee notes that Part III Bill of Rights of the Constitution of Zambia Article 18(2) provides as follows:

“Every person who is charged with a criminal offence (a) shall be presumed to be innocent until he is proved or has pleaded guilty.”

Conversely, section 123 of the Criminal Procedure Code provides that all capital offences (murder, aggravated robbery and treason) are unbailable. Your Committee observes that the lack of bail for any offence could be considered unconstitutional as it goes against the presumption of innocence.

(v) Presidential Pardons and Commutation of Sentences

Your Committee observes that the high numbers of State pardons, even with the best intentions of relieving prison congestion and thus alleviating conditions under the Convention Against Torture, could cumulatively give the impression that justice could and would be circumvented with luck. Additionally, the growing tendency of pardons of high profile individuals, especially politicians, sometimes serving long sentences for serious crimes, gives citizens the impression that justice is selective and that those who may genuinely merit pardon may languish in prison. This impression of selectiveness and discrimination rather than impartiality tends to undermine rather than uphold justice and in addition further damages the rights of the victim.

(vi) United Nations Reports on Zambia

Your Committee observes that the UN Committee Against Torture in its 2008 review of the steps taken by Zambia to implement the CAT recommended that Zambia should consider taking measures to restrict the application of the death penalty and to adopt

procedural reforms that would include the possibility of measures of pardon. The Committee further recommended implementation of legislation to provide for the possibility of the commutation of a death sentence where there have been delays in its implementation and to ensure that all persons on death row are afforded the protection provided by the Convention against Torture.

In 2007, the Human Rights Committee (the independent body that monitors State Party implementation of the ICCPR obligations), while reviewing Zambia's compliance with the ICCPR, reiterated its view that mandatory imposition of death penalty for aggravated robbery in which a firearm is used is in violation of Article 6(2) of the Covenant which "imposes stringent requirements that must be met for judicial killing not to be regarded as an arbitrary deprivation of life and, therefore, unlawful."

COMMITTEE'S RECOMMENDATIONS

From the foregoing, your Committee is of the view that the practice of Presidents not sanctioning the death penalty since 1997, makes Zambia *abolitionist de facto*, in that even if she retains the death penalty under her statutes, she has not carried out executions for some time.

Consequently, your Committee recommends that debate on the appropriateness of the death penalty in the Constitution should be encouraged and a decision made by the people of Zambia in accordance with Article 79 of the Constitution, on whether or not to retain the death penalty in the Bill of Rights, Part III of the Constitution.

Your Committee also makes the following auxiliary recommendations:

- (i) 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;
- (ii) there is need to review the provisions of Article 18 (2) in the Constitution which provides for the presumption of innocence in order to qualify it in the same way other rights are qualified so as to make section 123 of the Criminal Procedure Code *intra vires* the Constitution; and
- (iii) the prerogative of mercy should be exercised judiciously.

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 FOURTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY

8. Your Committee found that the issues that follow are still outstanding.

A. THE CAUSES AND EXTENT OF TORTURE IN ZAMBIA

i) Institutional Mechanisms for addressing Torture in Zambia

Your previous Committee had recommended that, as Zambia goes through the constitutional, legal and justice sector reform processes, the country should fully domesticate 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.

Executive's Response

The Executive stated that the Government noted the recommendation. In addition the Human Rights Commission was actively involved in ensuring compliance with international and regional human rights obligations through advocating for ratification and domestication of the instruments as well as reporting on them. Regarding the domestication of the UNCAT, the Human Rights Commission had embarked on efforts to address the silent and yet prevalent practice of torture in the country in terms of incidence and general public's perception of torture in Zambia. This exercise had culminated into the development of an Advocacy Campaign Strategy for the criminalisation of torture in Zambia. The strategy sought to pave the way for the enactment of legislation to criminalise torture.

Committee's Observations and Recommendations

Your Committee notes the response and awaits a progress report on the enactment of legislation 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 implored the Government to demonstrate commitment in the elimination of torture by lifting the reservation and recognising the competence of the Committee against Torture. This would send a clear message to would-be perpetrators of torture that acts of torture would not be tolerated by Zambia and the State would not protect perpetrators of torture.

Executive's Response

The Executive responded that the Government noted your Committee's recommendation.

Committee's Observations and Recommendations

Your Committee observes that the Government has merely noted its recommendation without giving any explanation as to action taken. In this regard, your Committee requests for an explanation.

iii) Limited mandate of the Human Rights Commission

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

Executive's Response

The Executive responded that the Human Rights Commission established under Article 125 of the Constitution of Zambia was an autonomous National Human Rights Institution (NHRI) that discharged the mandate of promoting and protecting human rights. The Commission was guided by the Paris Principles in the discharge of its mandate. The Paris Principles related to the status and functioning of National Human Rights Institutions in the promotion and protection of human rights and were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris on 7th to 9th October, 1991.

In order to effectively promote and protect human rights, the Commission was empowered under *the Human Rights Commission Act Chapter 48 of the Laws of Zambia* to, among other things, investigate violations of human rights, propose effective measures to prevent human rights abuse as well as rehabilitating victims of human rights violations including victims of torture.

The Commission was in the process of reviewing its enabling Act (The Human Rights Commission Act) in order to enhance its mandate. In reviewing the said Act, the Commission was undertaking a desk study of the mandate of other NHRIs particularly those that were seen to be in the lead in the promotion and protection of human rights in Africa such as the South African Human Rights Commission and the Uganda Human Rights Commission. For instance, under Article 53 of the Ugandan Constitution, the powers of the Uganda Human Rights Commission were provided for as follows:

"53. (1) In the performance of its functions, the Commission shall have the powers of a court-

- (a) to issue summons or other orders requiring the attendance of any person before the commission and the production of any document or record relevant to any investigation by the commission;
 - (b) to question any person in respect of any subject matter under investigation before the commission;
 - (c) to require any person to disclose any information within his or her knowledge relevant to any investigation by the commission; and
 - (d) to commit persons for contempt of its orders.
- (2) The Commission may, if satisfied that there has been an infringement of a human right or freedom, order-
- (a) the release of a detained or restricted person;
 - (b) payment of compensation; or
 - (c) any other legal remedy or redress.”

Further, the *Uganda Human Rights Commission Act Chapter 24* of the Laws of Uganda states under Section 7 (2) that:

“7. (2) Decisions of the Commission under article 53(2) of the Constitution shall have effect as those of a court and shall be enforced in the same manner.”

Based on the above progressive provisions, the Executive stated that the amendment to the *Human Rights Commission Act* should empower the Commission to sit as a quasi-judicial institution and make orders that may be enforced with equal force as a court order. This would ensure that victims of human rights violations got redress. This would also reduce the backlog of cases being adjudicated upon by the Judiciary. It was hoped that this advancement would promote greater protection of human rights by all duty bearers.

The prevailing legal framework where a person was required to petition the High Court under Article 28 for redress of violations of the rights contained in the Bill of Rights was too legalistic requiring the services of a lawyer which usually proved to be expensive to most Zambians. Many victims of human rights violations would rather forego their right to a remedy due to such legal technicalities and cost implications. The Commission needed to continue to ensure that it provides a free service to all people in Zambia on matters of human rights with less procedural formalities.

Empowering the Human Rights Commission to make binding decisions was guided by the Paris Principles under the part dealing with *Additional Principles Concerning the Status of Commissions with Quasi-judicial Competence* in the following terms:

“A national institution may be authorised to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organisations, associations of trade unions or any other representative organisations. In such circumstances, and without prejudice to the principles stated above concerning

the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;*
- (b) informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;*
- (c) hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law; and*
- (d) making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights."*

Zambia has not yet criminalised torture in her penal laws despite ratifying the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment. The Government has openly condemned acts of torture and has provided an enabling environment for the process being undertaken by the Human Rights Commission and other stakeholders aimed at criminalizing torture. The Government would continue supporting the process until torture legislation was enacted. This was a requirement under Article 4 of the Convention against Torture which provides that:

"4. (1) Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature."

Further, the Paris Principles offer guidance with regard to the mandate of an NHRI. Principle 3(b) states that an NHRI should:

"Promote and ensure the harmonisation of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) Encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;"

Therefore, prosecution of cases including torture should continue to be handled by the National Prosecutions Authority (NPA). The Commission would play a more effective role in promoting and protecting the rights of all people if clothed with quasi-judicial powers to act as a tribunal particularly for purposes of compensation to victims of human rights violations.

Committee's Observations and Recommendations

Your Committee notes the response and awaits a progress report with regard to clothing the Commission with quasi-judicial powers.

iv) Need to broaden mandate of the Police Public Complaints Authority

Your previous Committee had been concerned that the Police Public Complainants Authority (PPCA) was only empowered to make recommendations with regard to dismissal and prosecution of such officers to be acted upon by the Government.

Executive's Response

The Executive's response was that the mandate of the PPCA would be broadened so that it covered other Law Enforcement Agencies such as DEC, Immigration Department and Zambia Prisons Service. The Authority had already initiated legislative reforms to that effect. The Authority had developed a Civilian Oversight of Law Enforcement Policy in which it intended to extend its mandate to other Law Enforcement Agencies. A consultant was working on the Police Public Complaints Commission Bill that would transform the PPCA to the Police Public Complaints Commission (PPCC) and broaden the mandate of the Commission to include other law enforcement agencies.

Committee's Observations and Recommendations

Your Committee notes the response and awaits a progress report on the broadening of the mandate of PPCA.

v) Need to empower and equip law enforcement agencies to carry out torture-free investigations

Your previous Committee had recommended that staffing levels in the investigative wings of the Government should be increased in order to increase the number of investigators. There was 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.

Executive's Response

The Executive responded that the Government was in the process of expanding the establishment of the Zambia Police Service to 27,000 positions from the 17,100 police officers. The number of investigators would also be increased accordingly. The Investigation Department of the Zambia Police Service had been receiving increased budgetary allocation for investigations and acquisition of equipment. In this case, modern investigative equipment such as DNA equipment, digital cameras, scenes of crime kits, forensic motor vehicles, among

other equipment, had been procured to enhance investigations without resorting to torture.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the process of expanding the establishment of the Zambia Police Service.

vi) Work environment for police officers

Your previous Committee had recommended that the Police Command must deal with the issue of work-related stress among police officers by ensuring that officers who needed psychological support were availed such help.

Executive's Response

The Executive responded that policing was a psychologically stressful work environment filled with danger, high demands, and ambiguity in work encounters, human misery and exposure to death. Police stress referred to negative pressures related to police work. The pressures of law enforcement put officers at risk of high blood pressure, insomnia, heart problems, post-traumatic stress disorder and suicide. Factors that could lead to stress included lack of decent accommodation for officers, inadequate or poor equipment, long working hours, family problems, financial problems and health problems.

The Zambia Police Command was dealing with the issue of work-related stress among police officers by ensuring that officers who needed psychological support were availed such help. This was being done by the Police Command who had since employed a full time Psychologist at Sikanze Police Hospital in Lusaka. The Psychologist would be able to help the officers who were stressed. Furthermore, the Command through the Government planned to construct houses for police officers countrywide so that the officers could have decent accommodation. In addition, the Zambia Police had submitted to the Management Development Division (MDD) of Cabinet Office a proposed expanded structure of 27,000 police officers which would enable officers work less hours hence reducing on stress by police officers.

Committee's Observations and Recommendations

Your Committee notes the response and urges the Government to ensure that the Police Psychological Support Service is decentralised to all provincial capitals. It awaits a progress report on the matter.

vii) Content of education programmes for law enforcement officers

Your previous Committee had recommended that education and information programmes regarding the prohibition of torture should be fully included in the training curricula not only of law enforcement personnel, but also medical personnel, public officials and others who could be involved in the custody,

interrogation or treatment of any person subjected to any form of arrest, detention or imprisonment.

The Executive responded that the Zambia Police Service was reviewing the training curriculum to incorporate best practices in investigations and the treatment of persons in custody.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the review of the training curriculum of the Zambia Police Service.

B. MANAGEMENT OF CONFLICTS IN THE ELECTORAL PROCESS IN ZAMBIA

i) Administration of laws relating to elections

Your previous Committee while appreciating that the laws themselves may have some weaknesses, had implored the ECZ and the law enforcement agencies, especially the Zambia Police Service and the Anti-Corruption Commission, to be bold and enforce the law to the letter firmly and without bias. This would greatly reduce the incidence of electoral conflict as some of the provisions were 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.

Executive's Response

The Executive responded that the Zambia Police Service in collaboration with the Human Rights Commission and the Southern African Centre for the Constructive Resolution of Disputes (SACCORD) commenced the training of regulating officers in the Zambia Police Service from the rank of Inspector and above in management of elections in line with the *Public Order Act*.

It had covered seven provinces which were; Lusaka, Copperbelt, Central, Southern, Western, Eastern and North Western. More than 110 officers had since been trained and the programme was continuing to the rest of the provinces.

The topics being covered under this programme were:

- the role and experiences of the Zambia Police Force in enforcing the *Public Order Act*;
- the right to freedom of assembly;
- the provisions of the *Public Order Act*; and
- the role of the civil society in elections.

The Public Order Act in its current form was a good law as it adequately regulates Public Assemblies and Processions. It allows the law enforcement agencies (Zambia Police Service) enough time to assess potential threats.

The Commission regulates the application of the Electoral Code of Conduct on all political parties, candidates and stakeholders during campaigns. The Commission has made available the Code of Conduct to all stakeholders who wished to have access to it. To enhance accessibility of the Electoral Code of Conduct, the Code has been translated in seven local languages, namely: Tonga, Luvale, Lozi, Nyanja, Bemba, Kaonde and Lunda.

However, the powers of the Commission need to be enhanced for it to effectively enforce the code as the Commission has no powers to penalize erring stakeholders, for example, by disqualifying or suspending a political party or candidate from participating in an election.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the training of officers in the Zambia Police Service.

ii) Handling of election results

Your previous Committee had recommended that the ECZ should take immediate measures to fully inquire into and appreciate the concerns of stakeholders on this matter and address them comprehensively before the 2016 elections.

Executive's Response

The Executive responded that the Commission was exploring ways in which to transmit results electronically from the polling stations to the constituency totalling centres so as to enhance the efficiency of results transmission during the 2016 tripartite elections.

Committee's Observations and Recommendations

Your Committee awaits an update on plans to transmit election results electronically from polling stations to constituency totalling centres during the 2016 Tripartite Elections.

iii) Voter education

Your previous Committee had recommended that voter education should be carried out on a continuous basis and using all available means. This would help to reduce, among other things, voter apathy.

Executive's Response

The Executive responded that in order to enhance voter education, the Commission has established a Voter Education Centre at the show grounds in Lusaka which was open daily from Monday to Friday. The purpose of the Voter Education Centre was to provide a one stop centre for members of the public to be educated on the electoral process.

The Commission has also established voter education clubs in secondary schools in each of the ten provincial centres. The Commission was in the process of establishing more voter education clubs in secondary schools to enhance voter education among the youths.

Committee's Observations and Recommendations

Your Committee notes that there is only one Voter Education Centre located at Show Grounds in Lusaka. In this regard, your Committee urges the Government to ensure that there are such centres countrywide and awaits a progress report on the matter.

iv) Continuous voter registration

Your previous Committee had strongly implored the Government to ensure that adequate funding was provided to the ECZ so that continuous voter registration was implemented as a matter of urgency.

Executive's Response

The Executive responded that the Commission had continued appealing to the Government to fund continuous voter registration. In September, 2015, the Commission would commence the process of voter registration to capture new voters and to complete the voters' roll in preparation for the 2016 tripartite elections.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the continuous voter registration exercise.

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

Functions of the Department of Child Development

i) Prioritisation of children's programmes

Your previous Committee had urged the Government to 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.

Executive's Response

The Executive responded that the Government had prioritised child development by revising the National Child Policy to ensure survival, protection, development and participation of children in national development. The

Government has since approved the Revised National Child Policy on 15th June, 2015.

The improvement of funding towards children's programmes, the Ministry of Gender and Child Development would continue to engage the Ministry of Finance to see how the allocation and release of funds for children's programmes could be improved.

Committee's Observations and Recommendations

Your Committee notes the response and urges the Government to increase funding towards children's programmes under the Ministry of Gender and Child Development.

ii) Implementation of the new structure for the Ministry of Gender and Child Development

Your previous Committee had urged the Government, through the appropriate authorities, to expedite the granting of Treasury authority to enable the Ministry immediately implement the approved structure by recruiting the much needed personnel for the Department.

Executive's Response

The Executive responded that Treasury authority to enable the Ministry recruit and place the needed personnel for the Department of Child Development had been granted and the recruitment process had started in a phased manner. So far, of the 102 required Assistant Child Development Officers, six had been recruited while nine Child Development Officers had been recruited of the required 102.

Additionally, the Ministry of Gender and Child Development was working closely with the Public Service Management Division (PSMD) to ensure that only qualified people were recruited.

Committee's Observations and Recommendations

Your Committee requests for a progress report on the recruitment exercise.

iii) Availability of resources for children's programmes across sectors

Given that children's issues cut across sectors and ministries, your previous Committee had recommended the need to develop a mechanism which would ensure that adequate resources were availed in a timely manner to all ministries dealing with children's issues for the effective implementation of children's programmes.

Executive's Response

The Executive responded that on the availability of resources for children's programmes across sectors, the Ministry of Gender and Child Development had continued to develop mechanisms which would ensure adequate and timely availability of resources for children's programmes from both the Government and Development Partners such as:

- (a) Programme for the Promotion and Protection of Women and Children's Rights (PPPWCR);
- (b) GRZ/UNICEF Child Protection Programme; and
- (c) GRZ/UN Joint Programme on Gender Based Violence.

Committee's Observations and Recommendations

Your Committee requests for progress on the matter.

COMMITTEE'S FOREIGN TOUR TO KENYA

i) Restoration of public confidence in the Judiciary through reform

Your previous Committee, cognisant of the low levels of public confidence in the Judiciary in Zambia, had recommended that similar action be taken to purge the Zambian Judiciary and restore public confidence in the institution.

Executive's Response

The Executive responded that the Government of the Republic of Zambia constituted the Legal and Justice Sector Reforms Commission (the Commission) pursuant to the *Inquiries Act, Chapter 41 of the Law of Zambia*. The mandate of the Commission was to undertake a comprehensive public inquiry into the state of the Legal and Justice Sector in Zambia and recommend appropriate reforms that would ensure a more efficient, affordable, accessible, accountable, fair and responsive legal and justice sector.

The Commission in exercising its mandate, had conducted public sittings to collect recommendations that could lead to transformation of the legal and justice sector in seven of the ten provinces of Zambia.

The Commission further intended to undertake the following activities:

- (a) conduct closed hearing with officials from various public and quasi government institutions, for the purpose of receiving their submissions;
- (b) consider the report of district public and conduct research into the recommendations made by petitioners;
- (c) conduct a verification exercise in order to determine the veracity, or otherwise of allegations against public officers made by petitioners, in the course of their submissions;
- (d) comparative study tours to selected jurisdictions;

- (e) prepare final report and recommendations;
- (f) print the final report of the Commission; and
- (g) submit the final report of the Commission to His Excellency, Mr Edgar Lungu, President of the Republic of Zambia.

Committee's Observations and Recommendations

Your Committee requests for a progress report.

ii) The Police and the need to ensure enjoyment of Constitutional Rights

Your previous Committee had implored the Zambia Police Service 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.

Executive's Response

The Executive responded that in order to improve the capacity of individual officers to effectively enforce public order regulations, the Zambia Police Service had continued striving towards changing the mind set of officers and members of public by putting up and enhancing the following efforts and measures:

- continued sensitisation programmes on televisions and radio stations and in schools for both police officers and the public on the importance and maintenance of public order through community services established in all stations;
- development of Training Programmes for officers in public order and the institution trained fifty-six officers from provinces as trainers of trainers from all provinces that provide sensitisation programmes to both police officers and members of the public;
- *Human Rights and Public order Act* training courses for law enforcement officers had been incorporated in the Zambia Police Service training curriculum for both pre-service and in-services programmes that would enhance the upholding of Human Rights;
- Development of a Code of Ethics which provides a clear and concise guide to values that police officers must uphold and protect in the performance of day to day police duties including maintenance of public order;
- the Electoral Commission of Zambia in conjunction with the United Nations Development Programme and the Zambia Police Service developed training programmes for officers on the Electoral Code of Conduct that provided guiding principles and specific duties for the law enforcement officers on how to conduct themselves before, during and after elections; and

- the provisions of the *Public Order Act* set out the procedures one needed to follow before undertaking an assembly or procession and the Zambia Police examined the security situation for the conveners of the meeting or procession before going ahead; the law also provides for the process of appeal in instances of where the convener did not agree with the opinion of the police.

Apart from the internal mechanisms, there were other oversight institutions that provide checks and balances in terms of professional conduct of police officers. These included: the Police Public Complaints Authority which receive and presided over public complaints against police officers; the Human Rights Commission which ensure that the police uphold human rights in the execution of their duties; and the Anti-Corruption Commission which advocate for zero-tolerance of corruption among police officers and the public. These institutions would continue to provide checks and balances as this would help in ensuring that members of the Police Force upheld professionalism in the execution of their duties.

Committee's Observations and Recommendations

Your Committee requests for a progress report on the matter.

iii) Enhancement of the role of political parties in democratic processes

Your previous Committee had recommended 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.

Executive's Response

The Executive responded that the role of political parties in Zambia's democratic process had been enhanced through their inclusion in the Commission's political party liaison committees and the conflict management committees which were at national and district Levels.

The issue of enactment of a *Political Parties Act* was being considered by all political parties under the auspices of the Zambia Centre of Inter-Party Dialogue.

Committee's Observations and Recommendations

Your Committee requests progress report on the issue of the *Political Parties Act*.

iv) Development of a Manual for election offences

Your previous Committee had called upon the Zambia 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 would be used.

Executive's Response

The Executive responded that the Government noted your Committee's recommendations and would engage the relevant stakeholders.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the development of the manual.

v) Rights-based approach to children's issues

Your previous Committee had called 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 were issues of a very serious nature. In particular, it wished to see increased and direct engagement in child affairs at the highest levels of Government.

Executive's Response

The Executive responded that the National Agenda for Child Development was to put the constitutional mandate, government ministries' portfolio mandate and the mandates of developmental partners into implementable strategies for the well-being of the children. This agenda was premised on a holistic approach to children's upbringing focusing on four pillars of children's rights namely:

- Survival Rights;
- Developmental Rights;
- Protection Rights; and
- Participation Rights.

The Ministry of Gender and Child Development was being restructured. Cognisance had been taken into account to also refocus and strengthen programming with other line ministries and cooperating partners which would, among other areas, include:

- Health and Nutrition;
- Early Childhood Development and access to education;
- Protection against neglect and abuse;
- HIV prevention, treatment, care and support; and
- Adequate standard of living and legal identity for the children.

Committee's Observations and Recommendations

Your Committee requests a progress report on activities undertaken under the different thematic areas vis-a-vis the rights of a child.

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

Your previous Committee had requested an update on the completion of the computerisation project and the comprehensive review of the civil procedure rules.

Executive's Response

The Executive responded that the Judiciary modernisation and computerisation project was initially donor funded by the Investment Climate Facility for Africa with twenty-five per cent counterpart funding from the Government of the Republic of Zambia. The project was for a limited number of courts at Lusaka, Ndola and Kitwe. In order to sustain and roll-out the project to other parts of the country, the Judiciary introduced a dedicated budget line in its budget to support the project. However, while Parliament approved the budget towards the project, the Treasury released very minimal amounts from the approved budget. For instance, under the 2015 budget, a total of K2.5 million was approved but only K300,000.00 had been released to date. As a result of this poor funding, the rolling-out of the project had been difficult thereby threatening the sustainability for the project.

As regards the civil procedure rules, on 10th November, 2013, the Judiciary signed a Memorandum of Understanding with the United Nations Development Programme for the modernisation of the civil procedure rules, but this had not yet materialised.

Committee's Observations and Recommendations

Your Committee while noting the response, urges the Government to prioritise the project and requests for a progress report on the releases of funds to the project by the Treasury.

(ii) Backlog of Cases

Your previous Committee had been of the view that that the problem of case backlog had reached crisis proportions and was a very imminent threat to the already waning public confidence in the judicial system. In this vein, your Committee had reiterated 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.

Executive's Response

The Executive responded that the Judiciary was not averse to the appointment of High Court Commissioners. However, that the Judiciary was of the view that the High Court Commissioners should be appointed for a limited period to deal specifically with the backlog of cases and not to handle new cases.

Committee's Observations and Recommendations

Your Committee notes the response and awaits a progress report on the appointment of High Court Commissioners.

(iii) Jurisdiction of Subordinate Courts

Your previous Committee had reiterated that the status quo was unacceptable and there was 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.

Executive's Response

The Executive responded that the Judiciary supported the revision of the jurisdiction of Subordinate Courts. To this effect, the Judiciary had been discussing modalities of how best this should be implemented. However, funding remained the major challenge to kick-starting the revision of the *Subordinate Court Act, Cap 28 of the Laws of Zambia*.

Committee's Observations and Recommendations

Your Committee notes the response and urges the Government to adequately fund the Judiciary to facilitate revision of the *Subordinate Courts Act* so as to revise the jurisdiction of the subordinate courts in handling criminal cases.

(iv) Operational Independence of the Judiciary

Your previous Committee, while noting the response, had been concerned that the prevailing review mechanisms had not yielded the intended results and reiterated the need for enhanced measures in terms of peer reviews and accountability reports. In this vein, your Committee had requested for a progress report on the new performance review mechanisms for judicial officers.

Executive's Response

The Executive responded that the Judiciary was reviewing the current monthly returns appraisal system. It also intended to introduce an effective performance management system that would be used to assess the performance of individual judicial officers.

Committee's Observations and Recommendations

Your Committee requests a progress report on the development of the Performance Management System.

(v) Funding to the Judiciary

Your previous Committee had noted that the poor funding situation, coupled with poor infrastructure in the Judiciary, had compromised not only the autonomy of the Judiciary, but ultimately justice delivery. It reiterated that the poor funding of the Judiciary was so serious that it was crippling the institution's operations and undermining public confidence in it. Your Committee, in this regard had requested a progress report on the specific practical measures being taken to improve funding to the Judiciary in the short to medium term.

Executive's Response

The Executive responded that the Judiciary had continued lobbying the Executive to increase the budgetary ceiling for its operations. Further, the Judiciary had also been lobbying for its budget to be presented to Parliament by the Vice President and not the Minister of Justice so as to promote the independence and autonomy of the Judiciary.

Committee's Observations and Recommendations

Your Committee requests for a progress report on the efforts to increase funding to the Judiciary.

(vi) Training of Magistrates

Your previous Committee had noted the response and requested a progress report on the development of the training modules. More importantly, it wanted to find out when the training of judges and magistrates was expected to commence.

Executive's Response

The Executive responded that on first appointment, judges and magistrates undergo an intensive induction course. Thereafter, the Judiciary offered various continuous professional development courses for judges and magistrates. Additionally, in order to institutionalise training, the Judiciary had established the Judicial Centre of Excellence situated at number 19 Tito Road, in Lusaka. It was hoped that through the establishment of the Centre, the Judiciary would be able to conduct training on a scheduled basis. Further, the Judiciary was in the process of developing training modules and related training materials. A concept paper had since been submitted to source for funds from the European Union and the Investment Climate Facility for Africa for the development of training modules and support of other training programmes.

Committee's Observations and Recommendations

Your Committee requests a progress report on the training of Judges and Magistrates.

(vii) Recognition of the role of Magistrates in justice delivery

Your previous Committee had been concerned with the generality of the response on the matter and sought a more specific response as regards the time frame for the review of the terms and conditions of service, particularly in relation to magistrates.

Executive's Response

The Executive responded that the Judiciary had embarked on the process of reviewing terms and conditions of service for its members of staff. To this effect, the tendering process to hire a consultant had already begun and it was hoped that the exercise shall be conclude by December, 2015.

Committee's Observations and Recommendations

Your Committee will await a progress report on the recognition of the role of Magistrates in the justice delivery system.

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

i) Establishment of safety centres countrywide

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

Executive's Response

The Executive responded that the Government, through the Ministry of Community Development, Mother and Child Health, was mandated under the *Anti-Gender Based Violence Act No. 1 of 2011* and *Anti-Human Trafficking Act No. 11 of 2008* to establish and administer shelters for victims of Gender Based Violence.

The Ministry currently:

- managed one shelter with the capacity of forty clients in Mansa, Luapula Province;
- had commenced construction of the second shelter in Kapiri Mposhi, Central Province which was expected to be completed and commissioned in November, 2015; and

- had secured land in Chirundu and Sioma Districts and construction works for shelters were expected to commence in 2016.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the implementation of the plan to establish shelters for victims of GBV.

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

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

Executive's Response

The Executive's response was that the orientation and training of traditional leaders in law, gender based violence and human rights was an on-going exercise. In this regard, the Ministry intended to orient and train in a phased manner, all the 288 gazetted traditional leaders in the next three years.

Committee's Observations and Recommendations

Your Committee requests a progress report on how many Chiefs have been trained and remain to be trained.

iii) Establishment of Fast Track Anti-GBV Courts

Your previous Committee had noted the response and requested for an update on concrete progress made so far towards the establishment of the Fast Track Anti-GBV Courts.

Executive's Response

The Executive's response was that renovations of the buildings to house the courts, both in Kabwe and Lusaka, had been completed and the required IT equipment procured. Further, the training of Court End-Users, which included magistrates, police prosecutors, state advocates, Legal Aid counsel, Victim Support Unit of the Police, prisons staff as well as court officials (clerks and interpreters), was underway. The first training took place in February, 2015 and was conducted by judges and senior members in the police and DPP's chambers. The next training was lined up for August, 2015, while the launch of the courts would be in September, 2015.

The United Nations Programme (UNDP) was funding the establishment of fast track Gender Based Violence (GBV) Courts in Lusaka and Kabwe. To this effect, two courts rooms, two chambers and a witness's waiting room had been renovated in Lusaka. In Kabwe, one court room had been renovated.

Committee's Observations and Recommendations

Your Committee while noting the response and awaiting a progress report on the operationalising of the fast track GBV courts in Lusaka and Kabwe, urges the Government to establish fast track GBV courts in all provincial centres.

iv) 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.

Executive's Response

The Executive responded that *the Penal Code, Chapter 87 of the Laws of Zambia* was introduced by the British authorities during colonial times and was the primary source of Criminal Law in Zambia. Although there had been several amendments made to the Penal Code, there had never been a comprehensive review of the Act to see whether it responded to the changing needs of society. Further, there were several specialised pieces of legislation dealing with criminal matters that had been enacted since independence, such as:

- the *Narcotic Drugs and Psychotropic Substances Act*;
- the *Prohibition and Prevention of Money Laundering Act*;
- the *Anti-Corruption Commission Act*; and
- the *Plea Negotiations and Agreements Act*.

The provisions in these Acts needed to be harmonised with those in the Penal Code. This was so because some of the provisions in the Penal Code were archaic or had become redundant and, therefore, did not meet the modern day demands of criminal law.

To review the Penal Code, the Zambia Law Development Commission undertook country-wide stakeholder consultations which were completed in first quarter of 2014. Cross sections of stakeholders were consulted including judges of the Supreme and High Courts. In-depth study visits to foreign jurisdictions were undertaken in the second and third quarter of 2014. The countries visited were Canada, Hong Kong, Australia, South Africa, Zimbabwe and Uganda and completed in May, 2015. The organisations visited included criminal justice institutions, universities, national prosecutions authorities, national human rights institutions, law reform agencies and NGOs which work with the criminal justice system in these countries.

The in-depth studies examined the following:

- the institutional framework of the criminal justice system;
- the legal framework of the criminal justice system;
- the conceptual framework of the criminal justice system;
- the form and content of the criminal law in the respectable countries;

- the procedures followed in prosecution of cases; and
- the powers exercised by various players in the criminal justice system.

The detailed reports for the study visits had been compiled.

The research team which was collating data would be retreating for five days to analyse the findings from the country-wide consultations and in-depth studies as soon as funds were provided by the United Nations Development Programme. A draft report consolidating all the findings would be compiled during this period. A Technical Committee was also being set up to consider the draft report. A legislative draftsman would be hired and would sit with the Technical Committee and subsequently produce a draft bill.

The final report and draft Bill would be presented to the Minister of Justice by the Chairperson of the Zambia Law Development Commission.

Committee's Observations and Recommendations

Your Committee notes the response and awaits a progress report on the matter.

v) Domestication of regional and international human rights instruments

Your previous Committee had welcomed the proposal to develop legislation that would regulate the process of ratification and domestication of international instruments and requested that a progress report be submitted to your Committee.

Executive's Response

The Executive's response was that a draft Bill had been drafted by the Ministry of Justice and would undergo stakeholder consultation in the last quarter of 2015.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the presentation of a Bill on Domestication of and ratification of regional and international instruments.

LOCAL TOUR REPORT

i) Security of Judicial personnel

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

Executive's Response

The Executive's response was that the Judiciary carried out feasibility studies for the establishment of a constabulary similar to the one at National Assembly. However, due to budgetary constraints, this had not been implemented. In the

interim, Management of the Judiciary decided to engage a private security company, namely, Armcor, to offer security services at the Judiciary Headquarters. Notwithstanding the constabulary would be the best solution to deal with the security needs of the judiciary throughout the country.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the funding to this activity.

ii) Accessibility of court facilities to persons with disabilities

Your previous Committee had requested for a report on how the Judiciary planned to address the need for all court facilities countrywide, not only the newly constructed ones, to be accessible to persons with disabilities, in the shortest possible time.

Executive's Response

The Executive's response was that management intended to make alterations to the physical features of court facilities including the creation of ramps, widening of doorways and providing accessible toilet facilities. However, the provision of the above facilities was hampered by inadequate funding allocated for infrastructure development.

Committee's Observations and Recommendations

Your Committee notes that the need to make courts freely accessible to persons with disabilities is a key human rights issue. Therefore, the Executive is strongly urged to fund this activity. Your Committee awaits a progress report.

iii) Establishment of appropriate facilities for juvenile offenders

Your previous Committee had requested a further report on the recommendation as the response did not address the concern as regards lack of facilities for child witnesses and victims of Gender Based Violence (GBV).

Executive's Response

The Executive responded that the Lusaka Magistrates Court Complex had a waiting room for witnesses of GBV and juvenile offenders. Funding allowing, separate juvenile cells at court premises throughout the country would be established. The Judiciary also planned to put up screens in Courts for shielding juveniles and victims of GBV from their assailants. These screens would be devised in such a way that the accused person would not be able to see the victim but the victim would be able to see the accused person. It was also planned that video conferencing facilities would be put in court rooms to allow juveniles and victims of GBV to testify, but the lack of funding and supporting legislation had hindered the setting up of the facilities mentioned above. In meantime, the courts cleared the court rooms when cases for juvenile offenders were being

heard as well as when victims of GBV were testifying. Further, the Judiciary was piloting diversion programmes in Lusaka which were aimed at preventing juvenile offenders from being placed in custody.

Committee's Observations and Recommendations

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

iv) State of Judicial infrastructure

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

Executive's Response

The Executive's response was the every year, the Judiciary provided for budgetary allocation towards infrastructure development. However, the ceiling given to the Judiciary by the Treasury made it impossible for the Judiciary to embark on infrastructure development.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the funding to infrastructure development in the Judiciary.

v) Payment of housing allowances to Magistrates

Your previous Committee had wished to be availed a report on whether housing allowance due to magistrates was being paid to them in accordance with their conditions of service. The report should be accompanied with appropriate evidence.

Executive's Response

The Executive responded that the Judiciary did not have its own conditions of service, but was in the process of developing the same. In 2007, the Policy Committee of Judiciary came up with housing rental bands which management had been using to pay rentals for magistrates and research advocates. The Judicial Service Commission, at its sitting on 12th June, 2015, tasked management to conduct a market survey on the cost of housing in appropriate areas. Management had since engaged real estate companies to conduct the said survey and render a report that would be tabled for consideration before the Judicial Service Commission.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the payment of housing allowances to Magistrates.

vi) 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.

Executive's Response

The Executive's response was that the Judicial Service Commission had guided that management considers ways of converting the various rental bands into housing allowances to be paid through the pay-roll. Management was working with the Public Service Management Division to explore ways of converting the rental bands into housing allowances.

Committee's Observations and Recommendations

Your Committee awaits a progress report.

vii) 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.

Executive's Response

The Executive responded that the Judiciary Service Commission was not averse to this proposal and was looking at the modalities of how the proposal should be implemented.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the matter.

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

i) Need to decentralise police operations

Your previous Committee had resolved to request for an update on the practical measures being taken to ensure that law enforcement services through the Zambia Police Service were provided as close to the communities as possible. In

this light, your Committee had wished to be apprised on what budgetary allocation had been made towards these efforts in the 2015 financial year.

Executive's Response

The Executive's response was that the Zambia Police was making efforts to provide law enforcement services to all the areas around the country. These efforts and their budgetary allocations in the 2015 budget were as follows:

- (a) construction of police stations and police posts: a budgetary allocation of K6,000, 0000 has been provided for in the 2015 budget;
- (b) community services: A total of K1,670,319 has been allocated towards crime prevention and awareness, counselling and sensitisations, road safety sensitisation campaigns and production of education material, among other things. The Government, through the Zambia Police Service, had started decentralising these funds to all the provinces and in this regard all of them were allocated crime prevention and awareness funds;
- (c) procurement of community policing motor bikes and bicycles: a total of K1,028,67 has been allocated for this activity to enable officers especially in rural areas access the members of the community;
- (d) procurement of motor vehicles: A sum of K1,500,000 has been set aside for the purchase of vehicles earmarked for distribution to all needy areas; and
- (e) with the broader programme of decentralisation by the Government, the Ministry of Works and Supply was constructing a police station and ten houses in the newly created districts of Zambia.

Committee's Observations and Recommendations

Your Committee awaits a progress report.

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

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

Executive's Response

The Executive responded that the Judiciary was considering improving co-ordination with traditional courts so as to enhance justice delivery. With improved coordination, there would be a reduction in incidences of interference from traditional rulers in handling cases. Further, it was agreed at the stakeholder engagement meeting that a case referral mechanism be adopted at community level to enhance access to justice. The Judiciary also sought to increase the presence of local courts so that people have access to the formal justice system.

Committee's Observations and Recommendations

Your Committee awaits a progress report.

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

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

- i) Your previous Committee had resolved to seek an update on when this exercise was expected to be completed and when the new system would be implemented.

Executive's Response

The Executive's response was that this had not been implemented although it was receiving active attention. ZIALE found it prudent to first work on a new curriculum that would allow for new innovations to be introduced. The review of the curriculum had started and was progressing well. As one of the activities in the process, ZIALE administered a questionnaire to a total of ninety (90) carefully selected stakeholders including the Judiciary, Law Association Zambia, schools of law and the industry in general. Feedback was still being received and a report was yet to be generated. Among other things, respondents were asked to provide their views on the current format of the Legal Practitioners Qualifying Examination Course; whether it was adequate for the training of a learner legal practitioner and met the needs of the variety of corporate and individual clients; and, whether there was need to review the duration of the course.

A committee, made up of some stakeholders and ZIALE staff, would review the findings of the survey and generate recommendations for the consideration of the Council. It was expected that a new curriculum would be in place for the 2016/2017 academic year.

Committee's Observations and Recommendations

Your Committee notes the response and awaits a progress report on the development of a new curriculum at ZIALE.

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

Executive's Response

The Executive responded that the specific question related to Accreditation Regulations. The development of Accreditation Regulations was still on-going although it was at an advanced stage. As reported in the last update, the Council

of ZIALE considered the final draft Accreditation Regulations at its Meeting held on Thursday, 28th August, 2014. The document had since been submitted to the Ministry of Justice for further refinement taking into account the views of the Council.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the development of Accreditation Regulation at ZIALE.

- iii) Your previous Committee had requested for an update on the commencement of the pre-entry examinations.

Executive's Response

The Executive responded that as reported in the last update, a Pre-Entry Examination Committee had been set up and it had 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. At its meeting on Thursday, 16th July, 2015, the Committee considered draft rules for the administration of the Pre-entry Examination. It was expected that the draft rules would be tabled before the Council of ZIALE for further consideration and possible adoption.

Committee's Observations and Recommendations

Your Committee awaits a progress report.

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

Executive's Response

The Executive's response was that as indicated in the last update, the process to review the Student Rules had commenced. As of June, 2015, the ZIALE Management completed work on proposals for the review of the rules. The proposals would go through the relevant internal levels of scrutiny before finally being tabled before the Council of ZIALE in August, 2015. When the Council had made its position clear on the proposed changes, ZIALE would engage the services of draftspersons in the Ministry of Justice to work on a new set of Student Rules during the last quarter of 2015.

The revision of the Student Rules was comprehensive. It was intended that the new rules will completely overhaul the current rules and bring a whole new arrangement to the administration of the Legal Practitioners Qualifying Examination Course.

Committee's Observations and Recommendations

Your Committee awaits a progress report on the revision of Students' Rules.

- v) Your previous Committee had urged the ZIALE Council to expedite the process of revising the Student's Rules, particularly with regard to the five years ban.

Executive's Response

The Executive responded that as indicated in the last update, the process of review of the Student Rules had commenced. As of June, 2015, the ZIALE Management completed work on proposals for the review of the Rules. The proposals would go through the relevant internal levels of scrutiny before finally being tabled before the Council of ZIALE in August, 2015. When the Council makes its position clear on the proposed changes, ZIALE would engage the services of draftspersons in the Ministry of Justice to work on a new set of Student Rules during the last quarter of 2015.

The revision of the Student Rules was comprehensive. It was intended that the new rules would completely overhaul the current rules and bring a whole new arrangement to the administration of the Legal Practitioners Qualifying Examination Course.

Committee's Observations and Recommendations

Your Committee awaits a progress report.

CONCLUSION

9. In conclusion, 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 witnesses 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 Mweetwa, MP
CHAIRPERSON

March, 2016
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, Committee Clerk (SC)
Ms C Musonda, Committee Clerk (FC)
Ms S Sianga, Assistant Committee Clerk
Mrs R T Mwila, Stenographer
Mr R Mumba, Committee Assistant
Mr C Bulaya, Committee Assistant
Mr M Chikome, Parliamentary Messenger