



**REPORT**

**OF THE**

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

**FOR THE**

**FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY**

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

## **1.0 MEMBERSHIP OF THE COMMITTEE**

The Committee consisted of Mr M Jere, MP (Chairperson); Mrs P G M Jere, MP (Vice Chairperson); Evg. H Shabula, MP; Mr C Nanjuwa, MP; Mr R Bulaya, MP; Mr E Sing'ombe, MP; Ms M P Langa, MP; Mr S Banda, MP; Mr S Chungu, MP; and Mr F M Fube, MP.

The composition of the Committee changed following the appointment of Mr R C Mutale, MP to serve on another Committee, upon which he ceased to be a Member of this Committee. He was subsequently replaced by Mr F M Fube, MP.

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

Sir

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

## **2.0 FUNCTIONS OF THE COMMITTEE**

The functions of the Committee are set out in Standing Order 157(2) of the National Assembly Standing Orders, 2016.

## **3.0 PROGRAMME OF WORK**

At the commencement of the Fifth Session of the Twelfth National Assembly, the Committee adopted the Programme of Work set out below:

- (a) Consideration of the Action-Taken Report (ATR) on the Report of the Committee for the Fourth Session of the Twelfth National Assembly adopted on Tuesday, 30<sup>th</sup> June, 2019;
- (b) Consideration of the topical issue – The Review of the Operations of the Lands Tribunal;  
and
- (c) Consideration and adoption of the draft Report.

## **4.0 MEETINGS OF THE COMMITTEE**

The Committee held ten meetings during the year under review to receive submissions on the topical issue and consider the Action -Taken Report.

## **5.0 PROCEDURE ADOPTED BY THE COMMITTEE**

The Committee requested for written memoranda from stakeholders on the topical issue under consideration and invited them to appear before it in order to make oral presentations and to clarify issues arising from the written submissions.

## **6.0 ARRANGEMENT OF THE REPORT**

The Committee's Report is in two parts: Part I deals with the deliberations of the Committee on issues arising from the oral and written submissions by various stakeholders and the Committee's observations and recommendations thereon. Part II outlines the Committee's recommendations following the consideration of the ATR on the Report of the Committee for the Fourth Session of the Twelfth National Assembly.

### **PART I**

#### **CONSIDERATION OF TOPICAL ISSUE**

##### **THE REVIEW OF THE OPERATIONS OF THE LANDS TRIBUNAL**

### **7.0 Background**

The Lands Tribunal was established under the 1995 *Lands Act, Chapter 184 of the Laws of Zambia* as a specialised land court to adjudicate over land disputes in a speedy, flexible and efficient manner compared to the established judicial system. The Tribunal's continued existence was provided for in section 3 of the *Lands Tribunal Act, No. 39 of 2010*. Between 1995 and 2009, the Tribunal had limited jurisdiction of handling state land conflicts only. In 2010, however, its jurisdiction was widened to include, *inter alia*, inquiry into, and make awards or decisions in any dispute relating to land under customary tenure and to cancel Certificates of Title that the Tribunal considered to have been erroneously issued or to have been fraudulently obtained, or that it otherwise considered necessary to cancel.

As an institution that was essential in the dispensation of justice, particularly for the indigent, insofar as land disputes were concerned, the Lands Tribunal faced a number of challenges such as inadequate funding, centralised operations and low staffing levels. Established as a fast-track court, meant to circuit to all the ten provinces in Zambia, the Lands Tribunal only had presence in Lusaka and had only managed to circuit to the Copperbelt once in the last two years, thereby denying many Zambians an opportunity to have their land disputes resolved. This state of affairs prompted the Committee to undertake a study into the operations of the Lands Tribunal with regard to adjudication over land disputes in its effort to protect individual and institutional rights in land.

### **7.1 Objectives**

The objective of this undertaking was for the Committee to:

- (a) ascertain the adequacy of the legal and policy framework governing the Lands Tribunal and the gaps thereof;
- (b) ascertain the relevance of the Tribunal in resolving land disputes in Zambia;
- (c) appreciate, the challenges, if any, faced by the Lands Tribunal in its operations; and
- (d) make recommendations on the way forward with regard to enhancing the operations of the Tribunal.

## 7.2 Witnesses

The Committee received both written and oral submissions from the seventeen stakeholder institutions listed at Appendix II.

## 8.0 SUMMARY OF SUBMISSIONS BY STAKEHOLDERS

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

### 8.1 Composition of the Lands Tribunal

The Committee was informed that the Lands Tribunal Secretariat was headed by a Registrar who was appointed by the Judicial Service Commission. The Registrar was supported by other staff on attachment from the Ministries of Lands and Natural Resources and Home Affairs and the Judiciary. The Committee was also informed that the Tribunal consisted of the following members who were appointed by the Minister responsible for lands and natural resources:

- (a) A Chairperson, who is a legal practitioner of not less than seven years legal experience;
- (b) A Deputy Chairperson who is a legal practitioner of not less than seven years legal experience;
- (c) A representative of the Attorney General's Chambers who is an advocate of not less than seven years legal experience;
- (d) A representative of the Law Association of Zambia of not less than seven years legal experience;
- (e) A town planner registered under the *Urban and Regional Planning Act, No.3 of 2015*;
- (f) A land surveyor registered under the *Land Survey Act, Chapter 188 of the Laws of Zambia*;
- (g) A valuation surveyor registered under the *Valuation Surveyors Act, Chapter 207 of the Laws of Zambia*;
- (h) A representative of the House of Chiefs; and
- (i) Not more than three persons from the public and private sectors.

### 8.2 Adequacy of the Legal and Policy Framework Governing the Tribunal and the Gaps Thereof

Some stakeholders submitted that although the legislative framework governing the Lands Tribunal was adequate for the effective discharge of its mandate, there was no policy framework providing a strategic direction for the Tribunal, the consequence of which was that the Tribunal operated within the framework of the National Land Policy, which itself was yet to be finalised. Stakeholders informed the Committee that the legal framework was adequate in that the jurisdiction of the Tribunal had been expanded under section 4(1) of the *Lands Tribunal Act, No. 39 of 2010* to, *inter alia*, include hearing and determining disputes relating to land. In particular, the Tribunal was mandated to:

- (i) inquire into and make awards or decisions in any dispute relating to land under customary tenure;
- (ii) inquire into and make awards or decisions in any dispute or compensation to be paid in relation to land under the *Lands Act, Chapter 184 of the Laws of Zambia*, the *Lands Acquisition Act, Chapter 189 of the Laws of Zambia* or any other law;

- (iii) inquire into, and adjudicate upon, any matter affecting the land rights and obligations under the *Lands Act, Chapter 184 of the Laws of Zambia*, of any person or the Government;
- (iv) make orders for the cancellation of certificates of title that it considers to have been erroneously issued or to have been obtained fraudulently or that it otherwise considers necessary to cancel; and
- (v) to make any declaration that it considers appropriate and issue any order for the implementation of the declaration.

The Committee heard that other laws which provided for specific aspects of land administration and which impacted on the mandate of the Lands Tribunal included those set out below.

(i) **The Constitution of Zambia**

Article 253 of the Constitution of Zambia, as amended by Act No.2 of 2016, provided for key principles of land policy, among which was the effective and efficient settlement of land disputes.

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

The *Lands Act, Chapter 184 of the Laws of Zambia* dealt with land administration in Zambia, including aspects of vesting of land, land tenure, grant and renewal of lease, and qualifications for land ownership, among others.

(iii) **The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia**

The *Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia* was amended by the *Lands and Deeds Registry (Amendment) Act No. 40* of 2016 to provide for the Lands Tribunal for Zambia.

(iv) **The Lands Acquisition Act, Chapter 189 of the Laws of Zambia**

The *Lands Acquisition Act, Chapter 189 of the Laws of Zambia* provided for the compulsory acquisition of land and other property.

(v) **The Housing (Statutory and Improvement Areas), Chapter 194 of the Laws of Zambia**

The *Housing (Statutory and Improvement Areas) Act, Chapter 194 of the Laws of Zambia* provided for the control and improvement of housing in certain areas and matters connected with or incidental thereto.

(vi) **The State Proceedings Act, Chapter 71 of the Laws of Zambia**

The *State Proceedings Act, Chapter 71 of the Laws of Zambia* provided for civil proceedings by and against the State and the civil liabilities and rights of the State and its servants; and for purposes connected with the aforesaid matters.

Stakeholders informed the Committee that these pieces of legislation contained very progressive provisions to govern the Lands Tribunal.

Stakeholders further submitted that the regulations or rules which provided for procedures of lodging an appeal to and proceedings before the Lands Tribunal constituted under the Lands Act

of 1995 were archaic. They were of the considered view that there was need to enact new rules which should be aligned to the *Lands Tribunal Act No, 39 of 2010* in order for the Tribunal to effectively carry out its mandate. The Tribunal was still using the Lands (The Lands Tribunal) Rules statutory instrument (SI) No. 90 of 1996.

While stakeholders were in agreement that the existing legal framework governing the Lands Tribunal was adequate, they submitted that some gaps existed in the law as set out below:-

- (i) Section 5 of the *Lands Tribunal Act, No. 39 of 2010* provided for the composition of the Tribunal whose members were appointed by the Minister responsible for lands and natural resources for a tenure of office of five years on part-time basis. Stakeholders were of the view that this section conferred a lot of discretionary powers on the Minister to appoint members of the Tribunal which did not guarantee security of tenure. In this regard, appointments of all members should be on full- time basis by the Judicial Service Commission for consistency and continuity.
- (ii) Section 12 of the *Lands Tribunal Act, No. 39 of 2010* provided that the Tribunal shall deliver judgment on any matter within sixty days after the conclusion of the hearing of the case. However, there was no timeframe set for conducting hearing of a matter brought before the Tribunal. The lack of timeframe to conclude the hearing of land disputes before the Tribunal defeated the purpose of the Tribunal of being a fast-track court. The time limit should be set in order to activate the characteristic of prompt determination of land disputes.
- (iii) Pursuant to section 10(4) of the *Lands Tribunal Act, No. 39 of 2010* circuiting of the Lands Tribunal was discretionary as opposed to mandatory. Section 10(4) provided that the Tribunal “may” sit as a circuit Tribunal. The Act should, therefore, be amended to ensure that the circuiting of the Tribunal was mandatory.
- (iv) Section 16 of the *Lands Tribunal Act, No. 39 of 2010* which stipulated that a person aggrieved with the decision of the Tribunal may, within thirty days of the receipt of its decision, appeal to the High Court was erroneous because in practice, appeals from the Tribunal lay to the Court of Appeal which had jurisdiction to hear appeals from judgments of the High Court and a quasi-judicial body, as provided for by Article 131(1)(c) of the Constitution of Zambia, as amended by Act No. 2 of 2016. In this regard, stakeholders recommended that the *Lands Tribunal Act, No. 39 of 2010* should be amended so as to be in conformity with the provisions of Article 131(1)(c) of the Constitution of Zambia.
- (v) The Tribunal did not have exclusive original jurisdiction over land matters because an individual had the option to commence an action either in the High Court or the Lands Tribunal as affirmed in *Mulla and Others v Jabi (Appeal No.75/2016)(2018) ZMSC 5*.
- (vi) Section 23 of the *Subordinate Courts Act, Chapter 28 of the Laws of Zambia*, provided that if in any civil cause or matter before a Subordinate Court, the title to any land was disputed, or the question of ownership arose, the court may adjudicate if all interested parties

consented; but if they did not, the presiding Magistrate shall apply to the High Court to transfer such cause or matter to itself.

Stakeholders were of the view that this provision was problematic as it did not give an option for land matters to be transferred to the Lands Tribunal, and this was a huge limitation on the jurisdiction of the Tribunal. They added that transfers and appeals from the Subordinate Court and High Court, respectively, should be directed to the Lands Tribunal to enable it adjudicate on cases that might be pending before the High Court owing to the backlog of cases.

- (vii) There was need for a clear distinction between land matters that may be heard by the Lands Tribunal and those that may be heard by the Planning Appeals Tribunal. This was because the jurisdiction to hear and determine land disputes relating to planning decisions lay with the Planning Appeals Tribunal and not the Lands Tribunal. Pursuant to section 59 of the *Urban and Regional Planning Act, No.3 of 2015*, a person aggrieved with the decision of a planning authority may appeal in writing, to the appropriate Planning Appeals Tribunal within thirty days of the receipt of the decision of the planning authority, especially with regard to improvement areas.
- (viii) The Lands Tribunal was limited in granting relief to litigants against the State. This was because in granting relief, the Tribunal was subject to the *State Proceedings Act, Chapter 71 of the Laws of Zambia*, which provided that a court shall not make an order of injunction or for specific performance against the State, or make an order for the recovery of land or the delivery of the property but may, instead, make an order that declared the rights of the parties.

### **8.3 Collaboration between Traditional Leadership and the Tribunal in Land Advocacy and Land Dispute Resolution**

Stakeholders informed the Committee that chiefs and their traditional structures merely exercised interest control and regulation in the acquisition and use of land, while the subjects had the beneficial interest in the land. They submitted that given Zambia's dual land tenure system, therefore, the traditional leadership took cognisance of the provisions of section 4(1)(b) of the *Lands Tribunal Act No. 39 of 2010* which provided for the Tribunal to inquire into, and make awards or decisions in any dispute relating to land under customary tenure. The Committee also heard that the Act, in section 5 provided for the appointment of a representative of the House of Chiefs as a member of the Tribunal.

The Committee was further informed that due to limited availability of land in urban areas, more citizens were opting to acquire customary land. This had led to an increase in land disputes involving mostly headmen displacing local settlers and this was why collaboration between the traditional leadership and the Tribunal was important. The Committee heard, however, that more often than not, traditional leaders had been sued or subpoenaed in the courts of law or brought before the Lands Tribunal on allegations of infringement on the rights of their subjects with regard to land administration.

#### 8.4 Relevance of the Lands Tribunal

The Committee was informed that as a machinery of justice, the Lands Tribunal allowed for adjudication upon land matters by a panel of persons with expertise in land matters. Most importantly, the Tribunal was quick, flexible and cost-effective. Some stakeholders submitted that the Lands Tribunal was, therefore, relevant in resolving land disputes in Zambia. They submitted that many indigents in Zambia were discouraged by the operations of courts, especially the higher courts, which had high litigation costs, backlog of cases, and a high demand for legal representation every time a case was heard. The fact that the Tribunal did not demand for a representation, made it less intimidating.

Stakeholders also submitted that now more than ever there was need to change the structure and establishment of the Lands Tribunal. They stated that with the value attached to land, conflicts such as illegal allocations, invasion of idle or undeveloped private or public land, mostly by political cadres, and double allocations were occurring with greater frequency and intensity. The Tribunal was, therefore, relevant to resolve these disputes in order to protect individual and institutional rights in land.

Other stakeholders, however, informed the Committee that the Tribunal was not relevant on account of its lack of visibility and presence in other parts of the country. They informed the Committee that the Lands Tribunal was inundated with several land disputes countrywide that needed to be adjudicated upon expeditiously. However, due to challenges such as inadequate funding and manpower, the Tribunal had not achieved its intended purpose as a forum for the speedy adjudication of land disputes. The stakeholders informed the Committee that for the Tribunal's relevance to be more pronounced there was need to give it exclusive original jurisdiction to hear land disputes and increase its budgetary allocation.

#### 8.5 Effectiveness of the Tribunal in Adjudicating over Land Disputes

Stakeholders submitted that the Lands Tribunal had registered a steady decline in the number of cases brought before it over the past seven years probably due to loss of confidence in the Tribunal, as tabulated in figure 1.

<i>Year</i>	<i>Total Number of Cases in Since 2014</i>
2014	123
2015	179
2016	96
2017	101
2018	67
2019	72
2020	57

*Figure 1*

Stakeholders further submitted that the slow pace at which land disputes were heard and determined by the Tribunal was worrisome. In some instances, cases had taken over three years to be disposed of. The Committee heard that since 2014, the Lands Tribunal had held a total of fourteen circuit courts, with the highest being the ten held in 2016 as tabulated in figure 2. Other

than the ten held in 2016, the Tribunal had held no circuit courts in 2014, 2018 and 2020, while in 2017 and 2019 it held one circuit court, respectively.

<i>Year</i>	<i>Total No. of Circuit Courts Since 2014</i>
2014	0
2015	2
2016	10
2017	1
2018	0
2019	1
2020	0

*Figure 2*

It was furthermore submitted that between 2014 and 2020, the Tribunal had adjudicated over a total of 695 cases. Out of these, twenty-eight decisions had been appealed against, suggesting a dissatisfaction rate of 4 percent against the overall decisions of the Tribunal. Notably, in three out of the seven years there were no appeals against the decisions of the Tribunal.

<i>Year</i>	<i>Total Number of</i>		
	<i>Cases</i>	<i>Appeals</i>	<i>Percentage (%)</i>
2014	123	-	0
2015	179	-	0
2016	96	-	0
2017	101	17	17
2018	67	6	9
2019	72	3	4
2020	57	2	4

*Figure 3*

### **8.6 Challenges Faced by the Lands Tribunal**

The Committee was informed that a number of challenges affected the efficiency and effectiveness of the Lands Tribunal as outlined below.

(a) **Inadequate Staff**

It was submitted that the structure at the Lands Tribunal Secretariat was very lean, with only the Registrar, undertaking the day to day administration of the Tribunal. Other staff included the secretary, registry clerk, police officer, driver, office orderly and general worker, who were seconded principally from the Ministries of Lands and Natural Resources and Home Affairs and court reporters and interpreters from the Judiciary to support the office of the Registrar.

(b) **Centralised Operations of the Tribunal**

The Lands Tribunal only had presence in Lusaka. This made it very difficult for clients who resided outside Lusaka to access its services. Despite the Tribunal being allowed to sit at any place determined by the chairperson, many Zambians had not been able to access the

Tribunal's services, hence, there was need for the Tribunal to be present in all provinces and districts in order to effectively adjudicate over land disputes countrywide.

(c) **Inadequate Funding to the Tribunal**

There was need to increase the budgetary allocation to the Lands Tribunal so as to enable it meet its operational requirements and fully operate as a circuit court in order to provide services to other parts of the country. It was noteworthy that the Tribunal's budgetary allocation for 2021 was a meager K2 million. This amount was not sufficient for the effective and efficient operations of the Tribunal. Further, due to the expanded jurisdiction of the Tribunal, there were increased sittings of members to hear cases that the Tribunal previously had no jurisdiction over; hence, there was need to increase the institution's budget allocation.

With regard to the provisions of section 10(4) of the *Lands Tribunal Act*, in respect of the sitting of the Tribunal as a circuit court, it was submitted that this was critical, given the huge backlog of cases before the courts across the country. However, the low funding to the Tribunal made it difficult for the Tribunal to adjudicate on land matters in areas outside Lusaka via circuiting. For example, the Tribunal had in the past two years only held one circuit court on the Copperbelt. In essence, the operations of the Tribunal remained largely centralised with many litigants having to travel to Lusaka to attend trials.

(d) **Poor Conditions of Service for Members of the Tribunal**

It was submitted that board members of the Tribunal worked on part-time basis and were paid sitting allowances and not salaries. The chairperson and deputy chairperson were paid K1,200 per sitting while other members were paid K1,000, respectively. This was considered minimal compared to the work that the members had to undertake, particularly when preparing judgments. Good salaries and other conditions of service would, therefore, attract and retain highly competent and committed adjudicators.

(e) **Inadequate Transport**

The Lands Tribunal did not have adequate vehicles to cover their operations. In order to operate efficiently and effectively, the Tribunal required adequate transport. Lack of vehicles had impacted negatively on the Tribunal's operations, thereby impeding the delivery of justice, especially in outlying parts of the country.

(f) **Lack of Autonomy of the Lands Tribunal**

In the past, the Tribunal had been treated as a unit under the Human Resource and Administration Department of the Ministry of Lands and Natural Resources. Hence, for as long as the Tribunal was viewed and treated as a unit in the Ministry of Lands and Natural Resources, its autonomy and independence could not be guaranteed. The Tribunal needed to manage its own affairs such as finances and hiring of its staff in a similar manner as the Tax Appeals Tribunal.

(g) **Lack of Accommodation**

The Tribunal had been spending a large part of its monthly grant towards office accommodation for the Secretariat and court room. This affected operations as most of the

money went to pay rentals at the expense of the Tribunal's operations. The piece of land allocated to the Tribunal by the Commissioner of Lands had not been developed due to lack of finances. In the meantime, the challenge of accommodation had been alleviated by the Tribunal's shift to a Government building provided by the Ministry of Works and Supply. The Tribunal did not pay rentals but there was still need to construct offices on the piece of land it was offered.

(h) **Multiplicity of Actions under the High Court**

Many cases before the Tribunal had been found to be multiple actions, having been commenced in the High Court. Hence, by the time the Tribunal got to know of this and dismissed the matters as abuse of court process, the Tribunal's time and resources would have been wasted. It was submitted that one of the factors that contributed to the multiplicity of actions was the lack of an e-document management system. The Tribunal still maintained a paper-based filing system for data storage which meant searching manually for statistics and operational data.

(i) **Archaic Tribunal Rules**

Another challenge which the Lands Tribunal was faced with was the lack of Tribunal rules which were still being drafted. This had caused the Tribunal to rely on the rules provided under the Lands (The Lands Tribunal) Rules statutory instrument (SI) No. 90 of 1996. This was not ideal as certain aspects and operations of the Tribunal had transformed since the enactment of the *Lands Tribunal Act No. 39 of 2010* and thus the rules should be aligned to the aforesaid Act.

(j) **Untimely Delivery of Judgements due to Backlog of Cases**

The *Lands Tribunal Act No. 39 of 2010* provided that judgments of the Tribunal should be delivered within sixty days of concluding a hearing. However, in practice, many judgements had been delayed way beyond the stipulated time. This was attributable to the huge backlog of cases, limited funding and limited human resource working at the Tribunal Secretariat. As a result, many litigants had given up on their cases.

(k) **Low Public Awareness of the Lands Tribunal**

Despite having been in existence since 1995, there had been little public sensitisation on the existence of the Lands Tribunal as an alternative and fast-track land dispute resolution mechanism. The general populace, therefore, had not heard of it and did not know how to access its services. There was, therefore, need for heightened sensitisation if the Tribunal was to serve its purpose of ensuring that Zambians had a forum for the speedy adjudication of land disputes with a reduced cost of litigation.

## **8.7 Recommendations on the Way Forward**

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

- (a) The Tribunal should progressively establish permanent structures at provincial and district level in order to achieve its intended purpose and objective of giving speedy, flexible, efficient and cost-effective adjudication over land disputes countrywide.
- (b) Section 16 of the *Lands Tribunal Act, No. 39 of 2010* should be amended so as to be in conformity with the provisions of Article 131(1)(c) of the Constitution of Zambia, as amended by Act No. 2 of 2016, and state that all appeals emanating from the Tribunal should lie to the Court of Appeal and not the High Court.
- (c) There was need to increase the budgetary allocation for the Lands Tribunal to ensure that it operated effectively in the execution of its mandate. In the same vein, there was need for the Tribunal to recruit qualified staff to assist in its operations. Positions such as those of Assistant Registrar, legal researchers, court reporters, court marshals and interpreters, among others, should be created and filled on full-time basis.
- (d) There was need for the Lands Tribunal to undertake deliberate programmes aimed at raising awareness levels and sensitising the general public on the importance of its existence and operations. The Tribunal should also enhance linkages with the traditional dispute resolution mechanisms in order to increase accessibility and localise its operations.
- (e) The *Lands Tribunal Act, No. 39 of 2010* should be amended to change the appointment of membership to the Tribunal. A call for applications should be done for public scrutiny and ethical check rather than a single appointing authority. A rigorous and independent appointment process would enhance confidence in the Tribunal.
- (f) For the Tribunal to be efficient there was need for adequate investment in the operations of the Tribunal involving systems strengthening through the development of a data management and Monitoring and Evaluation system to support the operational processes of the Tribunal.
- (g) There was also need for the Tribunal to have a centralised judicial information system so as to reduce the multiplicity of actions before the Tribunal on the one hand and the High Court on the other. Further, in order to avoid a situation where people outside Lusaka were denied an opportunity to have their disputes heard and determined, the highly centralised lodging system for cases should be done away with.
- (h) The Tribunal should have exclusive original jurisdiction over land matters in order to remedy the current situation which gave an individual the option to commence an action either in the High Court or the Lands Tribunal.
- (i) There was need to provide a clear distinction between what constituted land matters and planning matters so as to reduce on duplicity of actions in the Lands Tribunal and the Planning Tribunal.
- (j) The Tribunal should have complete autonomy from the Ministry of Lands and Natural Resources. Particularly, payments for court process, filing fees and anything incidental to the foregoing should be done either at the Tribunal or the Judiciary.

- (k) To enhance the effectiveness of the Lands Tribunal, consideration should be given to transforming it into a specialised division of the High Court. As a specialised land court, it should operate like the Industrial Relations Court or the Family Court, which were divisions of the High Court.

## **9.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS**

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

- (i) The Committee is dismayed that the 2021 budgetary allocation for the Lands Tribunal is a mere K2 million. The Committee wonders how the Tribunal is expected to meet its operational requirements with such meager budgetary allocation. The Committee, therefore, recommends that the budgetary allocation for the Tribunal be increased in the quest to enhance its operations, especially with regard to its function as a circuit court, so that it can reach all corners of the country.
- (ii) The Committee notes with concern that all members of the Lands Tribunal apart from the Registrar are employed on part-time basis. The Committee is of the considered view that this impedes efficiency and effectiveness in the delivery of judgments and orders by the Tribunal. The Committee, therefore, recommends that the members should be employed on full-time basis so that they can be available to hear and determine matters in a timely manner.
- (iii) The Committee also observes that section 5(1) of the *Lands Tribunal Act, No. 39 of 2010*, provides for the appointment of members of the Lands Tribunal by the Minister responsible for lands and natural resources. The Committee is of the view that a rigorous and independent appointment process will enhance public confidence in the Tribunal. The Committee, therefore, recommends that all members of the Tribunal should be appointed by the Judicial Service Commission on permanent basis for consistency and predictability.
- (iv) The Committee notes with concern the low staffing levels of the Tribunal. Particularly, the Committee is concerned that out of the six staff in the employ of the Tribunal, only the Registrar hears and determines interlocutory applications. The Committee, therefore, implores the appointing authority to ensure more competent members of staff are appointed to hear and determine interlocutory applications.

Further, the Committee recommends that more technical staff such as court marshals, court reporters and legal researchers and interpreters should be employed on full-time basis for the effective running of the Tribunal Secretariat.

- (v) The Committee is cognisant of the fact that the Tribunal is a good dispute resolution tool meant to provide timely and cost-effective delivery of justice to the people of Zambia over land disputes. The Committee notes with concern, however, that the Tribunal only has presence in Lusaka. In this regard, the Committee urges the Government to ensure that the operations of the Tribunal are decentralised so as to achieve its intended purpose

and objective of adjudicating over land disputes countrywide in a speedy, flexible, efficient and cost-effective manner.

- (vi) The Committee is greatly concerned that due to the centralised nature of the Tribunal, there is low public awareness of its operations by many Zambians at provincial, district and community level. In this regard, the Committee urges the Government to put in place a robust information and communication strategy aimed at raising awareness on the mandate and operations of the Tribunal, as well as enhancing linkages with the traditional dispute resolution mechanisms in order to increase accessibility and localise its operations.
- (vii) The Committee observes that section 16 of the *Lands Tribunal Act, No. 39 of 2010* stipulates that a person aggrieved with the decision of the Tribunal may, within thirty days of the receipt of its decision, appeal to the High Court. The Committee is of the view that this provision is erroneous because in practice, appeals from the Tribunal lie to the Court of Appeal which has jurisdiction to hear appeals from judgments of the High Court and a quasi-judicial body, as provided for by Article 131(1)(c) of the Constitution of Zambia, as amended by Act No. 2 of 2016. In this regard, the Committee recommends that the *Lands Tribunal Act, No. 39 of 2010* should be amended so as to be in conformity with the provisions of Article 131(1)(c) of the Constitution of Zambia.
- (viii) The Committee notes with concern the rampant abuse of court process and waste of resources occasioned by the multiplicity of actions on land matters in both the High Court and the Lands Tribunal. To address this challenge, the Committee recommends that the Tribunal be given exclusive original jurisdiction over land matters so that it achieves its objective of giving flexible, less formal and expeditious adjudication over land disputes countrywide.
- (vii) The Committee observes with concern that the *Lands Tribunal Act, No. 39 of 2010* does not have a timeframe set for conducting the hearing of a matter brought before the Tribunal even though the Act stipulates that the Tribunal shall deliver judgment on any matter within sixty days after the conclusion of the hearing of the case. The Committee is of the view that this lack of a time limit in which the Tribunal must conclude the hearing of land disputes defeats the objective of the Tribunal being a fast-track court. The Committee, therefore, recommends that a time limit should be stipulated in order to activate the characteristic of speedy determination of land disputes.
- (viii) The Committee is concerned that the Lands Tribunal is still using rules and regulations under the Lands (The Lands Tribunal) Rules statutory instrument (SI) No. 90 of 1996., under the Lands Act of 1995, for lodging an appeal for proceedings before the Tribunal. The Committee recommends that new rules aligned to the *Lands Tribunal Act, No. 39 of 2010* should be promulgated. This will enable the Tribunal to effectively carry out its mandate.

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

### **10.0 THE AFRICAN PEER REVIEW MECHANISM: THE CASE OF ZAMBIA**

#### **10.1 Facilitation of Second Base Review**

The Committee in the previous Session had urged the Executive to facilitate Zambia's second peer review under the Base Review in the shortest possible time so as to assess the progress made in addressing the governance challenges highlighted in the first progress report.

#### **Executive's Response**

It was reported in the Action-Take Report that Zambia was already on the list of African Peer Review Mechanism (APRM) Member States scheduled to undergo the second peer review. However, the continental secretariat did not conduct such reviews during the years of the general elections of Member States. In that regard, Zambia's second peer review could only be conducted from 2022 onwards.

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

The Committee notes the response by the Executive but reiterates that the Government should endeavour to ensure that the second base review is undertaken not long after the general elections so as to address the governance challenges in the first progress report which are still prevalent. The Committee resolves to await a progress report on the matter.

#### **10.2 Funding of African Peer Review Mechanism Activities**

The Committee in the previous Session had urged the Executive to adequately fund APRM activities and its Secretariat so that its mandate could be carried out effectively.

#### **Executive's Response**

It was reported in the Action-Taken Report that the Government remained committed to the full implementation of the APRM activities in the country. The Government would, therefore, continue to explore ways to ensure that APRM activities and the APRM Secretariat were adequately funded.

It was also reported that the Government would continue to promote the mainstreaming of APRM programmes into the national development programme in order to enhance efficiency and effectiveness in their implementation. Additionally, the Government would continue to pursue strategic partnerships with stakeholders to complement funding from the Treasury.

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

The Committee observes with concern that the implementation of the APRM in Zambia has been drastically affected by reductions in budgetary allocations in the last seven years. In this regard, the Committee recommends that the Secretary to the Treasury should be engaged for enhanced budgetary allocation to the APRM for it to be impactful in Zambia. The Committee resolves to await a progress report on the matter.

### **10.3 Enhancement of the Bill of Rights**

The Committee in the previous Session had urged the Executive to begin preparation for the holding of a Referendum to educate the general citizenry on the requirements of amending the Bill of Rights to include social, economic and cultural rights.

#### **Executive's Response**

It was reported in the Action-Taken Report that the Government was already working on modalities of educating the general citizenry on the amendment of the Bill of Rights to include social, economic and cultural rights. This was because according to the 7NDP, the amendment of the Bill of Rights was part of the activities to be undertaken in 2021. It was anticipated that this activity would be wholly supported by all well-meaning Zambians.

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

The Committee notes the response by the Executive and resolves to await a progress report on the matter of enhancing the Bill of Rights.

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

### **11.0 GENDER-BASED VIOLENCE IN ZAMBIA**

#### **11.1 Scaling-up of Amenities for Gender-Based Violence Victims**

The Committee in the previous Session had resolved to await a progress report on the matter of scaling-up of amenities such as drop-in-centres, one-stop-centres, mobile clinics, temporary protective shelters for victims and fast-track courts.

#### **Executive's Response**

It was reported in the Action-Taken Report that the Government, through the Ministry of Gender had signed Phase II of the GRZ/UN-Joint programme on GBV and was awaiting the official launch. This notwithstanding, implementation of the programme had already begun. Among other things, the programme would focus on the establishment of the remaining four fast-track courts in Solwezi, Chinsali, Kasama and Mansa. The courts established in all provincial centres were aimed at expediting the prosecution of GBV cases. Further, establishment of village one-stop-centres would play a key role in continually sensitising the community on the need to report and support survivors of GBV as well as discourage all forms of GBV from occurring by challenging the social and cultural norms that perpetuated GBV.

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

The Committee notes the response by the Executive and calls for expeditious implementation of the GRZ/UN-Joint programme on GBV to enhance access to services by victims. The Committee resolves to await a progress report on the matter.

## **11.2 Expansion of Legal Definition of Medical Personnel**

The Committee in the previous Session had observed that expanding the legal definition of who could certify a medical examination report and testify in court could cure the mischief. The Committee had, in this regard, recommended that the necessary piece of legislation be amended accordingly to allow for flexibility and preservation of evidence.

### **Executive's Response**

The Executive reported in the Action-Taken Report that the project to review the *Anti-Gender-Based Violence Act, No.1 of 2011*, had reached an advanced stage.

It was reported that consultative meetings with stakeholders were conducted and following this, a drafting meeting was held from 16<sup>th</sup> to 20<sup>th</sup> December, 2019, where amendments to the Act were proposed by key stakeholders. The proposed amendments were scheduled to be reviewed by a team of experts and their outputs presented to stakeholders in a validation meeting in the first quarter of 2020. However, these two activities had not yet taken place due to the non-availability of funding for the project and in light of the COVID-19 pandemic. Once the above-mentioned activities were conducted, the proposed amendments to the Act would be submitted to the Ministry of Justice for final drafting of the Bill.

It was further reported that the recommendation by the Committee to expand the legal definition of medical personnel in the *Anti-Gender Based Violence Act No. 1 of 2011* to include clinical officers and nurses, where a medical doctor was not available to allow for flexibility and preservation of evidence was duly noted and would be included and presented to stakeholders at validation for discussion.

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

The Committee notes the response by the Executive and resolves to await a progress report.

## **11.3 Non-availability of Under-Five Cards and Birth Registration Certificates**

The Committee in the previous Session had recommended the roll-out of the provision of birth registration certificates to districts where cases of GBV were rampant so as to ease age verification in the judicial process.

### **Executive's Response**

It was reported in the Action-Taken Report that the Ministry of Home Affairs was striving to ensure that all new births were recorded and registered through established systems. A deliberate intervention targeted at districts where cases of GBV were rampant would be in place in 2021 and this would involve conducting mobile birth registration in districts to be identified in collaboration with the Ministry of Gender and the Zambia Police Service Victim Support Unit (VSU).

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

The Committee notes the response by the Executive and resolves to await a progress report on the intervention.

#### **11.4 Resident Magistrate in Nyimba District**

The Committee in the previous Session had observed with great concern that the absence of a Subordinate Court in Nyimba District was denying justice to victims of GBV, resulting in many victims withdrawing cases. The Committee had urged the Executive to quickly construct a court house in the district in order to expeditiously deliver justice for the victims of GBV. Further, the Committee had recommended that the Government should consider sending a Resident Magistrate to Nyimba District so as to address issues of delayed delivery of justice in GBV cases.

#### **Executive's Response**

It was reported in the Action-Taken Report that the Judiciary continued to lobby the Treasury for funding. The Judiciary had written to both the Secretary to the Cabinet and Secretary to the Treasury over the prevailing funding challenges for infrastructure development. The Treasury had noted the challenge through its minute dated 30<sup>th</sup> October, 2019 and advised that priority be given to complete construction projects that had reached a completion rate of at least 80 percent. Notwithstanding the foregoing, Magistrates based at Petauke Subordinate Court had continued by circuit for the purpose of hearing and determining civil and criminal matters. This arrangement would continue to be in place until a court house was built and resident magistrates posted to the station.

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

The Committee notes the response by the Executive and resolves to await a progress report on the matter of sending a resident magistrate to Nyimba.

#### **11.5 Inconsistency in Definition of a Child in the Law**

The Committee in the previous Session had resolved to await a progress report on the inconsistency in the definition of a child in the law.

#### **Executive's Response**

It was reported in the Action-Taken Report that the Ministry of Justice finalised the drafting of the Child Code Bill and upon submission of the Bill through the internal processes, the Ministry of Justice was requested to harmonise some provisions of the Bill. The Ministries of Youth, Sport and Child Development and Community and Social Services gave further instructions to the Ministry of Justice on gaps that had been identified. The Ministry of Justice was, therefore, still in the process of harmonising the provisions of the Bill and dealing with the identified gaps.

Further, the Constitution of Zambia (Amendment) Bill, No. 10 of 2019 was presented to Parliament during the June, 2019 Meeting and went through First Reading. Among the proposals the Bill was the amendment to the definition of the word "child" so as to align it with the definition under the Convention on the Rights of the Child, to which Zambia was a party.

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

The Committee observes that the review and harmonisation of the definition of a child in the law will impact positively on the efforts aimed at eradicating child marriage. The Committee, therefore, recommends that the relevant Bill be presented to Parliament by the end of the first quarter of 2021. The Committee resolved to await a progress report on the matter.

## **11.6 Enactment of the Child Code Bill**

The Committee in the previous Session had resolved to await a progress report on the matter of the enactment of the Child Code Bill.

### **Executive's Response**

It was reported in the Action-Taken Report that the Ministry of Justice finalised the drafting of the Child Code Bill and upon submission of the Bill through the internal processes, the Ministry of Justice was requested to harmonise some provisions of the Bill. The Ministries of Youth, Sport and Child Development and Community and Social Services gave further instructions to Ministry of Justice on gaps that had been identified. The Ministry of Justice was, therefore, still in the process of harmonising the provisions of the Bill and dealing with the identified gaps.

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

The Committee notes the response by the Executive and resolves to await a progress report on the enactment of the Child Code Bill.

## **12.0 THE REVIEW OF THE OPERATIONS OF THE LEGAL AID BOARD**

### **12.1 Review of the *Legal Aid Act, Chapter 34 of the Laws of Zambia***

The Committee in the previous Session had urged the Government, in reviewing the Act, to fully domesticate international and regional instruments on legal aid.

### **Executive's Response**

It was reported in the Action-Taken Report that the Ministry of Justice was still in the process of drafting the Legal Aid Bill. It was anticipated that the Bill would be presented to Parliament in the September, 2020 Meeting.

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

The Committee notes the response by the Executive but recommends that the Legal Aid Bill be presented to Parliament by the end of the first quarter of 2021. The Committee resolved to await a progress report on the matter.

### **12.2 Understaffing at the Legal Aid Board**

The Committee in the previous Session had recommended that the Government should grant the necessary Treasury Authority so that the Board could fill all the vacant positions in its establishment.

### **Executive's Response**

In a follow-up response by the Executive, it was reported that the Treasury was cognisant of the deficit in human resource being experienced at the Legal Aid Board (LAB). It was reported that recruitments at the LAB were approved by the Board based on the availability of resources in consultation with the Permanent Secretary (Administration) at the Ministry of Justice. It was further reported that due to fiscal challenges, the Treasury had not increased the operational grant for LAB since 2015, and that the Treasury would consider allocating more resources to the Ministry of Justice during the 2022-2024 Medium Term, revenue permitting.

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

The Committee implores the Treasury to prioritise the filling of these vacancies at the Legal Aid Board, and resolves to await a progress report.

#### **12.3 Legal Representation on *Pro Bono* Basis**

The Committee in the previous Session had resolved to await a progress report on the proposal to make the issuance of practicing licenses conditional on a practitioner offering *pro bono* services.

#### **Executive's Response**

It was reported in the Action-Taken Report that the matter was not considered during the Law Association of Zambia (LAZ) Annual General meeting held in July, 2020. However, the Ministry of Justice would continue to engage LAZ on the matter.

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

The Committee notes the response by the Executive but underscores the importance of making the issuance of practicing licenses conditional on a practitioner offering *pro bono* services. The Committee thus recommends that the proposal be considered at LAZ's next Annual General Meeting (AGM) in 2021.

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

### **13.0 THE REVIEW OF THE OPERATIONS OF THE OFFICE OF THE PUBLIC PROTECTOR (OPP)**

#### **13.1 New Organisational Structure of the Office of the Public Protector**

The Committee in the previous Session was displeased over the inordinate delay in granting Treasury Authority to enable actualisation of the organisational structure for the OPP, which would improve operations and ensure efficacy of the Office.

#### **Executive's Response**

It was submitted in the Action-Taken Report that the Office of the Public Protector had not been granted Treasury Authority. It was reported that the Treasury was cognisant of the fact that the new structure of the OPP had not been actualised due to fiscal challenges and reduction of the resource envelop. However, on 21<sup>st</sup> July, 2020 the Office engaged the Permanent Secretary - Budget and Economic Affairs to follow up on the matter. The Office was guided to come up with three possible scenarios that could be used to implement the structure for consideration. In the first scenario 25 percent of the positions could be operationalised comprising operational staff and the second and third scenarios were 50 per cent and 75 per cent, respectively.

It was submitted that as an immediate measure, the Treasury was pursuing the option of issuing a partial Treasury Authority by declaring savings from some expenditure line such as rental and moving the savings to personal emoluments with the view of normalising in the subsequent budgets. This measure would not have an effect on the rental expenditure as the institution had

been allocated an office block by Ministry of Works and Supply. Notably, the aforementioned measure was necessitated by the fact that the centralised recruitment allocation had been consumed by the recruitment of front line health personnel to help in the fight against the COVID – 19 Pandemic.

### **Committee’s Observations and Recommendations**

The Committee notes the response by the Executive and calls for expeditious action from the Treasury. The Committee resolves to await a progress report on the matter.

### **13.2 Other Operational Challenges faced by the Office of the Public Protector**

The Committee in the previous Session had resolved to await a progress report on the matter of other operational challenges faced by the OPP.

### **Executive’s Response**

It was reported in the Action-Taken Report that the Office of the Public Protector had not yet been granted Treasury Authority to actualise its approved organisational structure. However, the Ministry of Finance had committed to allocate funds that would enable the Office to operationalise 75 percent of its structure.

It was further reported that the Office had also continued to engage the Ministry of Finance for increased budgetary allocation to enable the Office to enhance its operations. However, due to austerity measures put in place by the Government to service the national debt, the Office was not granted budgetary increase. The Office would nonetheless continue to engage the Ministry of Finance on the matter.

### **Committee’s Observations and Recommendations**

The Committee is seriously concerned over this inordinate delay in granting Treasury Authority by the Ministry of Finance to enable the actualisation of the organisational structure of the Office of the Public Protector. The Committee, therefore, calls for expeditious action from the Treasury for the efficiency and effectiveness of the Office of the Public Protector with regard to safeguarding the interests and rights of the general public in line with the mandate of the Office. The Committee resolves to await a progress report.

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

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

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

In noting the Executive’s submission on the proposed revisions to the Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations, the Committee in the previous Session had resolved to await a progress report on the amendment of the Act.

### **Executive's Response**

It was reported in the Action-Taken Report that the revised regulations were still with the Ministry of Justice awaiting finalisation.

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

The Committee notes the response by the Executive but calls for expeditious action in the amendment of the *Zambia Development Agency Act, No. 11 of 2006*. The Committee resolves to await a progress report.

### **14.2 Government Support to Human Rights Commission, Zambia Environmental and Management Agency, Water Resources Management Authority and Mines Safety Department**

The Committee in the previous Session had resolved to await a progress report on the enactment of the Human Rights Commission Bill, 2018. This was with regard to the specific nature of Government support to the Human Rights Commission (HRC), Zambia Environmental and Management Agency (ZEMA), Water Resources Management Authority (WARMA) and the Mines Safety Department (MSD).

### **Executive's Response**

It was reported in the Action-Taken Report that on submission of the Bill through internal processes, it was discovered that there was need to undertake further consultations. The Bill was, therefore, referred to the Human Rights Commission to undertake the consultation and the Ministry of Justice was still awaiting feedback on the outcome of the consultation.

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

The Committee notes the response by the Executive and recommends that the Bill be presented to Parliament by the end of the first quarter of 2021. The Committee resolves to await a progress report.

### **14.3 Stiffening of Penalties for Environmental Pollution**

The Committee in the previous Session had recommended that the drafting of the Bill to amend the *Environmental Management Act, No. 12 of 2011* be expedited and that the Bill possibly be presented to Parliament within 2019. In this regard, the Committee had resolved to await a progress report.

### **Executive's Response**

It was reported in the Action-Taken Report that a draft amendment Bill was being finalised by the Zambia Environmental Management Agency (ZEMA). As soon as it was finalised, the Bill would be forwarded to the Ministry of Water Development, Sanitation and Environmental Protection for onward transmission to the Ministry of Justice.

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

In noting the response by the Executive, the Committee reiterates that the amendment of the Bill should be expedited in order to deter would-be polluters and resolves to await a progress report.

#### **14.4 Need for Legislation on Resettlement and Compensation**

The Committee in the previous Session had resolved to await a progress report on the outcome of the consultations undertaken by the Ministry of Justice on the need for legislation on resettlement and compensation.

##### **Executive's Response**

It was submitted in the Action-Taken Report that the Ministry of Justice was still undertaking consultations on the need for legislation on resettlement and compensation.

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

The Committee observes that resettlement is disruptive to people whose land is acquired. It is important, therefore, to expedite the establishment of resettlement and compensation principles so as to meet the needs of the people who own or use land or resources. The Committee resolves to await a progress report on the matter.

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

#### **15.0 THE CAUSES AND EXTENT OF TORTURE IN ZAMBIA**

##### **15.1 Limited Mandate of the Human Rights Commission**

The Committee in the previous Session had observed that the Human Rights Bill had not be presented in the September, 2019 Meeting of Parliament as assured and had urged the Executive to expedite the presentation of the Bill to Parliament.

##### **Executive's Response**

It was reported in the Action-Taken Report that on submission of the Bill through internal processes, it was discovered that there was need to undertake further consultations. The Bill was, therefore, referred to the Human Rights Commission to undertake the consultations and the Ministry of Justice was still awaiting feedback on the outcome of the consultations.

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

The Committee notes the response by the Executive but recommends that the Bill be presented in the February 2021 Meeting of Parliament. The Committee resolves to await a progress report on the matter.

##### **15.2 Restoration of Public Confidence in the Judiciary through Reform**

The Committee in the previous Session had noted the submission and observed that there was no timeframe given as to when the stakeholder consultations would be concluded. The Committee had recommended that a timeframe be stipulated for the conclusion of these consultations and resolved to await a progress report.

### **Executive's Response**

It was reported in the Action-Taken Report that the Legal and Justice Sector Reforms Commission had not completed its work due to non-availability of funds.

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

The Committee notes the response by the Executive but reiterates that as and when funds are available, the consultations with stakeholders be finalised. The Committee resolves to await a progress report on the matter.

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

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

#### **16.1 Operational Independence of the Judiciary**

The Committee in the previous Session had resolved to await a progress report on the matter of funding and implementation of the Performance Management System for the Judiciary.

### **Executive's Response**

It was reported in the Action-Taken Report that a team from the Judiciary conducted a performance management benchmarking visit to Zimbabwe Judicial Service Commission in the month of March, 2020. The Judiciary had since submitted a report on the benchmarking visit to the Judicial Service Commission for consideration.

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

The Committee notes the response by the Executive and resolves to await a progress report on the matter.

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

#### **17.1 Need to Include Magistrates' Conditions of Service in the Judges (Conditions of Service) Act**

The Committee in the previous Session had resolved to await a progress report on the need to include magistrates' conditions of service in the *Judges (Conditions of Service) Act, Chapter 277 of the Laws of Zambia*.

### **Executive's Response**

It was submitted in the Action-Taken Report that the Judiciary was still awaiting a response from the Secretary to Cabinet over the proposed amendments to include Magistrates' conditions of service in *Judges (Conditions of Service) Act, Chapter 277 of the Laws of Zambia*.

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

The Committee is seriously dismayed by the inordinate delay in concluding this matter and calls for expeditious action to address it. In particular, the Committee implores the Secretary to the Cabinet to provide the necessary response to the Judiciary so as to facilitate resolution of the problem. The Committee resolves to await a progress report on the matter.

### **18.0 CONCLUSION**

The Committee is aware that the establishment of the Lands Tribunal in the *Lands Act, Chapter 184 of the Laws of Zambia* and the continuation of its existence in the *Lands Tribunal Act, No. 39 of 2010* is premised on the fundamental principle of establishing a flexible, less formal and expeditious land dispute mechanism. The Committee is also aware that with the current value attached to land, conflicts arising from illegal allocations, invasion of idle or undeveloped private or public land, and double allocations are occurring with greater frequency and intensity. In this regard, the Lands Tribunal is highly relevant and essential in the dispensation of justice insofar as land disputes are concerned.

The Committee notes, however, that if not effectively operationalised, the Tribunal will not achieve its intended goal. There is need, therefore, to adequately fund the Tribunal, employ permanent staff, establish permanent structures at provincial and district level and undertake deliberate programmes aimed at raising awareness levels and sensitising the general public on the importance of its existence and operations. Further, there is need to amend the *Lands Tribunal Act, No. 39 of 2010* to ensure that all gaps identified are addressed in order to enhance the regulatory framework of the Tribunal.

The Committee is aware that it has made some far reaching recommendations on the operations of the Lands Tribunal and is confident that the Executive will act upon them in order to enhance the operations of the Tribunal. Incidentally, the Committee is very concerned about the number of recommendations in the ATR that have not been attended to over a long period of time, mainly due to lack of funding. For instance, in the Third Session of the Eleventh National Assembly, the Committee had recommended that Magistrates' Conditions of Service be included in the *Judges (Conditions of Service) Act, Chapter 277 of the Laws of Zambia*. However, to date, this has not been addressed. The Committee implores the Executive to expedite the resolution of this and many other matters.

Lastly, the Committee wishes to express its gratitude to the Honourable Mr Speaker and the Clerk of the National Assembly and her staff for the guidance and services rendered to it throughout its deliberations. Gratitude also goes to the stakeholders for their oral and written submissions.

M Jere, MP  
**CHAIRPERSON**

April, 2021  
**LUSAKA**

**APPENDIX I – NATIONAL ASSEMBLY OFFICIALS**

Ms C Musonda, Principal Clerk of Committees

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

Mrs C K Mumba, Senior Committee Clerk (FC)

Ms B Zulu, Committee Clerk

Mrs R N Mwiinga, Typist

Mr D Lupiya, Committee Assistant

## **APPENDIX II – LIST OF WITNESSES**

### **ZAMBIA LAND ALLIANCE**

Mr P Musole – Executive Director  
Ms S Chileshe – Consultant  
Ms J Kunda – Programme Officer

### **HUMAN RIGHTS COMMISSION**

Mr K Banda – Chief Investigations and Legal Officer

### **UNIVERSITY OF ZAMBIA – SCHOOL OF LAW**

Prof C Himoonga – Dean  
Mr F Mudenda – Lecturer

### **OXFAM**

Mr E Maseko – Governance Manager  
Ms Y Chibiya – Programme Quality Lead

### **NATIONAL LEGAL AID CLINIC FOR WOMEN**

Ms M Manda – Executive Director  
Ms M Mutupa – Deputy Executive Director  
Mrs C Jere – Senior Legal Officer

### **ZAMBIA INSTITUTE OF PLANNERS**

Mr C Sampa – Vice President  
Ms B Chipuwa – Deputy Secretary General  
Mr S C Tembo – Committee Member

### **CARITAS ZAMBIA**

Mr E Kabilika – Executive Director

### **ZAMBIA AGENCY FOR PERSONS WITH DISABILITIES**

Ms J Mwape – Acting Director General  
Mr J Kinuna – Inspector  
Ms I Mutenekwa – Senior Planner

### **KITWE CITY COUNCIL**

Mr S Mbulo – Town Clerk  
Mr G Sikazwe – Senior Legal Counsel  
Ms J N M Luwawa – Legal Counsel  
Ms T Siyoto – Legal Counsel

### **CHONGWE MUNICIPAL COUNCIL**

Mr M Sishumba – Town Clerk  
Mr I Kamanga – Senior Legal Assistant

**LUSAKA CITY COUNCIL**

Mr A Mwansa – Town Clerk

Mrs Y N Muwowo – Council Advocate

**MANSA MUNICIPAL COUNCIL**

Mr C P Chilambwe – Director Legal Services

Mr V Sakala – District Planning Officer

**MINISTRY OF LOCAL GOVERNMENT**

Mrs N Munthali – Director (Planning Department)

Mr P Phiri – Assistant Director (Physical Planner)

**HOUSE OF CHIEFS**

HRH Chief Kaputa – Member

HRH Chief Chamuka – Member

HRH Chief Chipepo – Member

Mrs Julian K Mulenga – Clerk (House of Chiefs)

Mr Joseph Kawangu – Deputy Clerk (House of Chiefs)

**MINISTRY OF LANDS AND NATURAL RESOURCES**

Mr N Yumba – Permanent Secretary

Mrs L Siwale – Assistant Director

Mr M Kapata – Principal Legal Officer

Mrs A Banda – Chief Registrar

**MINISTRY OF CHIEFS AND TRADITIONAL AFFAIRS**

Mrs M B Mbuta – Acting Permanent Secretary

Mr L Sakwiba – Director

Mr J Mpishi – Director (Chiefs and Traditional Affairs)

Mr J Kawandii – Deputy Clerk (House of Chiefs)

**THE LANDS TRIBUNAL**

Mrs J M C Tembo – Chairperson

Ms V C Dean – Deputy Chairperson

Mr M Chisengele – Registrar