



REPUBLIC OF ZAMBIA

REPORT

OF THE

**COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS AND GOVERNANCE ON
THE REVIEW OF THE ADMINISTRATION AND OPERATIONS OF THE
JUDICIARY IN THE DELIVERY OF JUSTICE IN ZAMBIA**

**FOR THE
SECOND SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY**

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FOREWORD

Honourable Madam Speaker, the Committee on Legal Affairs, Human Rights and Governance has the honour to present its Report for the Second Session of the Thirteenth National Assembly. The functions of the Committee are as set out under Standing Orders 197 (f) and 198 of the National Assembly of Zambia Standing Orders, 2021.

In order to acquaint itself with the topical issue under consideration, the Committee sought both written and oral submissions from various stakeholders, the list of which is at Appendix IV of the Report.

The Committee's Report is organised in two parts: Part I gives the background, objectives of the study, a summary of submissions from stakeholders, findings from the local and foreign tours and the Committee's Observations and Recommendations. Part II of the Report contains the Action-Taken Report on the report of the Committee for the First Session of the Thirteenth National Assembly.

The Committee wishes to place on record its utmost thanks to all the stakeholders who rendered both written and oral submissions during the study. The Committee also thanks the Honourable Madam Speaker and the Clerk of the National Assembly for the guidance and support services provided to the Committee throughout the session.



Mr Clement Andeleki, MP
CHAIRPERSON

June, 2023
LUSAKA

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1.0. COMPOSITION OF THE COMMITTEE

The Committee consisted of: Mr Clement Andeleki, MP (Chairperson); Ms Tasila E Lungu, MP (Vice Chairperson); Mr Chinga Miyutu, MP; Mr Edgar Sing'ombe, MP; Mr Anthony Kasandwe, MP; Mr Monty Chinkuli, MP; Mr George K Chisanga, MP; Mr Lameck Hamwaata, MP; Mr Mulenga F Fube, MP; and Mr Jay Emmanuel Banda, MP.

PART I

CONSIDERATION OF TOPICAL ISSUE

A REVIEW OF THE ADMINISTRATION AND OPERATIONS OF THE JUDICIARY IN THE JUSTICE DELIVERY SYSTEM IN ZAMBIA

2.0. BACKGROUND

Article 119 (1) of the Constitution of Zambia vests judicial authority and performance of judicial functions in the courts, which are mandated to perform those functions in accordance with the Constitution and other laws. To this end, the Judiciary is not subject to the control or direction of any authority and is conferred with both functional and financial independence in order to efficiently and effectively dispense justice.

In terms of the administration of the Judiciary, the Chief Administrator is the chief executive of the institution and is in charge of the day to day administration of the Judiciary. From an operative point of view, the Chief Registrar of the Judiciary coordinates administrative functions under court operations and is directly supported by Registrars of different court jurisdictions. These two key offices are at the fulcrum of the institution and ensure that the Judiciary executes its functions as an independent institution in the governance architecture of the country.

In recognition of its importance as a governance institution, the Eighth National Development Plan (8NDP) under the strategic development area on good governance environment has stated that access to justice is critical in delivering a good Governance environment, which is required for socio-economic development of the country. In this regard, the government has undertaken to address all the bottlenecks that have hitherto hindered access to justice and its speedy delivery. Some of the encumbrances that have been identified include; poor working conditions for judicial officers, inadequate numbers of judges and magistrates to deal with the ever increasing number of cases, poor case management compounded by the lack of integrated case flow management systems, below optimal staffing levels of judicial support staff and inadequate court facilities.

In view of the above, the Committee carried out the proposed study under the specific objectives set out below.

3.0. OBJECTIVES OF THE STUDY

The purpose of this study was to:

- (i) understand the legislative and policy environment relating to the administration and operations of the Judiciary in Zambia;
- (ii) assess the efficacy and or adequacy of the legislative and policy framework;

- (iii) appreciate the role of judicial administration and court operations in the dispensation of justice in Zambia;
- (iv) appreciate the challenges, if any, in the administration and operations of the Judiciary in Zambia; and
- (v) make appropriate recommendations on the challenges observed.

4.0. SUBMISSIONS BY STAKEHOLDERS

4.0.1. The legislative and policy environment relating to the administration and operations of the Judiciary in Zambia

Stakeholders submitted that the Judiciary of Zambia was established under Part VIII of the Constitution of Zambia. Pursuant to Article 118(1) of the Constitution, judicial authority of the Republic was derived from the people of Zambia and the Judiciary was enjoined to exercise it in a just manner so as to promote accountability. Article 118(2) outlined the principles underlying the exercise of judicial authority, which included, but were not limited to; non discrimination, no delay and fair and adequate compensation in the dispensation of justice.

In addition, Article 119 (1) provided that the authority of the Judiciary was vested in the courts and shall be exercised by the courts in accordance with the Constitution and other laws. The functions of the courts, as defined by Article 119 (2), were to hear civil and criminal matters; and matters relating to, and in respect of, the Constitution.

Article 123 of the Constitution envisioned the Judiciary as a self-accounting institution that should deal directly with the Ministry of Finance and National Planning in matters relating to its finances and that the Judiciary should be adequately funded in a financial year to enable it effectively carry out its functions.

Stakeholders also submitted that Articles 140 (appointment of judges), 141 (qualification for appointment as judge), 142 (tenure of office of judge), 143 (removal of judge from office) and 144 (procedure for removal of judges) were critical in the operations of the judiciary and in forestalling the functional independence of the institution.

With regard to the administration of the judiciary, stakeholders submitted that the administration of the Judiciary was provided for under *the Judiciary Administration Act No. 23 of 2016*. This piece of legislation provided for the administration of the Judiciary; conferred on the Judicial Service Commission the power to appoint judicial officers and staff, as well as the financial management of the institution.

The Act also provided for the appointment of the Chief Administrator who was responsible for the day-to-day administration of the Judiciary and was answerable to the Chief Justice. The Chief Administrator was also the controlling officer of the Judiciary.

Section 4(1) of the *Judiciary Administration Act* empowered the Chief Justice to constitute advisory committees, comprising judges or persons with knowledge of the work of courts and prevailing social conditions, for purposes of advising him on matters relating to the administration of the Judiciary. At present the Judiciary had nine Advisory Committees on different thematic areas.

4.0.2. Efficacy and or Adequacy of the Legislative and Policy Framework

Stakeholders were agreed that the legal and policy framework governing the administration and operations of the Judiciary was generally adequate. However, some stakeholders submitted that although Article 123 of the Constitution provided that the Judiciary should be adequately funded; this was not the case as the institution was sometimes unable to effectively carry out its mandate due to poor funding. They suggested that in order to comply with Article 123, the state required to “ring-fence” annual funding to the judiciary.

With regard to the appointment, qualification for appointment, promotion and or removal of judges from office, stakeholders were of the view that there was need to reform the processes to make them more transparent, predictable and participatory. They observed that the appointment of judges was shrouded in secrecy or left to the discretion of the President acting on the recommendation of the Judicial Service Commission. There was no transparent recruitment system such as an open advertisement calling for qualified individuals to apply. Furthermore, the system did not have a predictable promotion or elevation system that took into account the number of years served at the Bar or the Bench. This resulted in a situation where individuals with fewer years at the Bar or Bench could be appointed above their seniors, provided they possessed the requisite qualifications under the constitution. This had led to disgruntlement among the rank and file of the judiciary, thereby affecting its operations and ultimately the delivery of justice.

4.0.3. The role of Judicial Administration and Court Operations in the Dispensation of Justice in Zambia

Stakeholders submitted that the judiciary derived its mandate from Article 118(1) of the Constitution of Zambia, which provides that

“The judicial authority of the Republic derives from the people of Zambia and shall be exercised in a just manner and such exercise shall promote accountability.”

Article 118 (2) of the Constitution of Zambia, set out the principles aimed at guiding the Judiciary in the execution of its functions, which were to:

- (i) ensure justice for all, without discrimination;
- (ii) ensure that justice was not delayed;
- (iii) ensure adequate compensation, where payable;
- (iv) promote alternative forms of dispute resolution, including traditional dispute resolution mechanisms;
- (v) ensure that justice was administered without undue regard to procedural technicalities; and
- (vi) ensure the protection and promotion of the values and principles of the Constitution.

The right to a speedy trial was therefore, recognised and guaranteed by the constitution in Article 118(2)(b). Before the 2016 constitutional amendments, the right to a speedy trial was only enshrined in the Bill of rights, but now with the amendment of the constitution this article was included in the constitution as a guiding principle to the judiciary to dispense justice in a fair and speedy manner. In this regard, the key functions of the Judiciary included the administration of justice through resolving disputes between individuals or between individuals and the state, interpreting the Constitution and the Laws of Zambia, promoting the rule of law, and protecting the human rights of individuals and groups. Simply put, the

Judiciary was mandated to efficiently hear and determine civil and criminal matters, and matters relating to the Constitution.

In order to ensure effective and efficient administration of justice, the Judiciary had done the following:

(i) **Development of In-house Measures**

Statutory Instrument No. 58 of 2020 – The High Court (Amendment) Rules, was issued to amend the High Court Rules so as to promote efficient and swift justice delivery by streamlining the High Court civil procedure with a view to shortening the time for concluding litigation. In this regard, litigants were required to file pleadings (court documents) accompanied by legal arguments and witnesses' statements before a hearing. This advance information allowed a Judge to understand the shape and content of the case and the issues in dispute. It also equipped the Judge with prior appreciation of the relevant legislation and key authorities that would assist the court in arriving at a reasoned conclusion swiftly.

(ii) **Timelines**

Timelines had been set out within the High Court Rules for concluding hearings and rendering decisions. This had created an in-house mechanism whereby non-conforming judges and magistrates would be obliged to offer a satisfactory explanation to the Chief Justice as to why they failed to meet the deadline. This had given the Chief Justice the necessary supervisory control over delays, so that where need arose, such judges or magistrates could be referred to the Judicial Complaints Commission.

(iii) **Performance Management System**

The Judiciary had introduced a performance management system to help identify judges and judicial officers who were not performing to expectation. Once identified, appropriate administrative or disciplinary measures would be instituted against such judges or magistrates to remedy the problem.

(iv) **Information and Communication Technology**

The Judiciary had embraced Information and Communication Technology (ICT) which, not only facilitated access to justice, but also helped in the quick disposal of cases. However, at present, only Lusaka had an electronic record keeping system, although the plan was to introduce a case management system to all courts in Zambia.

With regard to the operations of the Judiciary as the institution vested with the exercise of judicial authority and the performance of the judicial function, the Constitution had established a court hierarchy system in which various courts had specific jurisdiction to perform specific functions. The hierarchy started at the bottom with the Local Courts, Subordinate Courts, High Court, Court of Appeal, the Constitutional Court and the Supreme Court.

Pursuant to Article 121 of the Constitution, The Supreme Court and Constitutional Court ranked equivalently thus the implication of this provision was that Zambia had two apex courts.

4.0.4. Challenges in the Administration and operations of the Judiciary

Regarding challenges experienced in the administration and operations of the Judiciary, stakeholders informed the Committee as set out below.

- (i) There was inadequate court infrastructure and office accommodation across the court system, which had persisted for a very long time, to the extent that the Supreme Court and the Constitutional Court continued to share chambers, courtrooms and office space. Some Judges of the Constitutional Court were accommodated in the Commercial Court building housed at the former Zambia National Building Society premises adjacent to the Lusaka High court building.
- (ii) The depletion of storage space for both new and concluded matters in the Supreme Court, the Constitutional Court and the Court of Appeal became and remained a cause for concern. The worsening congestion in the few available spaces made it increasingly difficult to access case records. In the case of the Supreme Court, the room allocated for archiving records was also being used by the High Court, Procurement and Maintenance departments.
- (iii) The Court of Appeal, temporarily housed at the former Industrial Relations Court building in Kamwala area was lean on courtrooms, and the premises were unsuitable as they were located in the noisy part of Kamwala area next to Inter-city bus terminus and were unsafe for hearing criminal appeals. The lack of holding cells within the Court of Appeal premises made it impossible to hold criminal sessions there thus the Court continued to endure the inconvenience of trekking to the Lusaka High Court to hear appeals and deliver Judgments in criminal matters. The unavoidable movements also proved to be a security risk for both the Honourable Judges and support staff, as well as an extra expense on the treasury.
- (iv) The Family and Children's Division of the High Court at Lusaka did not have a stand-alone registry but continued to operate under the General List. In Kitwe the Commercial Court, which needed a stand-alone building, continued to be hosted in the building for the General List, while the lack of a High Court building at Kasama resulted in Session Judges and support staff making use of the only chamber and registry, thereby disrupting the business of the lower courts.
- (v) At the lower courts, almost all Subordinate Courts had inadequate courtrooms, chambers, exhibit rooms, registries and archive rooms from the pre-1994 era when the Judiciary was a department under the then Ministry of Legal Affairs. As regards the Local Courts, out of 501 courts, 118 were operating without structures and in extreme cases, sittings were conducted under trees.
- (vi) The Subordinate Courts in the Copperbelt Province such as Kalulushi, Chambishi, Chingola and Chililabombwe continued to operate without holding cells. In the same vein, Kabwe High Court had no holding cell for females and juveniles.
- (vii) The jurisdiction of the Small Claims Court (capped at K20, 000.00) proved to be too low and not in sync with current societal needs in the area of business and commerce. In addition, the absence of this court in provincial headquarters other than Lusaka, Ndola and Kitwe impeded the Judiciary's operations and speedy delivery of justice. Moreover, the Small Claims Court did not have courtrooms and office space of its own.
- (viii) The Sheriff's office was unable to operate optimally due to inadequate storage facilities for goods seized in execution of writs. Further, the powers of the Sheriff were confined to what was contained in court orders and the Law. A number of aspects of the operations of that office, such as procedures on conducting auction sales and charging of fees for some processes, were not expressly provided for in the

Law. As a result, some litigants complained that the fees charged had no backing of the law.

- (ix) Enforcement of Court decisions by the Sheriff's office was another operational challenge especially in customary land matters as chiefs or traditional leaders did not normally cooperate with the Courts.
- (x) Article 123 of the Constitution, which provided that the Judiciary shall be a self-accounting institution and shall deal directly with the Ministry responsible for finance in matters relating to its finances was yet to be actualised thus rendering the Judiciary not financially independent.
- (xi) The Judiciary had a limited fleet of operational motor vehicles. The most critically affected courts were the High Court and the Subordinate Courts. Operationally this posed a huge challenge in instances where the courts required to circuit or move to a scene of crime.
- (xii) The judiciary suffered very low staffing levels to the extent that many courts, especially local courts, had incomplete staff establishments. Some remained closed due to lack of staff and perennial payroll misplacements resulting from the freezing of positions and inadequate establishment. The Small Claims Court was worst affected as it did not have a defined staff establishment.

4.0.5. Steps taken by the Government to improve the Administration and operations of the Judiciary

The Committee was informed that the Government had been responsive to the Judiciary's infrastructural needs despite the limitation to improve, rehabilitate or construct judicial infrastructure across the country due to financial challenges. There were a lot of works underway to improve the judicial infrastructure being done in phases. The Government had mainly engaged Zambia National Service (ZNS) and National Housing Authority (NHA) to conduct the works as well as other private contractors. The details of the works being implemented by the Government are shown in the table at **Appendix I**.

In order to appreciate the financial standing of the Judiciary, the Committee had requested to be apprised on the following aspects:

- (i) the trend of budget allocations to the Judiciary for the past five years against releases;
- (ii) the trend of expenditure on personal emoluments as well as programmes for the past five years; and
- (iii) the steps, if any, being taken by the Government to enhance financial independence and improve the administration and operations of the Judiciary.

The details regarding this inquiry are shown at **Appendix II** of the report; suffice to state that over the years, the Government had been gradually increasing the annual budget to the Judiciary from a budget of K450.3 million in 2017 to K580.5 million in 2021. In addition, as a mode of supplementing funding towards operations, the Judiciary retained funds collected from court fees, to utilize on conducting court operations and sessions. It was envisaged that this would continue to assist the Judiciary to progressively improve service delivery.

PART II

TOURS

5.0. LOCAL TOUR REPORT

In order to augment its findings, the Committee undertook its local oversight visits to Lusaka, Mazabuka, Choma, Namwala, Kazungula and Livingstone districts. The Committee interacted with the Judiciary itself and other critical stakeholders in the justice delivery system such as the Zambia Police Service, the Zambia Correctional Service, the National Prosecution Authority and the Legal Aid Board, among others.

5.0.1. Visit to Supreme Court Building and Lusaka High Court

After paying a courtesy call on his Lordship the Chief Justice, the Committee was taken on a conducted tour of the Supreme and Lusaka High Court buildings. The findings of the Committee are as set out below.

- (i) The Supreme Court building was opened in 1957 and had, since that time, never received any meaningful structural expansion. Meanwhile, the number of judges had exponentially increased over the years, putting sustained pressure on the few court rooms, chambers, registries, library and storage, which are now shared between judges of the Supreme Court, Constitutional Court and sometimes Court of Appeal.
- (ii) Due to the limited number of court rooms, which were only two in number, cases were heard on a rotational basis as judges had to alternate to allow each other to use the court rooms. As a consequence, cases were inevitably delayed adding to the ever increasing backlog of cases.
- (iii) Due to limited office space, some judges had been given small office space, which was meant for support staff, but re-configured, as Judges' chambers. This made it extremely difficult to conduct chamber matters or allow litigants to comfortably sit during such matters. Additionally, such Judges' chambers were not self contained, therefore, judges were subjected to communal or public conveniences.
- (iv) There was limited office space for support staff in the Supreme Court Building as they were cramped up in small offices due to lack of space. This greatly affected their work out-put in terms of processing court documents.
- (v) At the time of the visit, the High Court was undergoing some extensive renovations and re-purposing of some office space. However, the eight court rooms that had been in existence since the building was constructed were not adequate enough to cater for all the judges at any one time.
- (vi) Due to the renovations at the High Court, some Judges on the General List were temporarily accommodated at the new Ministry of Home Affairs building. This posed a challenge in dispensing justice as the building was not fit for purpose as Judges were housed in re-configured chambers which were not self contained and thus posed a serious menstrual hygiene challenge for female judges.
- (vii) The Family and Children's Division of the High Court, was only in Lusaka. However, its jurisdiction had expanded following the enactment of the Children's Code Act, No. 12 of 2022.
- (viii) The Commercial Division of the High Court was housed in the former National Housing Authority building adjacent to the Lusaka High court building. The building, which also accommodated some judges of the Constitutional Court, was re-purposed to as much as possible; adapt it to a court house. It included two court rooms, a conference room and Judges' Chambers among others. The two court rooms were not

sufficient as they were shared among five judges, while the Judges' chambers were small and were not self contained.

- (ix) The newly established Economic and Financial Crimes Division was to be located in a rented building as there was no space for it to be situated at the High Court building. This would however, pose a security risk and may compromise the independence of the institution.
- (x) The judiciary had an acute shortage of judicial officers required to deal with the historical case backlog and current case load. This would entail employing more professional magistrates and appointing more high court judges. The number of high court judges in terms of establishment was filled up to the maximum of sixty judges as per the provisions of the *Superior Court (Number of Judges) Act No. 9 of 2016*. To appoint more judges would require amendments to this Act.

5.0.2. Visit to the Lusaka Subordinate Court Complex

The Committee also visited the Lusaka Subordinate Court complex at Ridgeway and learnt the following:

- (i) the issues of space were akin to what was found at the higher courts as there were fewer court rooms compared to the number of Magistrates;
- (ii) there was improvisation of Chambers in order to accommodate all the magistrates. This meant that office space initially meant for support staff was re-purposed or re-configured to Magistrates' Chambers. Some of the Chambers were very tiny and were not self contained as was the case in the superior courts;
- (iii) since the complex was constructed and commissioned in about 2006, it had not received any meaningful maintenance works, as such it had suffered some structural dilapidation such as cracks, broken windows and fixtures;
- (iv) the holding cells were too small to hold the usual large numbers of persons on remand and those attending trial. The cells were dirty and did not have proper sanitation as could be detected through a pungent smell emanating from there; and
- (v) the committee discovered that the court complex was in two phases albeit phase two of the project had never been constructed due to lack of funding. Phase two was supposed to replicate what was in existence in terms of size and extent.

5.0.3. Visit to Mazabuka Subordinate and Local Courts

The Committee visited the courts in Mazabuka and came up with the findings below.

- (i) The court was designated as High Court and Subordinate Court because from time to time, the High Court circuted Mazabuka from Livingstone. However, when this happened, the High Court was given precedence to use one of the court rooms throughout the session.
- (ii) The Subordinate Court had five magistrates against two court rooms, thereby subjecting the Magistrates to take turns in hearing cases. This situation further compounded the delays in disposing of cases at subordinate court level.
- (iii) There were four Magistrates' Chambers, which meant one chamber was shared between two magistrates. This posed an operational challenge in the event that both Magistrates had chamber matters to attend to at the same time.
- (iv) Surrounding areas did not have subordinate courts, which meant that witnesses had to travel long distances to Mazabuka to attend court. In some instances, witnesses did not show up for want of transport, inevitably resulting in the undesirable adjournment of cases, which ultimately affected the speedy determination of such matters.

- (v) The court only had two court interpreters to service both open court and chamber matters. In order to fill in the gap, the court resorted to the services of the office orderly and a handyman as part-time court interpreters.
- (vi) The *Anti-Gender Based Violence Act and the Children's Code Act* mandated the courts to fast track cases involving children. Further, the law required that where a child was a victim they should be separated from the perpetrator and follow court proceedings through video conferencing. This was however, impossible to implement in view of the limited space and requisite equipment to facilitate video conference. Child victims were, therefore, subjected to being in the same room as the perpetrators.
- (vii) The Magistrates had a heavy workload as a result of the fact that they also attended to some criminal cases, which ordinarily started at subordinate court level for preliminary inquiries and committals to the High Court. The heavy workload was not commensurate to their conditions of service as magistrates were poorly remunerated in comparison to judges.
- (viii) When magistrates were employed by the Judiciary, settling in allowances were never paid on time. In the case of Mazabuka, Magistrates who joined in 2020 were only paid in 2023.
- (ix) The funding and procurement processes were done at provincial level. This meant that the district would sometimes not be funded.
- (x) At local court level, Mazabuka district had eight courts, but only six were operational. The local courts administered a lot of customary law cases, but were not well supported in terms of staffing levels and infrastructure.
- (xi) After the Kwacha was rebased in 2012, the *Local Court Act* was not amended in terms of the monetary value of an interstate estate for which a local court magistrate could issue letters of administration. Before rebasing, the value was placed at K 50,000 which now is K50 after rebasing. This had posed serious challenges in that there was a conflict between the *Interstate Succession Act* and the *Local Court Act*.

5.0.4. Visit to Choma Subordinate and Local Court

The Committee visited the Subordinate and Local Courts in Choma. Below are the findings of the visit.

- (i) The Subordinate Court at Choma had a fully functional Anti-GBV court with the necessary video conferencing equipment to facilitate the conducting of cases involving children who were victims of GBV. The equipment was procured with financial support from a cooperating partner.
- (ii) The courts at Choma had similar infrastructure challenges like Mazabuka, viz; two court rooms shared among five magistrates, lack of witnesses' shelter, no female holding cell, limited office space for support staff and limited space for registries and storage.
- (iii) The Subordinate Court only had one motor vehicle for court operations. This situation sometimes forced court staff to use their personal vehicles for official business.
- (iv) Although Choma was the provincial capital of Southern Province, the Chief Resident Magistrate was still based in Livingstone and as such, the dictates of hierarchy demanded that all requisitions, requirements, purchases or procurements for Choma were done in Livingstone.
- (v) The courts only had one interpreter against the five Magistrates.
- (vi) Funding towards court operations was inconsistent thereby affecting the smooth delivery of justice.
- (vii) One of the court rooms did not have burglar bars thus posing a security risk as accused persons could escape.

- (viii) There were plans to build a high court at Choma and to this end land had been acquired in 2018, however, funds to construct the court complex had never been allocated.
- (ix) At local court level, there was a newly constructed administration building, which housed offices for magistrates and support staff. However, there was only one court room to cater for all the Local Court Magistrates.
- (x) The surrounding local courts at Macha and Mapanza had dilapidated infrastructure and non-functional lavatories for the Local Court Magistrates and members of the public.
- (xi) While the Local Courts had jurisdiction under customary law to handle cases of early teenage pregnancies and compensation thereof, they had no jurisdiction to hear cases of maintenance of children born from such arrangements as such jurisdiction lay with the Subordinate Courts. This meant that disputing parties who desired to sue for child maintenance had to make the difficult decision to travel long distances to Choma central where the Subordinate Courts were located. In practice, most people were not willing to pursue such cases, which could potentially drag for years on end at the expense of their daily livelihoods that largely depended on farming. In the end, those seeking justice were indirectly denied as they could not afford to pursue it on account of inhibitive distances as well as socio-economic considerations.

5.0.5. Visit to Namwala Subordinate and Local Courts

During the visit to the Subordinate and Local Courts in Namwala, the Committee came up with findings as set out hereunder.

- (i) The Committee was informed that the district had four local courts, namely; Namwala, Nalubamba, Mokobela and Mungaila. The infrastructure at Nalubamba, Mokobela and Mungaila were in a deplorable state such that courts were forced to use make-shift structures. The Local Court building at Namwala required maintenance works as it had a damaged ceiling and was in a generally poor state.
- (ii) Both subordinate and local courts had acute staff shortages, which forced staff members to perform extra duties for which they were not employed nor remunerated.
- (iii) Both courts had two magistrates each using one court room, thereby causing the workload to continue growing and delaying the disposal of cases.
- (iv) The court room had leakages and the only Magistrates' Chamber was not self contained.
- (v) The station did not have adequate transport to traverse the difficult terrain of the district to serve court documents. There was, therefore, need for motorbikes to be procured to mitigate the transport challenge being experienced by the courts.
- (vi) Due to shortage of space, the court registry housed both the criminal and civil registry in one office, instead of being separated as was the standard practice in other districts.
- (vii) The courts had neither a holding cell nor witness shelter. This posed great challenges in holding inmates and persons on remand during trial.
- (viii) Funding to the courts was supposed to come in on a quarterly basis, but was erratic, largely because disbursements were centrally done at Head Quarters in Livingstone, instead of being sent directly to the district.

5.0.6. Visit to Kazungula Local Court

The Committee also interacted with the Judiciary in Kazungula and learnt the following:

- (i) The Local Court did not have reliable transport to allow for effective court operations such as enabling the court to move to areas where there were land disputes. The sheer size of the district made it extremely difficult for the courts to dispense justice in the absence of reliable transport;
- (ii) The court infrastructure required to be expanded to include a witnesses shelter to enable witnesses attend court especially during the rainy season;
- (iii) The court had damaged furniture, a situation which forced witnesses to sit on blocks during court proceedings; and
- (iv) The court received little or no grants on a monthly basis, thereby failing to work efficiently. In case the court was in dire need of funds, requests were sent to Livingstone, but the approval processes took long because processes were centrally done and not devolved to the district.

5.0.7. Visit to Livingstone High Court and Subordinate Court

During the tour, the Committee also interacted with officials from the High Court and Subordinate Court at Livingstone. The findings of the Committee are set out below.

- (i) The Livingstone High Court had two judges who also circuited Mazabuka during criminal sessions. Like in many other places visited, the High Court had two judges sharing one court room, which entailed that judges alternated to hear cases, thus affecting the speedy handling of court cases.
- (ii) The establishment of two judges had remained static despite an exponential increase in the population of Livingstone. With Choma becoming a provincial capital, there was need to station at least one high court judge at Choma, to ease the work pressure on the two high court judges who were also responsible for appeals from thirteen subordinate courts in the province.
- (iii) The court premises housed both the High court and Subordinate court thus posing a serious space challenge in terms of waiting areas for witnesses, space in the holding cells, parking for both judicial officers and the general public and offices for support staff. For instance, the Human Resource Department and the Provincial Accountant were squatting in another Government building.
- (iv) The coming into effect of the *Children's Code Act* had imposed strenuous implementing challenges on the High Court in that there were no separate rooms or court rooms to accommodate child victims during trial as required by the Act.
- (v) Further, the Act required that all matters where a child had committed an offence with an adult was to be tried by the High Court regardless of the nature of the offence. This exacerbated delays in disposal of such cases because of the exigencies of preparing the criminal cause list in readiness for criminal sessions. In other words, once a cause list for a particular criminal session (A session normally lasted for four months) had been prepared and the court was in motion, new cases where a child was jointly charged with an adult could not be heard immediately, but had to wait for the next round of criminal sessions to be added on the cause list.

6.0. MEETINGS WITH OTHER STAKEHOLDERS IN THE JUSTICE DELIVERY SYSTEM

The Committee met with stakeholders who interact with the justice delivery system at various levels. These were the Police; correctional service, legal aid and prosecutors. The Committee gathered information as set out hereunder.

6.0.1. Zambia Police Service

The Zambia Police Service was involved in the criminal justice system from the point when cases or commission of crimes were reported to the police. The police was responsible for effecting arrests, undertaking investigations, preparing case dockets for the prosecution team and in some instances they appeared as state witnesses in criminal trials. In line with this mandate, the Committee came up with the findings outlined below, after a series of meetings with the police in Choma, Namwala and Livingstone.

- (i) The police was not well resourced in terms of tools to use in investigations, especially complex cases such as cyber crime. In addition, the police were lacking in skills and capacities to undertake forensic investigations especially in cases such as murder, rape and Gender Based Violence (GBV). This affected the quality of investigations and dockets thereof and ultimately the quality of judgments.
- (ii) The police did not have adequate transport for mobility around their districts to carry out investigations and gather information. In districts with difficult terrain like parts of Namwala. The police were, therefore, hindered from swiftly responding to reports, which inevitably affected the speed at which cases would be referred to the courts of law for trial. This state of affairs entailed that in numerous cases suspects were detained longer than the permissible 48 hours awaiting the police to conclude their investigations. In Namwala for example, the police only had one old Toyota Land cruiser, which had to cover the width and breadth of the district. As the vehicle was constantly broken, the police had to consistently borrow the District Commissioner's vehicle to carry out operations.
- (iii) There was a lot of back and forth between the NPA and police when it came to agreeing on the credibility of dockets to be used in criminal cases. This resulted in delays in the commencement of trials at the expense of the accused persons in non-bondable offences, who would normally be held in police custody for these administrative processes to be concluded.
- (iv) There was need to devolve police supervision to the district level to avert inherent delays in procurement and administrative processes. For Southern Province, the Officer Commanding at provincial level was in charge of Namwala and other surrounding districts in terms of supervision, irrespective of the growth in population in these districts. This posed great challenge in dealing with issues that required urgent attention at district level, such as procurement of investigative materials.
- (v) Police infrastructure was generally in a deplorable state in the districts visited. In Choma for example, the building which housed the Division Head Quarters required to be refurbished or rehabilitated to make it conducive for work. The division had acquired a piece of land for construction of new infrastructure befitting a provincial capital, but there were no funds to commence the project.
- (vi) In Namwala, the police station, which was built in 1965, was in a bad shape with cracks appearing in many parts of the building. The traffic section was operating in a make-shift office, which was initially meant to be a shelter for a generator. The officers had no proper sanitation and were forced to share toilets with members of the public.
- (vii) Due to old infrastructure and limited space, the police stations were overcrowded in cells and in situations where there were not enough cells to accommodate juveniles, they were mixed with adults, contrary to the provisions of the *Children's Code Act*.

6.0.2. National Prosecution Authority (NPA) and Legal Aid Board

The National Prosecution Authority (NPA) and Legal Aid Board augmented the challenges as highlighted above regarding the difficulties which the courts experienced in the delivery of justice. These included the issues of low staffing levels, poor and inadequate infrastructure, inadequate funding to the judiciary, among many others.

With respect to how the NPA and Legal Aid Board linked into the two the criminal justice system, the Committee learnt the following:

- (i) The NPA constituted the prosecution team, while legal aid counsel normally played the role of defence counsel for those who could not afford to pay for legal services. In this regard the two parties played a critical role in ensuring that the prosecution of cases proceeded with minimum interruptions.
- (ii) As investigators, the police fed into the work of prosecutors by producing case dockets based on their investigations in criminal matters. It was submitted, however, that in some instances there was no proper coordination between the police and the prosecutors in instances where the NPA gave instructions to the police to improve the dockets. This resulted in delays in the commencement of trials before the courts of law.
- (iii) The NPA was resourced with a witness fund to facilitate court attendance of witnesses who could not afford to transport themselves to court because they resided far from the courts. This fund was usually inaccessible primarily because of inherent administrative bottlenecks, which were centralised at the province. This ultimately contributed to the delays in disposing of cases as some witnesses would fail to travel for court sessions.
- (iv) Both the NPC and the Legal Aid Board were understaffed especially at district level. As a result the workload for the lawyers was so overwhelming that it made it difficult to dispatch cases efficiently.

6.0.3. Zambia Correctional Service

The Committee held meetings with the Zambia Correctional Service officials and visited four facilities, namely; Lusaka Central (Chimbokaila), Namwala, Livingstone and Katombora Juvenile Reformatory facility. The Committee learnt that the correctional facilities were at the receiving end of the criminal justice system, in that they were responsible for keeping convicts and those on remand.

Apart from the perennial problem of over-crowding or congestion in the facilities, the committee gathered the information set out below, which impacted on the justice delivery systems.

- (i) The correctional service had the mandate to take and keep in custody those who had been convicted and sentenced by the courts. In this regard, the inmates were provided with services such rehabilitation, skills training, literacy training, formal education and tertiary education. This helped offenders to easily reintegrate back into their communities once released.
- (ii) Despite offering the educational programmes above, those who reformed and got released after serving full sentence or on parole or presidential pardon, found it difficult to be employed because there were no mechanisms in place to remove from their record the fact that they once served a prison sentence. In this regard they still carried the tag of “ex-prisoner” with no prospects of being employed.

- (iii) Through the Restorative Justice System, offenders and victims were brought together in an effort to reconcile them, which resulted in peace making and building.
- (iv) The correctional facilities were constrained with regard to transport and other logistics required to transport those on remand to the courts for trial. The situation was worse where the correctional facility was situated far from the courts.
- (v) Some of the facilities were constructed a long time ago and without consideration of female cells. At Namwala facility for example, female inmates were kept in the penal block, which unfortunately did not have toilets and bathrooms. This presented a huge challenge with regard to menstrual hygiene for the female inmates.
- (vi) The number of inmates who had been remanded in custody for many years awaiting trial was quite high and put extreme pressure on the few spaces in the facilities. This state of affairs signified the delays which were inherent in Zambia's justice system.
- (vii) The juvenile reformatory school at Katombora was constructed in 1953, but to date very little structural developments had taken place to expand the facility so as to cater for the ever increasing number of juvenile offenders. In this regard, due to the limited hostel spaces, the juveniles were mixed irrespective of the nature of the offence committed.

7.0. BENCHMARKING VISIT TO UGANDA

As part of its programme of work, the Committee undertook a benchmarking visit to Uganda to learn best practices in the administration and operations of the Judiciary in the justice delivery system of that country. The Committee was hosted by the Parliament of Uganda and in this regard paid a courtesy call on the Honourable Speaker of Parliament and the Leader of the opposition in the Ugandan Parliament.

In order to gather information on the topical issue, the Committee interacted with several stakeholders, namely; the Parliamentary Committees on Legal and Parliamentary Affairs as well as on Human Rights; the Uganda Human Rights Commission and the Uganda Police Service.

The Committee learnt the following best practice in the Ugandan justice delivery system.

- (i) The legal framework which governed the Judiciary in Uganda was mainly the Constitution of the Republic of Uganda and the *Administration of Judiciary, Act of 2020*.
- (ii) The *Administration of Judiciary Act, 2020* provided progressive and elaborate provisions for the proper functioning and administration of the Judiciary in Uganda, including; the establishment of the Judicial Council headed by the Chief Justice with the main responsibility of advising the Chief Justice on policy and planning matters; the establishment of the Inspectorate of Courts responsible for receiving and processing internal and external complaints against any staff of the Judiciary, including the investigation of maladministration in the Judiciary; and establishment of the Judicial Training Institute, which provided specialised and continuous training to the Judicial Service.
- (iii) The Judiciary had a performance management system in place, which was established by the Chief Justice as a monitoring tool for the performance of judicial officers.
- (iv) The Judicial Service was responsible for the recruitment process of judges. Positions were advertised, applications received and interviews conducted before recommendations for appointment was made to the President. Once appointed, judges underwent a thorough ratification process with Parliament.

- (v) After enactment of the *Administration of Judiciary Act*, financial autonomy of the Judiciary had been enhanced as the Judiciary was able to negotiate its own funding from the treasury. This was a departure from previous practice where the Judiciary was treated like a department under the Ministry of Justice and Constitutional Affairs.
- (vi) The conditions of service of judicial officers and lawyers under the Director of Public Prosecutions had improved significantly as signified by the increase in the number of lawyers who were attracted to join the two institutions.
- (vii) The Uganda Human Rights Commission had set up a tribunal under its mandate that heard and determined human rights violation cases and gave or issued compensatory awards, which were legally binding.
- (viii) The decisions of the Tribunal were easily enforceable because through the directive of cabinet, all state officials such as police, who violated the rights of citizens, were personally liable to pay the compensation and not the state.
- (ix) The tribunal operated as a fast track court and did not strictly follow the rules of procedure. This had resulted in it taking on a good number of human rights cases, consequently decongesting the High Court.
- (x) The Human Rights Commission had devolved to twelve regional offices and eleven field offices. This enabled citizens in far flung areas to access the Commission and lodge complaints of human rights violations.
- (xi) The Human Rights Commission had the mandate to intervene in cases which had delayed for a long time through the Inspectorate of Courts, established under the *Administration of Judiciary Act*. Cases that were more serious and involved the violation of the judicial code of conduct were referred to the Judicial Service.
- (xii) Under the Director of Public Prosecution there was a department which had the responsibility to deal with reports of cases, which were delayed by the prosecutors.
- (xiii) The police were under a legal mandate to charge accused persons within 48 hours of being arrested. This had proved to be very difficult to implement especially in the case of a felony being committed. To this end, the police in conjunction with the DPP had devised an administrative mechanism whereby suspects would be put on a holding charge and remanded in custody for fourteen days to allow investigations to take place. After fourteen days suspects were released either unconditionally or on police bond.
- (xiv) Both the police and the courts greatly encouraged alternative dispute mechanisms, plea bargaining and non custodial sentences, all in an effort to decongest the system.
- (xv) In order to enhance police/community sensitisation, the Uganda Police Service had deployed trained police officers as Community Liaison officers to engage the communities on various subject matters affecting the work of the police and crime prevention. This was put in place as a means to build trust amongst members of the community and bridge the gap between police and citizens.
- (xvi) The state had heavily invested in improving the investigative capacities of police officers through training and provision of modern technologies in crime investigations such as forensics and DNA profiling.
- (xvii) The police had introduced toll free lines for reporting of crimes. This had greatly assisted in communities where transport was a challenge.
- (xviii) The police had made it easy for suspects to access police bond as suspects coming from a particular locality could access it based on a letter from the Local Council in their locality. Where this was not possible, bond was issued based on the recognizance of the state.

8.0. COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS

After receiving written and oral submissions from stakeholders and undertaking on-sight visits of facilities under the justice delivery system, the Committee makes the observations and recommendations set out below.

- (i) The Committee observes that the legal and policy framework governing the administration and operations of the Judiciary is generally adequate. The Committee however, recommends that the rules of procedure for the Family and Children’s Court as well as the Economic and Financial Crimes Court, should be promulgated expeditiously to enable litigants access the courts seamlessly.
- (ii) The Committee observes that pursuant to Article 121 of the Constitution of Zambia, the Supreme Court and Constitutional Court rank *pari-passu* and this poses a supervision challenge for the Chief Justice as head of the Judiciary. Further, the Chief Justice does not sit in the Constitutional Court, which exercises final jurisdiction in all constitutional matters. The Committee notes that the Government has pronounced itself on the need to undertake comprehensive constitutional reforms in the near future. To this end the Committee recommends that Article 121 should be amended to allow the Chief Justice to sit as an *ex-officio* member of the Constitutional Court. Alternatively, the Committee is of the view that in order to exert some level of control by the Chief Justice as head of the Judiciary and to forestall the quality of judgments from the Constitutional Court, the decisions of the Constitutional Court should be appealable to the Supreme Court.
- (iii) The Committee also observes that the jurisdiction of the Small Claims Court, which was capped at ZMK 20,000, was too low in view of the increase in commerce and trade activities in the country, which had attracted an increase in commercial or business related disputes coming before the Courts. The Committee recommends that the threshold should be revised or adjusted upwards so that as many cases as possible can be handled by the Small Claims Court and consequently decongest the Subordinate Courts.
- (iv) The Committee observes that after the rebasing of the Kwacha in 2012, the *Local Court Act* was not amended to match the new values after rebasing of the currency. This means that the Local Courts can only issue letters of administration where the estate value is ZMK 50 only. The Committee recommends that this matter be addressed urgently as it has created a lot of operational challenges for the courts in the delivery of justice.
- (v) The Committee observes that the Sheriff’s office was unable to operate optimally due to inadequate storage facilities for goods seized in execution of writs. Further, the powers of the Sheriff were confined to what was contained in court orders. A number of aspects of the operations of that office, such as procedures on conducting auction sales and charging of fees for some processes, were not expressly provided for in the *Sheriff’s Act, Chapter 37 of the Laws of Zambia*. As a result, some litigants complained that the fees charged had no backing of the law. The Committee, therefore, recommends that the Government should institute legal reforms in this regard so that the bottlenecks highlighted above are resolved.
- (vi) The Committee observes that the biggest challenge being faced by the Judiciary was the issue of infrastructure. The Judiciary had limited court rooms, office space and judges’ chambers. The Committee found that judicial infrastructure had not been expanded since it was built pre-dating independence. Meanwhile the number of judicial officers and support staff had exponentially increased over the years to the extent that judicial officers were forced to take turns in the use of the limited court

rooms, and had to make use of make-shift office spaces as chambers, which were not self contained.

In view of the above, the Committee strongly recommends that the infrastructure development programmes that the Government has undertaken to embark on should immediately be funded so that construction works can commence. The Committee is greatly concerned at the huge case back-log that has caused untold misery on litigants that have been waiting to receive judgments for years on end. Therefore, once the problem of infrastructure is unbundled, it will go a long way in relieving the pressure of cases that had remained unresolved for many years.

(vii) The Committee observes that Articles 122(3), 123(1) and 123(2) of the Constitution guarantee financial autonomy of the Judiciary. However, the Committee notes that despite these provisions, the Judiciary was still treated like a department under the Ministry of Justice in that the institution was not funded adequately by the treasury to meet its operational and administrative needs. While the Committee appreciates the increase in budgetary allocations to the institution since 2022, it however, recommends that in accordance with the constitutional provisions cited above, the Judiciary should be given real financial autonomy as a separate arm of Government by obligating the state to fully and adequately fund the judiciary in terms of its budgetary needs.

(viii) The Committee observes that the Judiciary continues to grapple with a huge amount of unpaid personal emoluments, which have been outstanding for many years. This resulted in staff demoralisation and exposed former employees to destitution. Further the judiciary had a very lean staff complement especially at local court level, which greatly hindered the quick disposal of cases. As a result some courts especially in rural areas remained closed and had perennial payroll misplacements resulting from the freezing of positions and inadequate establishment.

While the Committee recognises that treasury authority was granted to resolve some of these challenges, it is of the view that the numbers that need to be employed are still inadequate in relation to the work load, which requires to be dismantled. The Committee recommends for more resources to be allocated towards this matter.

(ix) The Committee observes that magistrates had poor conditions of service, despite some being professional magistrates who are qualified advocates. The Committee notes that the magistrates handle the bulk of cases that come before the courts, but their conditions of service in comparison to judges are not reflective of the huge volumes of work that they handle.

In view of the foregoing, the Committee recommends that the Emoluments Commission should look into the conditions of service of magistrates with a view to making them more equitable, vis a vis the conditions of judges.

(x) The Committee observes that the Judiciary is unable to operationalise the case management system software, which was acquired in 2018. This is due to lack of funding to customise the software to suit the needs of the institution. The Committee is of the view that once the ICT platform is introduced in the entire case management system, it would greatly enhance the pace at which cases are processed as well as improve judicial accountability in terms of dictating who was responsible for delaying cases. In this regard, the Committee strongly recommends that the Government should urgently allocate financial resources to the Judiciary to specifically deal with the issue of installing ICT infrastructure.

(xi) The Committee observes that the enactment of the *Anti-Gender Based Violence Act* and more recently the *Children's Code Act* had imposed some implementation challenges for the courts. While the law made it mandatory for cases of GBV involving a child to be heard in-camera, the courts had no adequate court space, later alone video conferencing facilities to enable child victims to sit separate from the

physical court proceedings. Further, the *Children's Code Act* required that all matters where a child had been jointly charged with an adult would only be tried in the High Court. This also imposed challenges in terms of the timeframe within which such matters would be cause listed for eventual trial during criminal sessions.

While the Committee appreciates the good intentions of the Act, viz; promotion and protection of child rights, the Committee observes that certain provisions of the Act are an impediment to the quick delivery of justice, and recommends that appropriate amendments be instituted.

- (xii) The Committee observes that courts at district level had bigger challenges than those closer to the centre due to proximity and administrative bottlenecks, which greatly affected their daily operations. For example in Southern Province, the Committee found that some Local and Subordinate Courts at district level like Namwala and Kazungula, required to go through the provincial headquarters in order to request for funding or procure court requisites. Meanwhile cases continue to pile up as they await administrative processes to be completed. The Committee recommends for reformation of the administrative processes by devolving them to the districts so that the courts can operate independently in their quest to dispense justice efficiently.
- (xiii) The Committee recognises that apart from the Judiciary, there are other critical stakeholders who play a critical role in the justice delivery chain. The work of the police, correctional service, NPA and Legal Aid Board had a direct impact on the operations of the court and the pace at which cases are disposed of. The Committee observes that these institutions were faced with numerous challenges as hereinbefore highlighted, which had a direct impact on the delivery of justice. Some of the challenges include; poor infrastructure, poor working conditions and conditions of service, shortage of staff such as lawyers, warders, investigators and prosecutors, lack of logistical support like transport and investigative tools and limited skills and capacities to deal with complex legal matters. The Committee recommends that the Government should take a holistic approach in addressing these challenges as they all affected the justice delivery system in Zambia. The institutions listed above should be adequately funded to alleviate some of the inherent challenges aforesated.
- (xiv) The Committee observes that one of the factors that affect the quick delivery of justice is the high judge to case ratio which the judicial officers have to deal with on a monthly basis. This is reflective of the acute shortage of magistrates and judges. The Committee, therefore, recommends that more magistrates should be employed and the *Superior Courts (Number of Judges) Act* should be amended to allow for appointment of more judges, especially at high court level.
- (xv) The Committee observes that the recruitment system of judges and the elevation in the hierarchy of the Judiciary was not clearly spelt out. Advertisements for positions of judgeship, and the promotions criteria remained at the discretion of the Judicial Service Commission and or the appointing authority. In order to enhance transparency, the Committee recommends that the Judiciary should reform its appointment and promotion processes to make it more transparent and predictable and in keeping with the ethos of seniority, which is of utmost importance in the legal profession.
- (xvi) Based on the best practices learnt in Uganda, the Committee urges the Government to take note of some of the legal interventions that have been put in place in Uganda as a means to improve the administration and operations of the Ugandan Judiciary. In particular, the Administration of Judiciary Act of Uganda makes provision for the establishment of the Judicial Council, the Inspectorate of Courts and Judicial Training Institute, which have all greatly improved the delivery of justice in that country. The Committee, therefore, recommends for appropriate amendments to the *Judiciary Administration Act No. 23 of 2016*, to include the best practices highlighted above.

- (xvii) The Committee observes that the Human Rights Commission in Uganda plays a very important role in the justice system in that it has established a tribunal that hears and determines cases of human rights violation and is able to compensatory awards which are legally binding.

The Committee notes that the Government has lined up constitutional reforms as part of its law reform and development agenda. In this regard, the Committee recommends that the reforms should include the enhancement of the mandate of the Human Rights Commission, by clothing it with quasi judicial powers to hear and determine cases of human rights violations. This would go a long way in decongesting the High Court, which has original jurisdiction to hear human rights cases.

- (xviii) The Committee notes that the Ugandan justice delivery system is receiving tremendous support from the Government of Uganda in terms of funding to the Judiciary and improved conditions of service to judicial officers and prosecutors. The Committee reiterates its recommendation that the conditions of service as well as the working conditions of prosecutors, judicial officers and support staff, correctional service officers and police officers, should be improved holistically, so as to enhance the delivery of Justice.

PART III

9.0. CONSIDERATION OF THE ACTION TAKEN REPORT (ATR) ON THE REPORT OF THE COMMITTEE FOR THE FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

During the First Session of the Thirteenth National Assembly, the Committee considered a topical issue entitled: “**The Growing Trend of Electoral Violence – A Human Rights Concern.**” The Committee had made some observations and recommendations to which the Executive responded in the Action-Taken Report (ATR) as outlined below.

- (i) The Committee had observed that conflict could arise where there was competition for public office. The Committee was of the view that election-related violence could be prevented with the development of an early warning and prevention system whose measures could include collection, analysis and dissemination of information on various aspects of a conflict, including root causes, triggers, and factors that perpetuated electoral violence.

The Committee, therefore, recommended that the Government should create an Early Warning, Early Response (EWER) mechanism to minimise the impact of electoral violence and formulate clear and actionable intervention options for conflict prevention and management.

Executive’s Response

In response, the Executive stated that the Electoral Commission of Zambia (ECZ) planned to develop an in grown EWER system that would assist with incident reporting, incident mapping and create a response system for electoral violence and other electoral conflicts.

Committee’s observations and recommendations

The Committee resolves to await a progress report since the EWER mechanism was yet to be developed.

- (ii) The Committee had observed that one of the mandates of the ECZ was to manage and resolve electoral conflicts in a prudent and timely manner, with a view of achieving peaceful elections and mutual resolutions through mediation of conflicts that arose in the electoral process, pursuant to section 113 of the *Electoral Process Act, No. 35* of 2016. The Committee was of the view that the Government should progressively create these Conflict Management Committees at branch, ward and constituency level, where violence usually erupted.

The Committee, therefore, recommended that Conflict Management Committees should be replicated at all levels to supplement the work of Conflict Management Committees at national and district level to effectively manage electoral conflicts.

Executive's Response

It was reported in the ATR that the Commission was making consultations on the best way to replicate Conflict Management Committees at branch, ward and constituency level.

Committee's observations and recommendations

The Committee resolves to request for a progress report since consultations on the best way to replicate conflict management committees as suggested were underway.

- (iii) The Committee had observed that law enforcement officers, such as police officers worked and operated under very difficult conditions due to various challenges. This situation was worsened during elections. The Committee, therefore, recommended the enactment of laws that protected law enforcement officers, especially with respect to their tenure of office and laws that criminalised intimidation of police officers to enable them uphold professionalism, integrity, accountability, confidentiality, impartiality, excellence, pro-activeness, teamwork and human rights, in the execution of their duties without fear of losing their jobs.

Executive's Response

The Executive reported that to enable police officers uphold these values in the execution of their duties without fear of losing their jobs especially during elections, the Public Order Act was being reviewed to include provisions to protect law enforcement agencies as they executed their mandate. The draft bill was under consideration.

Committee's observations and recommendations

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

- (iv) The Committee had noted with great concern that the media, which was the primary means through which public opinion was shaped, was polarised and used as a channel to promote hate speech, misinformation and cyber-bullying. The Committee was of the view that the media had an extremely significant impact on the public's views. In this regard, it should not be controlled and monopolised.

The Committee, therefore, recommended that media organisations should comply with the Code of Professional Standards provided under section 33 of the *Independent*

Broadcasting Authority Act, No. 17 of 2002 to ensure balanced coverage and other ethical reporting standards such as fact-checking systems to combat misinformation, especially with regard to elections.

Executive's Response

It was reported in the ATR that the Government had already provided in the law a Code of Professional Standards, as noted by the Committee. The Ministry of Information and Media was now pushing for a media self-regulation mechanism that would ensure that media practitioners complied with a wider media code of ethics as the Code of Professional Standards alluded to was limited to the broadcast media. The media practitioners had already submitted a draft Bill to the Ministry of Information and Media, which had since been transmitted to the Ministry of Justice, to establish a media council, which would be a statutory media self-regulation mechanism.

Committee's observations and recommendations

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

- (v) The Committee further recommended that section 70(1)(2) of the *Penal Code Act, No. 87 of the Laws of Zambia* which provides for expressing or showing hatred, ridicule or contempt for persons because of race, tribe, place of origin or colour should be amended to include hate speech. The amendment should also make necessary provisions to forbid any tribal remarks during elections.

Executive's Response

It was reported in the ATR that the Ministry of Justice was reviewing the penal Code.

Committee's observations and recommendations

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

- (vi) The Committee had observed that there was need to develop a framework to help respond to and manage conflict before it escalated into violence. In this regard, an entity could be in place to capture early warning signals and help keep violence and human rights violators out of the political space.

The Committee, therefore, recommended that a national peace Architecture or national agency to respond to conflict-related matters, similar to the Disaster Management and Mitigation Unit (DMMU), be established to identify structural vulnerabilities and put in place mitigation measures as well as guide on how to resolve and prevent conflicts.

Executive's Response

It was reported in the ATR that the Government would carry out consultations on whether there would be need to create the National peace architecture to respond to conflict related matters, bearing in mind that conflict related matters were currently being dealt with by the Electoral Commission of Zambia through the National Conflict Management Committee.

Committee's observations and recommendations

The Committee resolves to await a progress report on the consultation process to be concluded by the Government regarding the establishment of the National Peace Architecture.

- (vii) The Committee had observed that voter and civic education was cardinal in averting electoral conflicts in the electoral process. There was need to sensitise the general populace on the meaning of democracy and for people to have free will and judgment in choosing a candidate.

The Committee, therefore, recommended that the Government should increase the budgetary allocation to the ECZ so that it could intensify civic and voter education on a continuous basis, especially among the youth countrywide.

Executive's Response

It was reported in the ATR that the Treasury would engage the Electoral Commission of Zambia to establish the financial requirements to conduct activities relating to voter registration and civic education. These activities would be essential in facilitating knowledge transfer on democracy as a system of governance and how citizens could participate, either directly or indirectly through the people they elected to represent them. Over the medium term, Government would endeavour to allocate more resources to this cause.

Committee's observations and recommendations

The Committee resolves to await a progress report on the outcome of the engagement between the Treasury and the ECZ.

- (viii) The Committee had also recommended that the period for voter education be increased to six months, in an election year.

Executive's Response

While noting the Committee's recommendation, it was reported in the ATR that the Commission planned to integrate voter education content in the school curriculum so as to promote continuous voter education.

Committee's observations and recommendations

The Committee resolves to request for a progress report on the observation to increase the period for voter education to six months during an election year. The Committee also wished to learn at which stage (primary or secondary) the school curriculum would be changed to incorporate voter education.

- (ix) The Committee had observed that electoral violence could be averted with the implementation of an online voting or electronic voting system. This way, results could be reported and published faster, and the transmission of results to the totalling centre, which heighten tensions, could be quicker.

The Committee, therefore, recommended that the Government should expedite the implementation of the online voting or electronic voting system to among others; speed up the counting of ballots, reduce the cost of paying staff and improve accessibility for persons with disabilities, and more importantly, reduce on electoral conflicts on Poll Day.

Executive's Response

It was reported in the ATR that the Commission had been exploring the best way to implement electronic voting through research and studying best practices from other jurisdictions. The Commission further needed to carry out extensive consultations from various stakeholders on the implementation or electronic voting.

Committee's observations and recommendations

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

9.0.1. Review of the Operations of the Lands Tribunal

(i) Employment of members of the Lands Tribunal on full-time basis

The Committee had resolved to await a progress report on the amendment of the *Lands Tribunal Act, No. 39 of 2010* to provide for the employment of the Chairperson and Deputy Chairperson of the Lands Tribunal on full-time basis.

Executive's Response

The Executive responded through the ATR that the process of amending the *Lands Tribunal Act No. 39 of 2010* in order to allow for full time appointment of the Chairperson and Deputy Chairperson was still underway. The Ministry of Lands and Natural Resources was still engaging the Ministry of Justice in order to finalise the process of amending the Lands Tribunal Act.

The process had commenced and some provisions in the proposed amendment bill were not captured correctly and accurately by the Ministry of Justice. Therefore, they required to be corrected before the process could continue.

Committee's observations and recommendations

The Committee resolves to await a progress report.

(ii) Appointment of Members of the Lands Tribunal by the Minister Responsible for Lands and Natural Resources

The Committee had resolved to await a progress report on the matter.

Executive's Response

It was reported in the ATR that the appointment of Members of the Lands Tribunal by the Judicial Service Commission (JSC) was not among the proposed amendments to the Lands Tribunal Act. This was because there had not been any serious challenges to the Members of the Lands Tribunal being appointed by the Minister responsible for

Lands and Natural Resources. However, the proposal to have the Members of the Lands Tribunal appointed by the Judicial Service Commission as was with most Judicial officials was welcomed and would be considered for inclusion in the prepared Lands Tribunal Act amendment.

Committee's observations and recommendations

The Committee notes that the Lands Tribunal exercises quasi- judicial powers, therefore, it is in the best interest of the institution and for its independence, to have its members appointed by the JSC. In this regard the Committee resolves to await a progress report on the inclusion of this recommendation in the prepared Lands Tribunal Act.

(iii) Staffing Levels at the Lands Tribunal

The Committee had resolved to await a progress report with regard to the creation of the position and employment of the Deputy Registrar at the Lands Tribunal.

Executive's Response

The Executive reported in the ATR that one of the proposals in the amendments to the *Lands Tribunal Act* was to create a position of a Deputy/Assistant Registrar. This position would be that of a qualified Legal Practitioner who would assist the Registrar to hear and determine interlocutory applications as well as assist the Registrar to manage the affairs of the Lands Tribunal. Once the Lands Tribunal Act was amended, this position would assist in improving staffing levels. Further, the restructuring exercise the Ministry of Lands and Natural Resources was undergoing provided for the Lands Tribunal to propose the positions of Legal Researcher, which would also improve the staffing levels at the Lands Tribunal.

Committee's observations and recommendations

The Committee resolves to request for a progress report and urge the Executive to expedite the amendment process of the *Lands Tribunal Act*.

(iv) Lack of Employment of Technical Staff

The Committee had resolved to await a progress report with regard to the amendment of the Act and the employment of technical staff at the Lands Tribunal.

Executive's Response

It was reported in the ATR that one of the proposed amendments to the *Lands Tribunal Act No. 39 of 2010* was to include a provision that the Tribunal shall employ on terms and conditions to be approved by the Minister responsible for Lands and Natural Resources, such staff as may be necessary for the performance of the functions of the Tribunal. The said provision was expected to assist the Tribunal employ technical staff such as Court Marshals and Court Reporters once the *Lands Tribunal Act* was amended.

Committee's observations and recommendations

The Committee resolves to await a progress report on the amendment process of the Lands Tribunal Act.

(v) Non-Visibility of Lands Tribunal in other parts of the Country

The Committee had resolved to await a progress report with regard to the decentralisation of the Lands Tribunal.

Executive's Response

It was reported in the ATR that the proposed Lands Tribunal amendment Act provides that the Minister may from time to time direct by gazette notice that there be a Provincial Registry of the Tribunal in such places as shall be in such notice mentioned for any districts to be thereby defined. Once the amendment to the Act was effected, it shall result in the Lands Tribunal being present in other Provinces. Further, the funding for the Lands Tribunal was increased in the budget year 2022 and therefore Circuit Courts had started being conducted, resulting in more visibility of the Lands Tribunal in other parts of the country.

Committee's observations and recommendations

The Committee resolves to request for a progress report.

(vi) Archaic Rules and Regulations

The Committee had resolved to await a progress report on the promulgation of the new rules for lodging of an appeal for proceedings before the Tribunal.

Executive's Response

It was reported in the ATR that the draft new rules of the *Lands Tribunal Act No. 39 of 2010* were already in place, but had been submitted to the Ministry of Justice for further scrutiny after which they would be sent back to the Ministry of Lands and Natural Resources for approval.

Committee's observations and recommendations

The Committee resolves to request for a progress report.

9.0.2. The African Peer Review Mechanism: The Case of Zambia

(i) Facilitation of Second Base Review

The Committee had resolved to await a progress report on the matter.

Executive's Response

The Executive reported in the ATR that the 2022 budget allocation of ZMW200, 000 was not adequate to support the conducting of a Second Base Review. The activity involved collection of input for Country Self-Assessment Report (CSAR) which was

subjected to a Review Mission from member states who also conducted broad-based consultations with stakeholders at National and Provincial levels. It was further reported that the Treasury would, in consultation with the Ministry of Justice, establish an appropriate mode of supporting the activities relating to the African Peer Review Mechanism (APRM). This would enable the Treasury determine the optimum level of financial assistance required to run affairs relating to the APRM. Subsequently, an allocation could be made in subsequent budgets, over the medium term to address the challenges.

Committee's observations and recommendations

The Committee notes that the APRM Second Base Review process is critical in ascertaining the country's democratic, human rights and governance credentials. The allocation of K200, 000 to such an important exercise, therefore, signifies a lack of commitment on the part of the Executive to be scrutinized by other States through the APRM framework. The Committee resolves to urge the Government to allocate adequate financial resources to the process and to await a progress report on the matter.

(ii) Funding of African Peer Review Mechanism Activities

The Committee had recommended that the Secretary to the Treasury should be engaged further for increased budgetary allocation to the APRM for it to be impactful in Zambia. The Committee resolved to await a progress report.

Executive's Response

It was reported in the ATR that the Treasury would, in consultation with the Ministry of Justice, establish an appropriate mode of supporting the activities relating to the African Peer Review Mechanism (APRM). This would enable the Treasury determine the optimum level of financial assistance required to run affairs relating to the APRM. Subsequently, an allocation could be made in subsequent budgets, over the medium term to address the challenges.

Committee's observations and recommendations

The Committee resolves to request for an update on the engagement efforts between the Treasury and the Ministry of Justice.

(iii) Enhancement of the Bill of Rights

The Committee had resolved to await a progress report on the enhancement of the Bill of Rights.

Executive's Response

It was reported in the ATR that the Human Rights Commission submitted the draft Bill to the Ministry of Justice for finalisation of drafting. The Ministry of Justice had since finalised the drafting of the Bill and submitted it to the Human Rights Commission for their review.

Committee's observations and recommendations

The Committee notes that the response does not specifically address the enhancement of the Bill of Rights. The Committee resolves to request for a progress report on the matter.

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

(i) Stiffening of Penalties for Environmental Pollution

The Committee had resolved to await a progress report on the matter.

Executive's Response

The Executive reported that pursuant to the creation of the Ministry of Green Economy and Environment (MGEE), there had been a shift in policy to bring into prominence and actualisation, matters pertaining to green economy in national development and planning. In view of this, in May, 2022, MGEE instructed the Ministry of Justice to include green economy considerations in the Environmental Management (Amendment) Bill, 2022 and to include in the Bill, provisions pertaining to-

- a) registration of pesticide and toxic substances, so as to protect human health and the environment from harmful chemicals;
- b) domestication of the Kigali Amendment to the Montreal Protocol on Substances that deplete the Ozone Layer, so as to phase out refrigeration gases that cause climate change;
- c) introduction of provisions that will expedite and enhance the consideration of environmental assessments (environmental impact assessments and strategic environmental assessments), including regulation of environmental assessment experts; and
- d) provision of minimal penalties to be imposed for breach of the Environmental Management Act, so as to deter would be and current offenders.

Flowing from the above, a workshop to review the provisions proposed by MGEE was held between ZEMA, MGEE and MOJ from 8th to 12th August 2022. The Bill that was drafted during the workshop was then subjected to stakeholder consultation and validation at a meeting held on 16th August 2022. The final Bill had been scheduled for resubmission by MGEE to MOJ on 18th August 2022 in readiness for its presentation to the Internal Legislation Committee of MOJ. MOJ had committed to scheduling the Bill for presentation to Parliament during the September 2022 Session.

Committee's observations and recommendations

The Committee resolves to await a progress report as the Bill was not presented to Parliament in September 2022.

(ii) **Need for Legislation on Resettlement and Compensation**

The Committee had resolved to await a progress report on the matter.

Executive's Response

The Executive reported that the Ministry of Justice was still in the process of consulting stakeholders on the matter and was hoping to expedite the process to meet the needs of the people who own or use land or resources.

Committee's observations and recommendations

The Committee resolves to await another progress report on the matter.

10.0. CONCLUSION

It was apparent in the course of the study that the Judiciary is faced with a lot of administrative and operational challenges that greatly affect its main mandate of dispensing justice. Given the prominent and critical role that the Judiciary plays in the delivery of justice in Zambia, it is imperative that the Government should enhance the steps being taken to improve the administration and operations of the Judiciary by providing the necessary support in terms of adequate financing, human and material resources as well as expansion of existing, and construction of new infrastructure.

The Committee urges the Executive to start implementing the recommendations herein so that some of the persistent bottlenecks in the justice delivery system can be unclenched to allow for the speedy delivery of justice.



Mr Clement Andeleki, MP
CHAIRPERSON

June, 2023
LUSAKA

**APPENDIX I
SUMMARY OF THE STATE OF JUDICIAL INFRASTRUCTURE ACROSS THE
COUNTRY**

S/N	NAME OF COURT	LOCATION	INITIAL CAPACITY	CURRENTLY HOUSING	INTERVENTION	REMARKS
1	Supreme Court	Lusaka Headquarters – Longacres	5	11	Extension Works to the Supreme Court building	Sketch designs concluded
2	Constitutional Court	Lusaka Headquarters – Longacres	0	13	Proposed Construction of a Superior Court Complex at Chikwa Court of Lusaka	At Preliminary design stage
3	Court of Appeal	Lusaka – Off Dedan Kimathi Road	2	19	Proposed Construction of a Superior Court Complex at Chikwa Court of Lusaka	At Preliminary design stage
4	High Court	Lusaka Headquarters – Longacres	16	60	Proposed Rehabilitation works underway	Works currently at 15% progress. However, for the additional Chambers to be housed in the Proposed Court Complex at Chikwa.
5	High Court	Ndola	2	6	Proposed construction of Superior Court Complex	Sketch designs concluded
6	High Court	Kitwe	2	6	Proposed construction of Provincial High Court Complex	Sketch designs concluded
7	High Court	Kabwe	1	6	Proposed construction of Superior Court Complex	Sketch designs concluded

8	High Court	Livingstone	2	6	Proposed Rehabilitation works underway	Works currently at 60% progress. However, for the additional Chambers to be housed in the Proposed Court Complex at Choma
9	High Court	Solwezi - Solwezi Municipal Council Old Chamber Hall	5	5	Proposed Rehabilitation works underway	Currently at Mobilization stage and contractor is on site
10	Judges' Institutional Houses	<ul style="list-style-type: none"> • Livingstone • Kasama 	2	2	Proposed Rehabilitation works underway	Works currently at 70% progress for Livingstone and at contract award stage for Kasama
11	High Court	Kasama Chinsali Choma Mongu Solwezi Mansa Chipata	6	6	Proposed construction of Provincial High Court Complex	Sketch designs concluded
12	Subordinate Courts	Lusaka Magistrate Court Complex Kabwe Ndola Kitwe Solwezi Chipata Choma Mumbwa Mongu			Proposed rehabilitation works	At Preliminary assessment stage concluded
13	Subordinate Courts	Kasama Mansa			Proposed Rehabilitation works	Works currently at 20% progress for Mansa and Kasama at Works currently at 10% progress
14	Subordinate Courts	Chinsali Chama Chirundu			Proposed Completion of construction works	Contract to be re-awarded for Completion of construction works to in the year 2023.

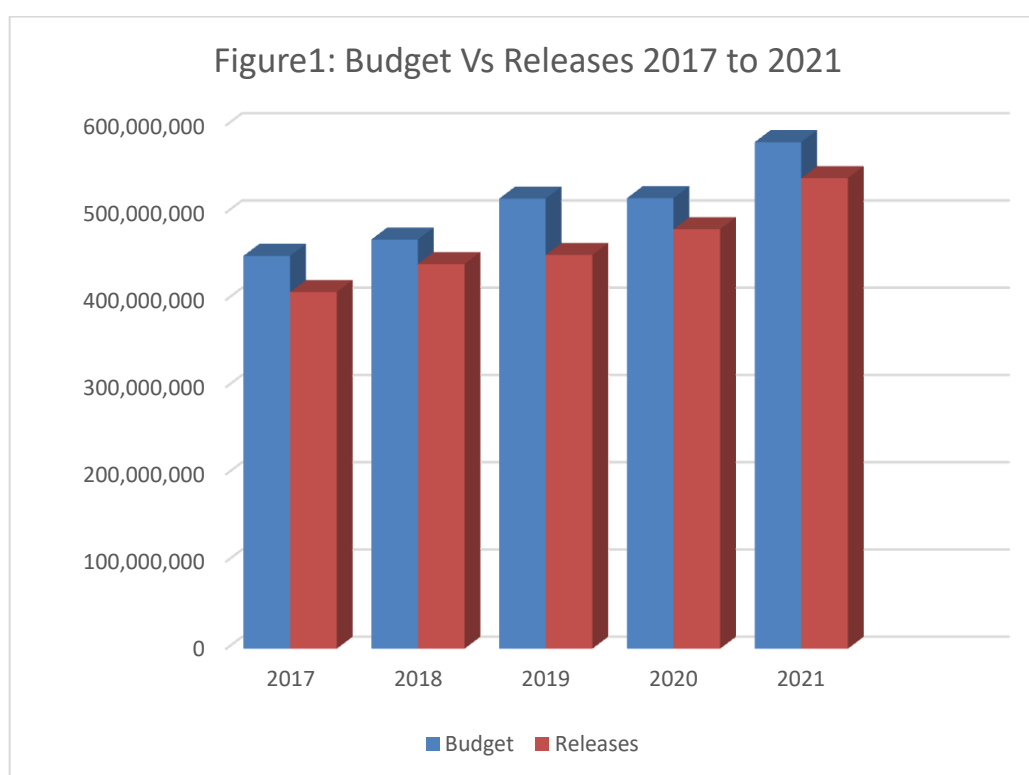
15	Local Courts	Matero Luangwa Nyimba Makululu Chikupili Chibombo Twapia Zimba Litoya			Proposed Completion of construction works	Contract awarded for Completion of construction works and currently at Mobilization stage and contractor is on site
16	Local Courts	Kitwe Mwense Nchelenge Munkonge Mporokoso			Proposed Completion of construction works	Contract at award stage for Completion of construction works.
17	Local Courts	Chavuma Mukaka Mfumu Choma Local Court Office Mwape Mumbhezi Local Court Staff Houses Chilanga Masansa Chembe Nkana Rural Ndola Main Baluba Shangombo Staff Houses Isoko Kasoka Muyombe Local Courts			Proposed Completion of construction works	Contract to be re tendered for Completion of construction works in the year 2023.
18	Small Claims Court	Lusaka Ndola Kitwe	0	3	Currently squatting in the Subordinate Court	Need for standalone building to be constructed.
19	Sheriff of Zambia	All Provincial Districts	1	21	Construction of Warehouses and Offices in all the 10 Provinces	At design stage and currently in the process of acquiring land in all the Provinces

Information Supplied by the Ministry of Infrastructure, Housing and Urban Developments

APPENDIX II –

Table 1: Budget Vs Releases 2017 to 2021

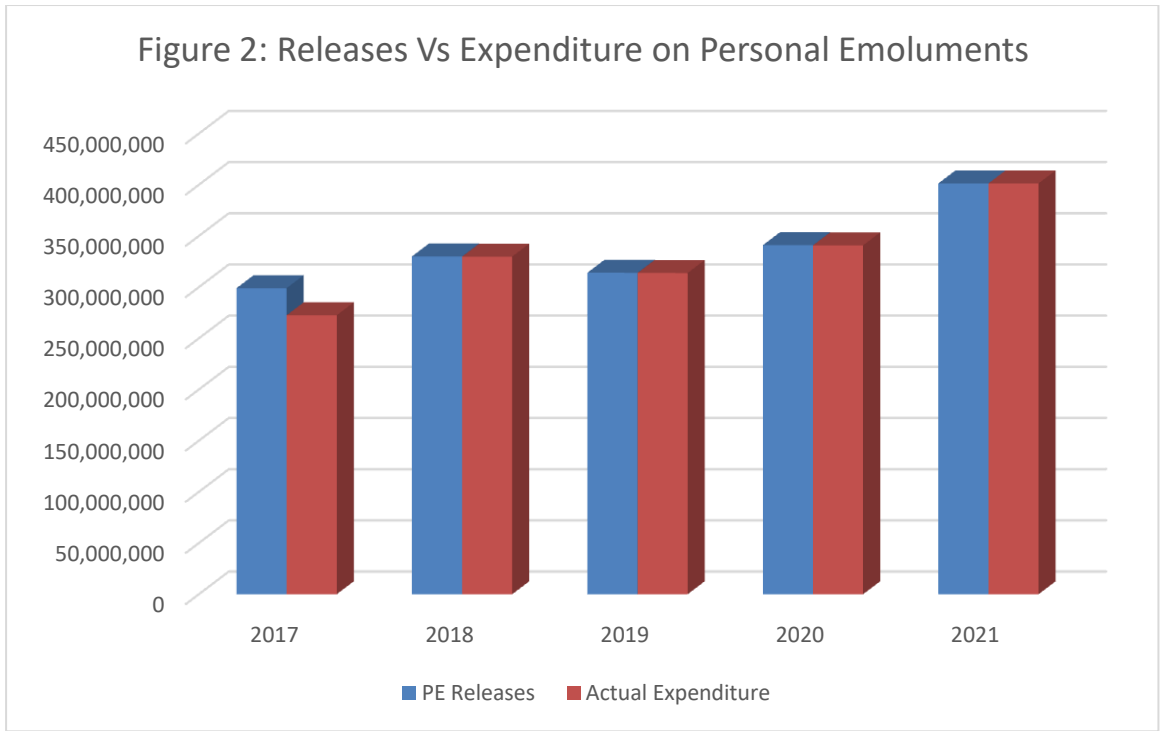
Year	Budget	Releases	Variance	% Variance
2017	450,290,735	408,727,201	41,563,534	9.23%
2018	468,958,320	440,883,303	28,075,017	5.99%
2019	515,740,938	451,315,004	64,425,934	12.49%
2020	516,346,304	480,805,295	35,541,009	6.88%
2021	580,546,993	539,350,698	41,196,295	7.10%



Information Supplied by the Ministry of Finance and National Planning

Table 2: Releases Vs Expenditure on Personal Emoluments

Year	PE Releases	Actual Expenditure	Variance	Variance %
2017	298,970,503	272,487,461	(26,483,042)	(8.86) %
2018	329,998,569	329,800,411	(198,158)	(0.06) %
2019	314,073,933	313,838,937	(234,996)	(0.07) %
2020	340,980,987	340,797,804	(183,183)	(0.05) %
2021	401,325,716	401,325,714	(2)	0.00%



Information Supplied by the Ministry of Finance and National Planning

APENDIX III - List of National Assembly Officials

Mr Francis Nabulyato, Principal Clerk of Committees (SC)
Mrs Chitalu K Mumba, Deputy Principal Clerk of Committees (SC)
Mr Geoffrey Zulu, Acting Senior Committee Clerk (SC 2)
Ms Annette Maluwa, Administrative Assistant
Mr Daniel Lupiya, Committee Assistant
Mr Muyembi Kantumoya, Parliamentary Messenger

APENDIX IV - List of Stakeholders

THE JUDICIARY

MINISTRY OF JUSTICE

MINISTRY OF FINANCE

MINISTRY OF INFRASTRUCTURE, HOUSING AND URBAN DEVELOPMENT

ZAMBIA POLICE SERVICE

ZAMBIA CORRECTIONAL SERVICE

NATIONAL PROSECUTION AUTHORITY

LEGAL AID BOARD

HUMAN RIGHTS COMMISSION

UNIVERSITY OF ZAMBIA

UNIVERSITY OF LUSAKA

CHAPTER ONE FOUNDATION

MAGISTRATES AND JUDGES ASSOCIATION OF ZAMBIA

ACTION AID