

REPUBLIC OF KENYA



PARLIAMENT
OF KENYA
LIBRARY

PARLIAMENT

THE SENATE

ELEVENTH PARLIAMENT

THE SESSIONAL COMMITTEE

ON

DELEGATED LEGISLATION

A REPORT ON THE STUDY VISIT TO ZAMBIA

4TH TO 10TH MAY, 2014

Clerk's Chambers,
Parliament Buildings,
P.O. Box 41842-00100
NAIROBI.

July, 2014

Hon. Speaker
You may approve
for tabling.
[Signature]
17/07/14

TABLE OF CONTENTS

ABBREVIATIONS.....	2
PREFACE.....	3
EXECUTIVE SUMMARY.....	6
CHAPTER 1: Introduction.....	8
CHAPTER 2: Meetings.....	9
2.1 Meeting with the Speaker.....	9
2.2 Meeting with Members of the Law Association of Zambia.....	12
2.3 Meeting with the counterpart Committee on Delegated Legislation	14
2.4 Meeting with the Ministry of Transport, Works, Supply & Communication.....	17
2.5 Meeting with the Electoral Commission of Zambia.....	17
2.6 Meeting with the Secretary to the Cabinet of Zambia.....	20
2.7 Meeting with the Human Rights Commission.....	20
2.8 Meeting with the Permanent Secretary Ministry of Justice.....	22
2.9 Courtesy call to the Kenya High Commission.....	23
CHAPTER 3: FINDINGS & RECOMMENDATIONS.....	25
Appendix	
Programme	

ABBREVIATIONS

NAZ	National Assembly of Zambia
LAZ	Law Association of Zambia
ECZ	Electoral Commission of Zambia
COMESA	Common Market for East and Southern Africa

PREFACE

The Sessional Committee on Delegated Legislation is established pursuant to the Senate Standing Order 214 which states:

- (1) There shall be a select Committee to be known as the Committee on Delegated Legislation.
- (2) Whenever a statutory instrument is submitted to the Senate pursuant to the Constitution, any law or these Standing Orders, the statutory instrument shall, unless a contrary intention appears in the relevant legislation, be laid before the Senate by the Chair of the Senate Committee on Delegated Legislation and thereafter stand referred to the Committee.
- (3) The Committee shall consider in respect of any statutory instrument whether the statutory instrument-
 - a) is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
 - d) directly or indirectly bars the jurisdiction of the courts;
 - e) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
 - f) involves expenditure from the Consolidated Fund or other public revenues;
 - g) is defective in its drafting or for any reason, the form or purport of the statutory instrument calls for any elucidation;
 - h) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
 - i) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - j) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - k) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - l) inappropriately delegates legislative powers;
 - m) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - n) appears for any reason to infringe on the rule of law;
 - o) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and

- p) accords to any other reason that the Committee considers fit to examine.

(4) If the Committee-

- a) resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department or the authority that published the statutory instrument;
- b) does not accede to the statutory instrument, or part of a statutory instrument, the Committee may recommend to the Senate that the Senate resolves that all or any part of the statutory instrument, as the case may be, be annulled.

(5) If the Senate-

- a) fails to agree to the recommendation of the Committee under paragraph (4)(b), the statutory instrument shall be deemed to have been approved by Parliament;
- b) resolves to annul a statutory, or part of a statutory instrument, the resolution shall, within seven days of the passage of the resolution, be referred to the National Assembly for concurrence.

The Committee is comprised of the following members;

- | | | |
|-----------------------------|---|-------------------------|
| 1. Sen. Stephen Sang | - | Chairperson |
| 2. Sen. Judith Sijeny | - | Vice Chairperson |
| 3. Sen. (Dr.) Boni Khalwale | | |
| 4. Sen. Emma Mbura | | |
| 5. Sen. Daniel Karaba | | |
| 6. Sen. Liza Chelule | | |
| 7. Sen. Godliver Omondi | | |
| 8. Sen. Joy Gwendo | | |

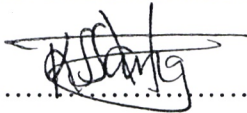
The Committee at its 12th meeting resolved to send a delegation of Four Senators and two staff to Zambia on 4th to 10th May, 2014 to study the experiences of Zambia Parliament.

Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for facilitating the benchmarking visit to Zambia in May, 2014.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 204 (1), to present the Report of the Sessional Committee on Delegated Legislation on the benchmarking visit to Zambia for consideration by the House.

Signed.......... Date.....16/7/2014.....

SEN. STEPHEN SANG

CHAIRPERSON, SESSIONAL COMMITTEE ON DELEGATED LEGISLATION.

EXECUTIVE SUMMARY

The Sessional Committee on Delegated Legislation undertook a foreign benchmarking visit to Zambia from 4th to 10th May, 2014. The delegation comprised of:-

- i. Sen. Daniel Karaba - Leader of the delegation
- ii. Sen. Liza Chelule - Committee Member
- iii. Sen. Emma Mbura - Committee Member
- iv. Sen. Godliver Omondi - Committee Member
- v. Denis Abisai -Principal Legal Counsel
- vi. Joyce Aluoch -Committee Clerk
- vii. Chrispinus Odinya - Aide to Sen. Godliver

The delegation held meetings with the Speaker of the National Assembly of Zambia and members of the counterpart Committee on Delegated Legislation. The delegation also held discussions with the following:-

- 1) The Law Association of Zambia,
- 2) The Permanent Secretary in the Ministry of Transport, Works, Supply and Communications,
- 3) The Electoral Commission of Zambia,
- 4) The Secretary to the Cabinet,
- 5) The Human Rights Commission and
- 6) The Permanent Secretary in the Ministry of Justice.

The Committee also had an opportunity to make a courtesy call to the Kenya High Commission in Lusaka.

The Committee observed that the process of making and scrutiny of statutory instruments in Zambia and the challenges faced were closely similar to the Kenya case. The Statutory Instruments Act, 2013 of the Laws of Kenya was deemed to be a better law since it comprehensively provided for the whole process of making, scrutiny, publication and operation of statutory instruments.

However, unlike Kenya, in Zambia regulation making authorities endeavored to ensure that the process of making statutory instruments was as consultative as possible by engaging the relevant stakeholders in the making of the statutory instruments.

Secondly, in appointment of members to the Committee, preference was given to those who had a legal background and experience. The Committee secretariat was pro-active and continuously coordinated with the office of the Government Printer to ensure that copies of the statutory instruments that had been published were tabled before the National Assembly.

In scrutiny of the statutory instruments, the Committee embraced the principle of public participation by going out to collect the views of those affected by the statutory instruments.

The Committee makes the following **recommendations** from the observations made from the visit to Zambia:-

- The Statutory Instruments Act, 2013 be amended to specifically provide for sanctions for non-compliance with specific provisions of the Act.
- The Committee on Delegated Legislation to embrace the principle of public participation in the scrutiny of statutory instruments.
- The Secretariat to liaise and coordinate with the National Council for Law Reporting, to continuously monitor published statutory instruments.
- Establishment of Parliamentary Liaison offices in every Ministry to ensure coordination in monitoring the issuance and implementation of the statutory instruments.

The Senate Committee on Delegated Legislation is a relatively new Committee constituted on 13th March, 2014. As such, there was need for the members of the Committee to understand its operations and procedures. The Committee, while noting that Zambia was one of the few countries in Africa with the best practices and a useful comparative system for scrutiny of delegated legislation, resolved to make a study visit to the National Assembly of Zambia. The objectives of the visit were to benchmark and exchange experiences with Members of the National Assembly of Zambia and in particular to:-

- (i) Gain an insight on the role and operations of the counterpart Committee at the Zambian Parliament;
- (ii) understand the rules and procedures of the Committee on Delegated Legislation;
- (iii) study and understand the procedures and operationalization of subsidiary legislation;
- (iv) study the Legislative Control over delegated legislation in the Zambian Parliament;
- (v) understand from the counterpart Committee how the Committee's recommendations are implemented; and
- (vi) apprise itself on the structures and systems put in place to improve the performance of the Committee.

During the visit, the delegation interacted and held consultative meetings with the Speaker of the National Assembly of Zambia, Members of the Committee on Delegated Legislation of the National Assembly of Zambia, the Law Association of Zambia, the Government Printer, the Secretary to the Cabinet and finally, the Permanent Secretary of the Ministry of Justice.

2.1 MEETING WITH THE HON. SPEAKER OF THE PARLIAMENT OF ZAMBIA (NAZ)

The delegation paid a courtesy call on the Speaker of the National Assembly of Zambia, Hon. Justice, Dr. P. Matibini, who informed the delegation as follows:-

Benchmarking visits

The Hon. Speaker Hon. Justice, Dr. P. Matibini, began his speech by appreciating the presence of the Senators from Kenya. He noted the importance of such benchmarking visits and encouraged similar interactions in future. He reiterated that there was no formal training on how to be a Senator or Member of Parliament. According to him, the benchmarking visits gave members opportunities to compare and develop the best practices especially in matters of delegated legislation which are very challenging. Similarly, the visits were important in strengthening the already existing ties between Parliaments. He advised that engagement between parliamentarians needed to descend down beyond the regional ones and establish personal contacts.

He stated that Delegated Legislation represented a paradox in the sense that, most countries practiced the doctrine of separation of powers with the legislative power being vested in the Legislature. In this context, nonetheless, there was usually need to delegate some of the legislative powers mostly to the executive. It is important to ensure that delegated legislation was made within the limits of the powers that have been assigned to the executive.

Parliament of Zambia

Article 63 of the Constitution of Zambia provides for the establishment of Parliament. It consists of 150 elected members, 8 members nominated by the President and the Speaker who is elected by the Members of the Assembly from persons who are qualified to be elected as members of the Assembly but are not members of the Assembly.

There are three (3) major political parties represented in the National Assembly; Patriotic Front; Movement for Multi-Party Democracy and United Party for National Development. The others are Forum for Democracy and Development; Alliance for Democracy and Development; and two independent members.

Committee system

In Zambia, Ministers are drawn from the National Assembly and can sit in Committees. The Committees of the National Assembly of Zambia are majorly classified into three:-

- a) House-keeping committees
- b) General purpose committees
- c) Portfolio committees

1. House-keeping committees

i) Standing Orders Committee

This is the mother of all other committees consisting of the Speaker who is the Chair and seven other members appointed by the Speaker at the commencement of every session. It is responsible for the constitution of other committees.

ii) Committee on Privileges, Absences and Support Services

This Committee consists of eight members appointed by the Speaker at the commencement of every session. It is chaired by the Deputy Speaker. It is mandated to examine cases of absenteeism of members, comfort and convenience of members around and within the precincts of Parliament and advise the Speaker on matters connected with the policy and administration of library, privileges etc.

iii) Parliamentary Reforms and Modernization Committee

This Committee consists of ten members appointed by the Standing Orders Committee at the commencement of the life of Parliament. The Committee is obligated to examine and propose reforms to the powers, procedures and practices, organization and facilities of the Assembly.

2. General purposes committees

i) Public Accounts Committee

This Committee consists of the Vice-President, Minister, Deputy Minister or any member appointed or acting in any office prescribed by or under an Act of Parliament and nine (9) other members. It is mandated to examine the accounts showing the appropriation of sums granted by the Assembly to meet the public expenditure.

ii) Committee on Delegated Legislation

This Committee consists of the Vice-President, Minister, Deputy Minister or any member appointed or acting in any office prescribed by or under an Act of Parliament and eight (8) other members appointed by the Standing Orders Committee. It is mandated to scrutinize and report to the House whether powers to make orders, regulations, rules, sub-rules and by-laws delegated by Parliament are being properly exercised.

iii) Committee on Government Assurances

This Committee consists of the Vice-President, Minister, Deputy Minister or any member appointed or acting in any office prescribed by or under an Act of Parliament and eight (8) other members appointed by the Standing Orders Committee. It is mandated to scrutinize the assurances, promises and undertakings and other matters related thereto given by Minister on the floor of the House, comment on delays in implementation and exercise such other functions that may be allocated to the Committee by the Speaker.

iv) Committee on Estimates

This Committee consists of the Vice-President, Minister, Deputy Minister or any member appointed or acting in any office prescribed by or under an Act of Parliament and nine (9) other members appointed by the Standing Orders Committee. It is mandated to examine the Estimates and Excess Expenditure Appropriation Bill.

3. Portfolio Committees

There are eleven portfolio committees which relate to the structure of Government and consist of the Vice-President, Minister, Deputy Minister or any member appointed or acting in any office prescribed by or under an Act of Parliament.

The Speaker concluded by stating that delegated legislation was one of the colonial legacies that was derived from England. It was influenced by the theory of separation of powers as was articulated by *Baron de Montesquieu* a French Political thinker. Delegated legislation was necessary due to the detail, complexity and specialization of legislation. In all these, there was still need for parliament to oversee to ensure that what was delegated was supervised.

2.2 MEETING WITH MEMBERS OF THE LAW ASSOCIATION OF ZAMBIA (LAZ)

Ms. Clare Musonda, Clerk to the Committee on Delegated Legislation of Zambia officially welcomed the Senate delegation and expressed joy in hosting them. She explained that the objective of the visit by the Kenyan delegation was to learn the process of making and scrutiny of delegated legislation in Zambia and to interact with various stakeholders. She then led in a self-introductory sessions of all the members present.

Speech of the Chairman

Mr. Joe Kapembwa who made a speech on behalf of the Chairman of the Law Association of Zambia began by stating that Zambia had a heritage of the commonwealth just like Kenya and informed the delegation as follows:-

1. The Zambian constitution recognized the only legislative body as Parliament. However, due to time and complexity, Parliament delegates this legislative power in the first tier to Ministers and second tier to the regulator itself.

2. For the regulations to take effect they had to be gazetted. Once rules/regulations were passed, they went through parliamentary oversight, a power which Parliament guards jealously. Parliament scrutinizes the regulations to see whether the delegates are working within the power delegated and for the better implementation of the parent Act. Many at times, the delegates overstep their jurisdictions especially in the area of tax where some commissions create a new tax when the power given is for collection of tax only.

Members of the Association were actively involved as practitioners. They cited the following as challenges faced in delegated legislation in Zambia:-

- Excesses of delegated legislation

The amount of power that the enabling Act usually gives to delegated legislation for instance The Explosives Act; and The State Security Act leaves a lot of discretion that can be abused. When enacting an Act of Parliament the delegated power must be detailed and precise.

- Exclusionary clauses

There are exclusionary clauses in delegated legislation for instance The Citizenship Act which limits powers of the Judiciary. This can lead to abuse of the delegated power by the regulation making authority. Similarly, The Evidence Act is a small Act and detailed issues are left to delegated legislation.

- Judicial review

This is one way in which a citizen can assert his/her rights for instance when the executive exceeds their limit and infringes on the rights enshrined in the Constitution. There are two (2) processes: first, one seeks the leave of the court before filing for review. This is a process in itself and there must be a faster mode by which this can be done. Secondly, is by applying for writ of summons.

- The effects of conflict between the principle of delegated legislation and separation of powers especially in instances where the Judiciary is

empowered to make delegated legislation which they themselves will interpret is a big challenge.

2.3 MEETING WITH COMMITTEE ON DELEGATED LEGISLATION OF THE PARLIAMENT OF ZAMBIA

Ms. Moono Lubezhi, the Chairperson of the Committee on Delegated Legislation of the National Assembly of Zambia, welcomed the Kenyan delegation to Zambia and expressed great pleasure in hosting them. She then led her committee members in a self-introductory session.

Sen. Karaba stated that the Senate team was delighted by the warm welcome extended to them by the Committee. He noted that issues of delegated legislation still remained a challenge to the Kenya Senate Committee on Delegated Legislation and expressed hope that they would learn from the experiences of their counterparts in Zambia.

The Chairperson of the committee on Delegation of the National Assembly of Zambia began her speech by stating that according to Article 62 of the Constitution of Zambia, the legislative power vests in Parliament. This power is exercised by Bills passed by the National Assembly and assented to by the President. However, this is subject to Article 80 of the Constitution which provides that nothing shall prevent Parliament from conferring on any person or authority power to make statutory instruments.

The Committee on Delegated Legislation of the National Assembly of Zambia is a Sessional Committee and also one of the general purposes committees of the House. It consists of eight (8) members appointed by the Standing Orders Committee. In appointment of the members, preference is given to those who have a legal background and experience. The Committee elects a chairperson from among its members. The Quorum for a meeting of the Committee is met within fifteen minutes of the appointed hour of sitting by four (4) of its members who are all back benchers either from the ruling party or the opposition.

The Committee is mandated to scrutinize statutory instruments to establish whether:-

- The powers to make them are being properly exercised ;
- The instruments are in accordance with the Constitution or statute under which they are made;
- The instruments unduly trespass on personal rights and liberties;
- The instruments make the rights and liberties of citizens depend upon administrative decisions; and
- The instruments are concerned only with administrative detail and not amount to substantive legislation

The Committee involves public participation by going out to collect the views of the public on the effects of the statutory instrument on them.

Procedure of the Committee:

It must be stated from the outset that the mandate/functions of the Committee on Delegated Legislation is to review subsidiary legislation after it has already been promulgated and taken effect. As regards the procedure, therefore, the Committee, through the Office of the Clerk, takes note of all Statutory Instruments issued for a particular period. While the standing instructions are that issuing authorities must issue explanatory memoranda for all Statutory Instruments at the time of their promulgation, this is usually not the case. Therefore, the Committee, through the office of the Clerk, requests explanatory memoranda well after the fact. Be that as it may, the explanatory memoranda for all Statutory Instruments issued during the particular period under review are inevitably submitted to the Committee for scrutiny and concurrence.

Legislative Control over Delegated Legislation and Implementation of the Committee's Recommendations

The Chairperson of Delegated Legislation Committee of Zambia Parliament stated that explanatory memoranda are meant to explain the objectives and rationale

behind the issuance of the Statutory Instruments. They provide a justification for the Statutory Instrument. The Committee considers the Statutory Instruments and the explanatory memoranda in line with its powers and functions as outlined above. Where the Committee deems it necessary, the Committee may invite relevant stakeholders such as intended beneficiaries or other persons on whom any Statutory Instrument is likely to have an impact in order to interact with them and understand in what way the piece of legislation will impact on them. The Committee may also decide to visit various government projects or other facilities and institutions in a quest to fully understand the extent of implementation of the statutory instrument and its impact. The Committee then makes appropriate recommendations with regard to the Statutory Instruments. These recommendations are contained in a report to the House. The consideration of the report is through a motion in the House which, if carried, becomes a decision of the House. The Executive is then required to take appropriate action on the recommendations contained in the Committee's report and table an **Action Taken Report** on the matters contained therein within sixty (60) days from the date of adoption of the report by the House. The Action Taken Report is referred to the Committee for scrutiny and a report on whether it is satisfied with the actions taken or responses from the Executive in relation to the recommendations made in the Committee's previous report.

Challenges faced by the Committee

She informed the delegation that some of the challenges facing the Committee include:-

- Lack of clarity in differentiating legislative and administrative decisions
- Sometimes statutory instruments are passed when the House is not in session and it is a challenge getting quorum for meetings when the House is on recess due to financial challenges. However, in a State of Emergency it is a constitutional issue and it is a requirement that National Assembly must sit within seven (7) days of the passage of that order. If parliament is not sitting then those days are not counted.

Conclusion

The Committee on Delegated legislation is a Sessional Committee and the rules and procedures of the House apply to it just like any other Committee. The Committee is mandated to review and make recommendations through a report to the House on whether or not the exercise of the delegated power to make laws is properly exercised. Once the report of the Committee is adopted by the House, the executive is required to submit a response to the House within 60 days thereof.

2.4 MEETING WITH THE PERMANENT SECRETARY, MINISTRY OF TRANSPORT, WORKS, SUPPLY AND COMMUNICATIONS

The delegation met with the Acting Permanent Secretary Mr. Joe Kapemba and the Government Printer Mr. Charles Zimba. The members were taken through the process of publication of statutory instruments as follows:-

- The printing process starts with receiving of gazette Notice and Advertisements from Government Ministries, Provinces, Departments and all statutory bodies which are paid for at the rate of K100.00 per minimal allotment. However, State House, Cabinet Office and National Assembly are exempted from such payment.
- Statutory Instruments are issued by various government ministries and statutory bodies after approval by the Department of Legislative Drafting in the Ministry of Justice. The Cabinet Minister responsible for the statutory instrument then dates and signs the statutory instrument. It is then forwarded to the government printer for printing. The price of statutory instruments depends on the number of pages it contains.

The delegation was taken through a guided tour of the Government Printers.

2.5 MEETING WITH THE ELECTORAL COMMISSION OF ZAMBIA

The acting chairperson of the Commission welcomed the Senators and after a self-introductory session, the leader of the delegation, Sen. Karaba expressed gratitude

to the Commissioners for finding time off their busy schedules to meet the Kenya Senate team. He then introduced the Senate delegation. The members were briefed on the Political and Governance system of Zambia as follows;-

Executive

The Executive consists of the President who is directly elected and members of the cabinet who are appointed by the President. The executive serves for a five year term.

Legislature

The Legislature consists of 150 Members of Parliament directly elected each representing a Constituency and eight (8) members nominated by the President. They serve for a five (5) year term.

Local Government

The local government consists of 1422 Directly Elected Councilors who serve for a five (5) year term.

Establishment of the Commission

The Electoral Commission of Zambia was established as an Autonomous Electoral Management Body in 1996 under Article 76(1) and (2) of the Republican Constitution. Prior to the establishment of the Electoral Commission in 1996, there were two Part-time Commissions; the Electoral Commission which handled the Presidential & National Assembly Elections while the Local Government Commission handled the Local Government Elections. Both Commissions were under the Office of the Vice President.

Composition of the Commission

The Commission comprises of the Chairperson and four Members who all serve on full time basis. The Chairperson and Members of the Commission are appointed by the President subject to ratification by the National Assembly. The Chairperson should be a person who is qualified to hold high Judicial Office, while there are no specific qualifications for the other Members. The maximum period that may be served by the Chairperson and Members is Seven Years.

Secretariat

The executive head of the Commission is the Director of Elections who is appointed by the Commission and is responsible for the implementation of the Commission's policies and the daily operations of the Commission. The Director is assisted by a complement of contract and permanent staff. The operations of the Commission are centralized at the headquarters in Lusaka and the Commission depends on part-time officers in the districts for the conduct of voter registration and elections.

Constitutional functions

The Constitutional functions of the Commission are as follows:-

- To supervise the registration of voters and review the voters' roll;
- To conduct Presidential and Parliamentary elections; and
- To review the boundaries of the constituencies into which Zambia is divided for the purpose of election to the National Assembly.
- The Statutory functions of the Commission are as follows:-
 - To conduct and supervise the Local Government Elections;
 - To conduct referenda;
 - To conduct Voter Education;
 - To resolve electoral conflicts through conflict management committees; and
 - To Formulate and review Electoral General Regulations.
- The Commission may perform any other statutory functions that the National Assembly may call upon it to undertake.

Elections held since establishment of the Commission

- The Commission has conducted 6 major elections since establishment:
 - 1996 General Elections – Presidential & National Assembly
 - 1998 Local Government Elections
 - 2001 Tripartite Elections – Presidential, National Assembly & Local Government Elections
 - 2006 Tripartite Elections – Presidential, National Assembly & Local Government Elections

- 2008 Presidential Elections
- 2011 Tripartite Elections – Presidential, National Assembly & Local Government Elections
- In addition, by Elections whenever avacancy occurs at National Assembly or Local Government level.

The Commission makes election regulations. There has been no experience or situation where the Committee overrides such regulations. This is because the procedure for making the regulations requires that they have to pass through the Ministry of Justice for approval. There has only been one incidence where election of municipal candidates was passed and challenged by one person and was subsequently annulled by the courts.

2.6 MEETING WITH THE SECRETARY TO THE CABINET

The Committee paid a courtesy call on the Secretary to the Cabinet, Dr. Roland Msiska. He indicated that the Permanent Secretary, Ministry of Justice was best placed to give a brief on Delegated Legislation. However, he briefly explained the process of making subsidiary legislation.

He was of the opinion that the imposition of sanctions for non-compliance with the provisions for scrutiny of statutory instrument would ensure compliance. He further pointed out that the establishment of Parliamentary Liaison offices in every Ministry would also ensure coordination in monitoring the statutory instruments.

2.7 MEETING WITH THE HUMAN RIGHTS COMMISSION

The Director of the Commission, Ms. Florence Chibwesha explained that the Commission's term had ended and the Ministry of Justice was in the process of appointing new members to the commission. She made the following presentation on the Commission:-

1. The Paris principle provides that the Commission must be independent and autonomous. This is also provided for in the Constitution and the Human

Rights Act. The Commission had made decisions independently and had never been subjected to any interference.

2. On the other hand, in financial matters, the Commission was not independent as it did not determine the allocation of its resources. However, the Commission held consultations with the Ministry of Finance over the resources to be allocated to them but this also was within the limit given.
3. Functions of the Commission had been determined to be very broad. They did not in any case curtail the kind of human rights violation the commission could deal with. The Act allows the commission to commence investigations on its own initiative without waiting for complaints.
4. The department of Research was responsible for the collection, analysis and publication of reports which were stored in a documentation centre. Information from outside the country could also be found in the centre. This information served as the basis for decision making by the management.
5. Investigations by the Commission revealed that the most common complaints were on labour issues, child abuse, unlawful detention and torture. Investigation is then done, report compiled and submitted to the complaints committee which subsequently determines the way forward on the issue.
6. The Information education and training department assists the Commission in fulfilling its mandate. It raises awareness on human rights issues using different ways and means with target groups being political parties, civil society organizations, media, general public, curriculum centres and other stakeholders.
7. The major challenges faced by the Commission were stated as:-
 - Ignorance
 - Impunity
 - Lack of respect for human rights.
 - Tradition and culture
8. In delegated legislation matters, the Commission had not been proactive to ensure that they monitored subsidiary legislations affecting human rights.

However, most regulation making authorities had invited the Commission for stakeholder consultations during the regulation making process.

2.8 MEETING WITH THE PERMANENT SECRETARY MINISTRY OF JUSTICE

Mrs. Patricia D. Jere, the Permanent Secretary, Ministry of Justice, welcomed the Kenyan delegation and expressed delight in meeting them.

Mrs. Jere conveyed the apologies of the Parliamentary Counsel who was not able to attend the meeting due to other urgent official engagements. She explained that she oversees three (3) departments i.e. Legislative Drafting, International Law &Agreements and Litigations. She then made the following presentation on the process of making subsidiary legislation:-

1. The Regulation Making Authority that was desirous to make a Statutory Instrument had to write to the Ministry of Justice through the office of the Permanent Secretary attaching a draft of the instrument. The time taken to deal with the instrument would depend on the demand and urgency of the instrument. Instruments from ministry of finance and cabinet office (Office of the President) were considered as very important and could be dispensed with in a day. This was because they were very simple and could be handled even by a new drafts person. Other draft instruments could take a longer time depending on the complexity of the instrument which may require a lot of research.
2. The Ministry would scrutinize the draft regulation to ensure that its subject matter was within the scope of the parent Act. 90% of the draft instruments received was usually within the Act.
3. On Instruments relating to fees, it was a challenge determining what fees was reasonable for lack of expertise in that field. Sometimes it would only be learnt the fees was unreasonable after a public outcry.
4. Once the draft instrument had been considered, the Ministry would then send the instrument together with a letter stating that three signed copies of

the draft instrument had been enclosed. If the Minister or the body issuing the instrument had signed it, then it had to be published within twenty eight days. If the twenty eight days lapsed before the instrument was sent for publication, then the Ministry was required to issue a fresh approval for the instrument.

5. There was an exception to the statutory instruments that needed to be scrutinized by the Ministry of Justice for example the administrative instruments.
6. There is a provision for challenging statutory instruments by a tribunal formed by the Chief Justice but that provision had never been invoked. That may have been due to the ignorance of the people, lawyers generally and the legal costs involved.

2.9 COURTESY CALL TO KENYA HIGH COMMISSIONER LUSAKA

The delegation paid a courtesy call on the Kenya High Commissioner to Lusaka. Her Excellency Ms. Ruthie Rono, the High Commissioner, extended a welcome to the delegation from the Kenya Senate and appreciated the time they had taken to make a courtesy call on the High Commission.

Ms. Rono gave a brief presentation on the Commission's role and functions in Lusaka and the relations between Kenya and Zambia. Among others she informed the Committee that as follows:-

1. The Commission had nine home based officers who were assisted by fifteen local members of staff from Zambia. There were eight hundred and fifty registered Kenyans in Zambia with most of them living in Lusaka while others were in Livingstone.
2. Kenya and Zambia had developed cordial relationships in all spheres over the years. The friendship between Former Presidents Kenneth Kaunda and Mzee Kenyatta goes back all the years since independence period in the 1960s.

3. Kenya exported manufactured goods such as hair creams, lotions and other cosmetics to Zambia while it imported copper and copper products, maize, maize seeds, and sugar from Zambia.
4. The sugar trade between Kenya and Zambia had gone on well because they are both members of COMESA. The only challenge experienced with the sugar trade was delays on the border which were caused by issues of documentation. Delegations from the sugar industry in Kenya had visited Zambia to learn about the sugar production industry.
5. In the milk industry, Kenya had a challenge with accessing the Zambian market. In 2004, Zambia stopped UHT from entering the market due to issues of sanitation with the processing of the milk. The issue had since been addressed and Kenya was expected to begin exporting milk to Zambia.
6. Kenya and Zambia have had mutual exchange for training in various areas such as defense.
7. Zambia had been keen to learn from the Kenyan expertise in tourism. Kenya Airways has direct flights plying the Livingstone –Nairobi route. In the hospitality industry, Zambia had done collaborations with Utalii College, Kenya.

CHAPTER FIVE: FINDINGS AND RECOMMENDATIONS

5.1 FINDINGS

- i. The process of making and scrutiny of statutory instruments in Zambia is more or less similar to Kenya save for a few differences.
- ii. In Kenya, the Statutory Instruments Act, 2013 is a more comprehensive and better law dealing with statutory instruments than the Interpretation and General Provisions Act, CAP 2 Act of the laws of Zambia.
- iii. Despite being a better law, the Statutory Instruments Act, 2014 does not provide for penalties or sanctions for non-compliance hence the continued cases of non-compliance on the part of the Cabinet Secretaries.
- iv. In Zambia, the regulation making authorities endeavor to ensure that the process of making statutory instruments is as consultative as possible. The authorities engage those who are likely to be affected with the statutory instruments with a view to getting consensus on the instruments.
- v. In the appointment of members to the Committee on Delegated Legislation in Zambia, preference is given to those who have a legal background and experience. The Secretariat is proactive and coordinates with the government printer to maintain a record of published statutory instruments.
- vi. The Interpretation and General Provisions Act, Cap 2 which is the law that deals with Statutory Instruments in Zambia does not specifically require that transmission of statutory instruments to the National Assembly must be done by the responsible Cabinet Secretary. The Secretariat in coordination with the Government Printer is therefore able

to bring the published statutory instruments to the attention of the Committee for its action.

- vii. The period within which the statutory instruments need to be tabled in the National Assembly after publication is not specified in Zambia. The Interpretation and General Provisions Act, CAP 2 provides that statutory instruments shall be laid before the National Assembly as soon as may be after they are made. The Committee therefore has more time to deal with instruments after they have been published unlike in Kenya where the instruments must be tabled within seven (7) days.
- viii. The Committee on Delegated Legislation is expected to scrutinize the Statutory Instruments within twenty one (21) days after it is laid in the National Assembly.
- ix. The Committee on Delegated Legislation embraces the principle of public participation by engaging the public to collect their views on the effects of the statutory instrument on them.

5.2 RECOMMENDATIONS

- i. The Statutory Instruments Act, 2013 be amended to specifically provide for sanctions for non-compliance with specific provisions of the Act.
- ii. The Committee on Delegated Legislation to embrace the principle of public participation in the scrutiny of statutory instruments.
- iii. The Secretariat to liaise and coordinate with the National Council for Law Reporting, to continuously monitor published statutory instruments.
- iv. Establishment of Parliamentary Liaison offices in every Ministry to ensure coordination in monitoring the issuance and implementation of the statutory instruments.

PROPOSED PROGRAMME
FOR THE VISIT OF THE SENATE SESSIONAL COMMITTEE
ON DELEGATED LEGISLATION FROM THE PARLIAMENT OF KENYA
4 - 10 MAY, 2014

Day/date	Time	Activity	Venue	Responsible Department(s)
Monday, 5 th May, 2014	TBA	Arrival	KK International Airport/Hotel	RPIR
Tuesday, 6 th May, 2014	08:30 hours	Courtesy call on the Hon Mr Speaker	Amusaa Mwanamwambwa Committee Room	Committee/ Speaker's Office/RPIR
	09:45 hours	Meeting with the Secretary to the Cabinet	Office of the Secretary to the Cabinet	Committee
	11:45 hours	The President, Law Association of Zambia	Law Association of Zambia Offices	Committee
	13:00-14:00 hours	LUNCH	LUNCH	Admin
	14:30 hours	Meeting with the Committee on Delegated Legislation	Amusaa Mwanamwambwa Committee Room	Committee
Wednesday, 7 th May, 2014	09:00 hours	Visit to Government Printers and meeting with Permanent Secretary (Ministry of Transport, Works, Supply and Communications) and relevant staff	Government Printing Department	Committee
	11:00 hours	Meeting with the Permanent Secretary (Legislative Drafting), Ministry of Justice	Ministry of Justice Offices	Committee
	13:00-14:00 hours	LUNCH	LUNCH	Admin

	14:30 hours	Meeting with the Chairperson and Commissioners, Electoral Commission of Zambia	Electoral Commission Offices	Committee
Thursday, 8 th May, 2014	09:30 hours	Meeting with the Chairperson and Commissioners, Human Rights Commission	Human Rights Commission Offices	Committee Admin/ RPIR
	11:30 hours	Travel to Chisamba	-	Admin/ RPIR
	12:30 -16:00 hours	Tour of Chisamba ZAMBEEF Huntley Farm	Chisamba Huntley farm	Admin/ RPIR
	16:00 hours	Travel back to Lusaka	-	
Friday 9 th May, 2014	FREE	FREE	FREE	FREE
Saturday, 10 th May, 2014	TBA	Departures	Hotel/KK International Airport	RPIR