

**REPORT ON THE MARKETS AND BUS STATIONS BILL (NAB NO. 8 OF 2007)
REFERRED TO THE COMMITTEE ON LOCAL GOVERNANCE, HOUSING
AND CHIEFS' AFFAIRS FOR THE FIRST SESSION OF THE TENTH
NATIONAL ASSEMBLY APPOINTED ON 8TH NOVEMBER, 2006.**

Consisting of:

Dr K Kalumba, MP (Chairperson); Mrs R M Musokotwane, MP; Mr E Kasoko, MP; Mr J J Mwiimbu, MP; Mr K Kakusa, MP; Mr H M Malama, MP; Mr B J Chongo, MP; and Mr C A Kanyanyamina, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

Your Committee have the honour to present their Report on the Markets and Bus Stations Bill (NAB No. 8 of 2007) referred to them by the House on 28th February 2007.

Functions of the Committee

2. In addition to any other duties conferred upon them by the Honourable Mr Speaker, or any other order of the House, your Committee do consider any Bills that may be referred to them by the House.

Meetings of the Committee

3. Your Committee held seven (7) meetings to consider the Markets and Bus Stations Bill (NAB No. 8 of 2007).

Procedure Adopted by the Committee

4. Your Committee, in considering the Bill, requested written submissions from various stakeholders who also appeared before them and made oral submissions. They also met with the Minister for Local Government and Housing to comment on concerns raised by stakeholders.

Objects of the Markets and Bus Stations Bill (NAB No. 8 of 2007).

5. The objects of the Bill are to:
- (a) provide for the establishment and regulation of markets and bus stations;
 - (b) provide for the establishment of management boards for markets and bus stations;
 - (c) repeal and replace the *Markets Act, 1937*; and
 - (d) provide for matters connected with or incidental to the foregoing.

CONSIDERATION OF THE MARKETS AND BUS STATIONS BILL (NAB 8/2007)

Background

6. Your Committee note that the proposed Bill intends to repeal the *Markets Act, Cap 290*, of the Laws of Zambia, so as to harmonise it with other related pieces of legislation such as the *Public Health Act*, the *Food and Drugs Act* and the *Town and Country Planning Act*, and the *Protection and Pollution Control Act*. The existing Markets Act, Cap 290 of 1937 is an old piece of legislation and has become inappropriate over the years as it has failed to adequately address the trends and developments that continue to take place in the management and control of markets in the country.

Further, no legislation has been enacted in the past to specifically deal with the management and control of the operations of bus stations in the country. The Bill therefore, seeks to bring on board the modern trends that will promote the efficient operation and management of markets and bus stations in Zambia.

Salient Features of the Bill and Ramifications

7. Your Committee wish to highlight the salient features of the Bill as follows:

(Clause 2) Application

The clause excludes private premises from the application of the Bill.

(Clause 3) Interpretation

The clause defines the word “area.” According to this definition, the Bill is intended to apply to areas under the jurisdiction of a local authority.

(Clause 4) Establishment of Markets and Bus Stations

This clause vests the power to establish markets and bus stations in the Minister. A local authority with the approval of the Minister may establish markets and bus stations. A local authority has the right to go into Public/Private Partnerships over the management of markets and bus stations for any period but not exceeding seven years. These partnerships are to be done with the approval of the Minister.

(Clause 5) Control and Management of Bus Station

This clause places all markets and bus stations under the control of the local authority in whose area they are situated. The local authority may manage a market or bus station by itself or through a management board with which it signed a lease under clause 15.

(Clause 6) Unauthorised Markets and Bus Stations

Clause 6(1) prohibits any person from establishing or permitting to be established on land owned by a person, a market or bus station, or maintaining, conducting or managing a market or bus station without the consent of the local authority in whose area the market or bus station is situated and without the approval of the Minister. This clause, therefore, makes provision for private individuals, with the approval of the Minister and the consent of the relevant local authority, to participate in the establishment and management of bus stations and markets.

Clause 6 (2) specifies the penalty for the contravention of clause 6 (1).

(Clause 7) Designation of Market Streets

This clause makes provision for periodic designation of certain streets or areas as market streets. The designation of such street markets is required to be published in the Government Gazette and a widely circulated newspaper for the information of the public. The local authority is empowered to make by laws for the days for the market street, the goods to be sold on the market street and the regulation of traffic and access to the market street.

(Clause 8) Demolishing, Reconstructing, Abolishing, Closing or Moving of Markets and Bus Stations

Clause 8 makes provision for the power of the local authority in consultation with the Minister to, among other things, demolish, abolish and close up a market or bus station, provided notice in writing is given to the affected person.

(Clause 9) Fees, Stallage and Levy

This clause provides for prescribed fees for people who intend to sell at markets or to operate a bus at any bus station. A penalty fee of 10,000 penalty units is provided for any breach of this clause. A penalty unit is one hundred and eighty kwacha (K180.00). Ten thousand (10,000) penalty units converts to one million, eight hundred thousand kwacha (K1,800,000.00).

(Clause 10 and 11) Inspectors of Markets and Bus Stations

Clause 10 provides for the appointment and powers of inspectors. The role of the inspector is necessary in ensuring compliance to the Bill. Clause 11 also gives an inspector the power to enter into any market, bus station, Market Street or other premises without a warrant to conduct his functions under the Act.

(Clause 12) Issue of Licences and Permits

Under this clause, a local authority may issue licences or permits to peddlers, hawkers, marketers and operators of bus services to operate in a market, market street or bus station provided that where a management board is established to manage a market or bus station, the licences and permits to operate in the market, market street or bus station shall be issued in consultation with the management board.

(Clause 13) Establishment of Management Boards

Clause 13 provides for the establishment of management boards by the Minister in consultation with the local authority.

(Clause 14) Composition of the Management Board

Clause 14 provides that a management board will consist of not less than eight and not more than eleven members appointed by the Minister including the chairperson and vice-chairperson from amongst the members of the management board.

(Clause 15) Business Plan and Management Lease

This clause requires a management board to prepare and submit its business plan for the market and bus station for which it is established, covering a period of five years, to the Minister for approval. The Minister shall consider the proposed business plan in consultation with the local authority concerned and, if satisfied with the business plan, shall approve it. The Minister may appoint experts to assist a management board to develop its business plan if the Minister is not satisfied with the proposed business plan.

After the business plan is approved by the Minister, the local authority, in whose area the market or bus station is located, shall enter into a management lease with the management board, provided that before entering into such management lease, the local authority shall settle all the liabilities and obligations in respect of a market and bus station, including the retirement of staff not required by the management board.

(Clause 16) Functions of the Management Boards

Clause 16 sets out the functions of Management Boards.

(Clause 26 – 31) Financial and General Provisions

Clauses 26 to 31 sets out provisions relating to the funds of local authorities payable under the Act to be paid into a special fund including the fees and rentals paid by management boards to a local authority.

A management board may not receive any grant or donation from any source other than the Government without the prior approval of the Minister. A management board is restricted in spending its moneys to annual budget as approved by the board and the Minister.

(Clause 32) National Markets and Bus Station Development Fund

This clause empowers the Minister to establish, by statutory instrument, a fund to assist the markets and bus stations established under this Act. This Fund is intended to assist in the development of markets and bus stations.

(Clause 33) Regulations and by Laws

This clause empowers the Minister to make regulations by statutory instrument and a local authority to make by laws for the implementation of the provisions of the Act.

Schedule

The Schedule sets out the management lease that may be signed between a local authority and management board.

Stakeholders' Concerns

8. All stakeholders who appeared before your Committee welcomed the Bill as a move in the right direction in meeting the current challenges in the management of markets and bus stations in the country. They, however, raised concern with some aspects of the Bill as follows:

(a) ***(Clause 4) Establishment of Markets and Bus Stations***

Clause 4 (4): the duration of the public private partnership be increased from seven (7) years to fourteen (14) years, so that it is in line with the provisions of the *Local Government Act Cap 281* which has a similar provision. Further, the period of seven years is too short for any investment to mature.

In Clause 4(5): the requirement that the planning, siting and construction of markets and bus stations do conform to the specified laws might make the construction of these social facilities very expensive. For example, smaller local authorities will find it too expensive to prepare the Environmental Impact Assessment reports, which is a requirement under the *Environmental Protection and Pollution Control Act*, before a project is embarked upon.

(b) ***(Clause 5) Control and Management of Markets***

Clause 5 (6) (1), which provides for persons to establish markets or bus stations in any area with the approval of a local authority and the approval of the Minister should be deleted. While appreciating the need for individuals and private institutions to contribute to economic growth, such individuals and private institutions should be accommodated under the proposed public private partnerships. Markets and bus stations should remain the domain of government and local authorities.

(c) ***(Clause 7) Designation of Market Streets***

The use of Gazette notices is not only restrictive, but equally expensive in rural areas. Clause 7 (3), therefore, should be amended to provide for the publication in the Government Gazette or newspapers, or by general circulation of notices or by way of popular mode of communication in a particular area.

(d) ***(Clause 9) Fees and Stallage and Levy***

This Clause which gives the Minister power to prescribe the fees or levy for selling goods in a market or for operating a bus station, should be amended to provide for the prescription of payments of fees, stallage or levies by the Local authority and not the Minister while the Minister's role should remain that of an appellate body, in case there is an appeal or dispute relating to the fees.

(e) ***(Clause 10) Inspector of Markets and Bus Stations***

It is proposed that clause 10 (3)(c) be amended to read: "open and inspect any package or container other than a cargo container".

(f) ***(Clause 12) Issue of Licenses and Permits***

It is proposed that this particular clause be amended to exclude hawkers and peddlers as this is incompatible with the provisions of the *Trades Licences Act*, which prescribes the operating mode for hawkers and peddlers.

(g) ***(Clause 14) Composition of Management Board***

It is proposed that the members of the management boards should be identified by the local authority and recommended to the Minister to include those provided

for under clause 14 (2)(c)(d)(e)(f). The provisions under clause 14 (2)(a)(b) have the potential of restricting the Minister's choice as most districts may not have persons representing the Minister at all.

For the same reasons, Clause 14(6) should be amended to provide that the Minister may, on recommendation of the local authority, appoint a different number of members, depending on the size of markets and bus stations.

(h) *(Clause 15) Business Plan and Management Lease*

A plan is a management planning instrument and should be handled by organs closest to the markets and bus stations where the needs are best understood. Therefore, clause 15 (1) should be amended to read that a management board established under subsection (1) of section thirteen shall submit its business plan for the market or bus station covering an initial period of five years to the local authority for approval, with a copy to the Minister. For the same reasons, subsections (2),(3) and (4) should refer to the local authority and not the Minister.

Further, clause 15 (5) should be deleted to allow for negotiations between the management board and the local authorities on the issues relating to liabilities and obligations to avoid a repeat of what happened during the transition of the Water Departments into commercial utilities

It is further proposed that the tenure of the lease provided for under clause 15 (6) of three years be increased to five years so that it is in line with the period of the business plan provided for under 15 (1).

(i) *(Clause 18) Tenure of office of members and vacancy*

Clause 18 (2)(d) and (g) should be amended to provide that the notice of resignation by a member shall be given to the local authority and not to the Minister since the lease will be between the local authority and the board. Further, paragraph (g) should be amended to read: "the office of the member shall become vacant, if the member is convicted of an offence under any other written law and sentenced therefore."

(j) *(Clause 31) Annual Reports*

The local authority will be the supervising authority of the management board. It is proposed that the boards' annual report should be submitted to the local authority and not to the Minister.

(k) *(Clause 33) Regulations and by Laws*

Clause 33 (2) (h) proposes to introduce price ceilings on any article of food for sale in a market. This should be deleted because it is incompatible with the liberalised economy and could be construed as the reintroduction of price controls in the country.

(l) *(Clause 34) Repeal, Savings and Transitional*

Clause 34(4) be amended to read: "after the commencement of this Act, any market association, committee, cooperative or any other institution operating within a market or a bus station that is under the management of the local

authority or the management board shall cease to operate within the market or bus station.”

The presence and involvement of associations, cooperatives as well as political parties in the management of markets and bus stations has undermined the legitimacy of local authorities. If these pressure groups are not removed or barred by law, the board will meet the same fate.

Additional Amendments Proposed by Stakeholders

9. Stakeholders proposed the following additional amendments:

(i) There is need to re-arrange the sections, under “arrangement of sections” as follows:

“Part II” to start at clause 4 and end at clause 12. 2.

“Part III” to start at clause 13 and end at clause 25. 3.

“Part IV” to start at clause 26 and end at clause 34.

(ii) **(Clause 3): Interpretation**

The following definitions be amended and added as follows:

- “bus service” to read as “bus service” means a service for the provision of public transport.”
 - “prescribed goods” means goods authorized for sale by a local authority in consultation with the Minister but shall not include petroleum products, alcohol and alcohol related products.
 - “market” means a market established under this Act and includes a market street, being a place or premises where any prescribed goods are sold.
 - “Local authority”, the definition to include “township boards.”
 - The Bill should include the definition of inspector as per current *Market Act Cap 290* section 3: “Inspector of markets” means a person appointed by the local authority or by the Minister to be an inspector of markets or authorized by the local authority to discharge the functions of an inspector or market.”
- (iii) **Clause 4 (3)**, by the deletion of the word “prior.”
- (iv) **Clause 4 (5)** the listing of Acts to include the statement: “ and any other relevant Acts.” This will forestall omitting some of the relevant statues that have relevance to markets and bus stations.
- (v) **Clause 5 (3)**, the listing of Acts to include the statement: “ and any other relevant Acts.” This will forestall omitting some of the relevant statues that have relevance to markets and bus stations.
- (vi) **Clause 31 (3)**, the sentence is incomplete.

Observations and Recommendations of the Committee.

10. Your Committee wished to satisfy themselves that the Bill was in line with democratic principles and the decentralisation policy before making recommendations. They also wanted to establish if it recognised and respected the independence of economic players. The view of your Committee is that some aspects of the Bill do not seem to support the spirit of the decentralisation policy, in which the participation of sub-structures is cardinal. They are also concerned that vesting too much powers in the Minister will not only overburden the Minister but also slow down the decision making process in markets and bus stations. Your Committee contend that if this was allowed to happen, it would lead to inefficiency in the operations of markets and bus station. To help clarify this position your Committee sought audience with the Minister of Local Government and Housing, after which your Committee recommend the following amendments:

Clause 6(1): should be rephrased as follows: “ a person shall not, without being in partnership with a local authority and with the approval of the Minister.....”

Clause 9(1) to read: “*Any person who desires to sell goods in any market or operate a bus station shall pay such fees, stallage or levies as may be prescribed by the local authority or board and approved by the Minister.*”

Clause 15(1): to read “ *A management board established under subsection (1) of section thirteen, shall submit its business plan for the market or bus station covering an initial period of five years to the local authority for the approval of the Minister.*”

Other observations of the Committee are as below:

Banning of Associations from Operating in Markets and Bus Stations

Your Committee further note that, through clause 34(4), the Bill seeks to ban market associations from existing in markets. They observe that this is as a result of the anarchy that has prevailed in markets and bus stations. Your Committee support this clause on the understanding that it is not meant to stifle freedom of association, but rather to prevent such market associations from setting bases or offices in markets and bus stations. Market associations will, however, remain free to set up offices elsewhere, but not within market and bus station premises.

Fees and Levies

This Bill proposes fees to be paid by any person who desires to sell goods in any market or operate a bus at any station. Long distance bus operators who appeared before your Committee were concerned that this would mean that they would be over levied, as every board through which their buses passed would legally demand levies.

In this regard, your Committee urge the Government to ensure that once the law is enacted, the interests of bus operators are protected through a mechanism that will prevent over-charging of levies.

Notice for Demolishing, Reconstructing, Abolishing, Closing or Moving of a Market or Bus Station

The Bill, in clause 8, provides that a notice, in writing, be given before the demolishing, reconstructing, abolishing, closing or moving of a market or bus station could be undertaken. It does not, however, state the minimum length of the notice. Your Committee are concerned that this could disadvantage aggrieved parties. In this respect, your Committee recommend that the notice period be included in the Bill to foster fair play. They propose that this notice be twenty-eight (28) days.

Price Ceilings of Food Articles

Your Committee agree with the sentiments of stakeholders that the proposal in the Bill to introduce price ceiling on food stuffs sold in markets be deleted from the Bill. The view of your Committee is that this proposal is against the tenets of the policy of liberalisation of the economy, which the country has embraced.

Public Private Partnerships

The Bill, in Clause 4 (4), proposes that any public/private partnerships entered into shall not be for a period longer than seven years. Your Committee wish to adopt the observation of stakeholders that the period of seven years is too short for any investment to mature. Your Committee, therefore, recommend that the period be increased to fourteen (14) years to bring it in line with the provisions of the *Local Government Act Cap 281*, which has a similar provision.

Appointment of Inspectors

The Bill proposes the appointment of inspectors, who, among other things, will be expected to examine and make copies of any books, records or other documents containing information relevant to enforcement of the Act. The reading of your Committee is that this function will include auditing of books of accounts and are concerned that the said inspectors might not have the requisite skills to do so. To this effect, your Committee recommend that a provision be made in the Bill for auditors from local authorities to undertake the function of inspecting books of account.

Composition of the Board

On the composition of the management board, Clause 14(2)(f) of the Bill proposes that one person shall come from the Residents Development Committee (RDC). Your Committee propose that this should be amended to read, (f) “a member of the community where the management board is situated.”

Conclusion

11. In conclusion, your Committee wish to express their gratitude to you, Mr Speaker, for not only appointing them to your Committee, but also for granting them the opportunity to scrutinise the Markets and Bus Stations Bill, NAB 8 of 2007. Your Committee also wish to thank the Office of the Clerk of the National Assembly and the Ministry of Justice for the support rendered to them throughout their deliberations. They are indebted to all the witnesses who appeared before them for their co-operation in providing the necessary briefs. Your Committee are hopeful that the observations and recommendations contained in their Report will assist the House make a decision on the said Bill.

We have the honour to be, Sir, your Committee on Local Governance, Housing and Chiefs' Affairs mandated to scrutinise the Markets and Bus Stations Bill, NAB NO. 8 of 2007.

Dr K Kalumba, MP
(Chairperson)

Mrs R M Musokotwane, MP
(Member);

Mr E Kasoko, MP
(Member);

Mr J J Mwiimbu, MP
(Member);

Mr K Kakusa, MP
(Member);

Mr H M Malama, MP
(Member);

Mr B J Chongo, MP
(Member); and

Mr C A Kanyanyamina, MP
(Member)

APPENDIX I

Ministry of Justice

Mrs A M Sitali, Chief Parliamentary Legal Counsel

Ministry of Local Government and Housing

Hon S T Masebo, MP, Minister

Mr P Lubambo, Acting Permanent Secretary

Mr C Hamulyata, Parliamentary Liaison Officer

Mr L Chongo, Programme Counterpart Coordinator

Kitwe City Council

Mr A D Simwinga, Town Clerk

Ndola City Council

Ms C Mphande, Town Clerk

Zambia Consumers' Association(ZACA)

Mr M Ililonga, Executive Secretary

Chongwe District Council

Mr E N Mumba, Council Secretary

Mr M C Chishimba, District Treasurer

Lusaka City Council

Mr T Hakuyu, Town Clerk

Mr G Lungu, Acting Assistant Director Legal

Mr B Matawe, Acting Deputy Director, Housing and Social Services

Local Government Association of Zambia

Mr M Mbolela, Executive Secretary

Capital Commuters Ltd

Mr I Y Khankhara, Director

Mr G M Ngwenyama, Operations Manager

Salauti Transport (Baba Bus Services)

Mr I I Patel, Director

Mr F Chanda, Manager

Zambia National Marketeers Association(ZANAMA)

Mr Evis Nkandu, President

Mr Sidney Kayombo, Vice President

Mr Kashiwa Lameck, Secretary General

Mr Malama Chongo, Vice Secretary General

Mr Able Chikwa, National Treasury

Cross Border Association Traders of Zambia

Mr C Mwanakisi, Chairman General

Mr T Taruvinga, Secretary General

Mr P Lungu, Disciplinary Coordinator

Mr T Sankisha, Public Relations Chairperson

Lusaka City Market

Mr J Kachingwe, Manager

Intercity Bus Terminus

Mr J Walubita, Manager

Mr K Kapika, Accountant

Mr B Chewe, Superintendent

Mazhandu Family Bus services

Mr J M Mazhandu, Managing Director

Marks Motorways

Mr M Mushili, MP, Managing Director

Zoom Roadways

Mr V Findlay, Managing Director

APPENDIX II

LIST OF OFFICIALS

National Assembly

Mr S M Kateule, Principal Clerk of Committee
Mr M K Phiri, Assistant Committee Clerk
Mr F M Kateshi, Assistant Committee Clerk
Mr D Malwele, Assistant Committee Clerk
Mr S Chiwota, Assistant Committee Clerk
Mrs D C Mukwanka, Assistant Committee Clerk
Mr C Chishimba, Assistant Committee Clerk
Mrs M K Siwo, Assistant Committee Clerk
Mrs B M Unene, Personal Secretary II
Mrs K M Nkandu, Stenographer
Ms C Lisulo, Typist
Mr J Mulinde, Parliamentary Messenger
Mr Likunyendo, Parliamentary Messenger