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REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION FOR THE FIFTH SESSION OF THE NINTH NATIONAL ASSEMBLY APPOINTED ON WEDNESDAY, 18TH JANUARY, 2006

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir

Your Committee, consisting of:

Dr P D Machungwa, MP (Chairperson); Mr C R Banda, MP; Ms B H Jere, MP; Mr J J Mwiimbu, MP; Mr W Nsanda, MP; Mr L Shemena MP; Mr J Shakafuswa, MP; and Mr R Gray, MP;

have the honour to present their report for the Fifth Session of the Ninth National Assembly.

Functions of the Committee

2.0 Your Committee were guided in all their deliberations by the relevant Standing Order, which sets out the functions of your Committee as follows:

“The Committee shall scrutinise and report to the House, through Mr Speaker, whether the powers to make orders, regulations, rules, sub-rules and by-laws delegated by Parliament are being properly exercised by any person or authority within such delegation. As the machinery of delegated legislation is dealt with under the heading “Statutory Instruments”, these instruments must:

- (a) be in accordance with the Constitution or statute under which they are made;
- (b) not trespass unduly on personal rights and liberties;
- (c) not make the rights and liberties of citizens depend upon administrative decisions; and
- (d) be concerned only with administrative details and not amount to substantive legislation, which is a matter for Parliamentary enactment.”

If your Committee are of the opinion that a Statutory Instrument should be revoked wholly or in part or should be amended in any respect, they report that opinion and the ground thereof to the House. Any such debate is subject to a motion in the National Assembly, which, if carried, would have the effect of the House.

Meetings of the Committee

3.0 Your Committee held seven meetings during the period under review and considered a total of fourteen Statutory Instruments.

4.0 CONSIDERATION OF STATUTORY INSTRUMENTS RECEIVED

Ministry of Tourism, Environment and Natural Resources

Statutory Instrument No. 28 of 1997, the Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations, 1997

Background

4.1 Following concerns raised by your Committee on the legality of the above Statutory Instrument, it was observed as follows:

Zambia, like many other countries, had recognised the need for sustainable environmental management. Accordingly, the country prepared a National Conservation Strategy (NCS) in the early

1980s. This process highlighted the need for Zambia to develop Environmental Impact Assessment (EIA) regulations and also spelled out policy and the legislative framework on environmental management. The Government of Zambia adopted the NCS, 1985. The NCS, in 1985, focused on two main points, namely:

- (a) the guidelines for cross-sectoral conservation action and;
- (b) the formation of an institution or body to implement the strategy.

The NCS paved the way for the subsequent enactment of the Environmental Protection and Pollution Control Act (EPPCA, No. 12) 1990, which established the Environmental Council of Zambia (ECZ), with the mandate to regulate all environmental matters in Zambia. It is worth noting that the guidelines for cross-sectoral conservation action in the strategy recommended, among other issues, the promotion of environmental impact assessments in developing projects.

In 1994, the NCS was revised and updated into the National Environmental Action Plan (NEAP). The principles in the NEAP enshrined the basic tenets of the EIA process and facilitated for the passage of Statutory Instrument No. 28 of 1997.

Statutory Instrument No. 28 of 1997

Statutory Instrument No. 28 of 1997, the “Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations,” were passed to provide for matters of environmental impact assessment in Zambia. Prior to the EIA Regulations of 1997, undertaking of EIA in Zambia was largely optional and was carried out through mutual arrangements between the State and the potential developer.

Prior to these Regulations, the process was mostly donor driven and restricted to large construction projects such as hydro-electricity. There was also little consideration of the impact of developments on communities in which they were located. Further, the absence of EIA regulations meant that medium and small-scale projects were not regulated, despite their cumulative effects on the environment. The decision to promulgate Statutory Instrument No. 28 of 1997 was, therefore, necessary to curb environmental degradation arising from economic development.

The major objective of the Statutory Instrument under review was to ensure that environmental consequences of actions were addressed by providing the decision makers with adequate information on which to base their decisions. Subjecting developmental projects to EIA ensures that economic development is undertaken with minimal negative impact on the environment because the process requires developers to undertake mitigating measures to cushion some of the unavoidable impact on the environment that are associated with economic development. The EIA Regulations also fully embody Millennium Development Goal No. 7, that “Ensuring Environmental Sustainability” is a legal requirement in line with most of the Multilateral Environmental Agreements to which Zambia is a party.

Statutory Instrument No. 28 of 1997 in relation to the Environmental Protection and Pollution Control Act

Section 95 of the Environmental Protection and Pollution Control Act provides as follows:

- “95(1) A person aggrieved with any decision or ruling made by an inspector under this Act, may appeal to the Council within forty-five days after the date of receipt of the ruling or decision.
- (2) The Council within thirty days after receiving an appeal, shall make and convey its decision to the appellant.”

However, regulation 24 of the Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations, 1997, provides as follows:

24. (1) If any party concerned is aggrieved by a decision of the Council, that party may, in writing, appeal to the Minister against the decision of the Council within a period of ten days after receipt of the decision letter from the Council.
- (2) The Minister shall render his decision within fourteen days of receiving an appeal.
- (3) If the aggrieved party is not content with a decision of the Minister he may appeal to the High Court.

Section 95 (1) and (2) of the principal Act above makes reference to a person aggrieved by any decision of an inspector under the Act to appeal to the Council and the Council is expected to make and convey its decision within thirty (30) days of receiving the appeal. Therefore, in this scenario, since the Act is silent on where the appellant should appeal in the event that he/she was dissatisfied with the decision of the Council, then the intention was that an appeal shall lay from the Council to the High Court.

On the other hand, Regulation 24 (1), (2) and (3) was making reference to a person aggrieved by a decision of the Council, to appeal to the Minister who is expected to make his decision within fourteen days of receiving the appeal. In the event that the aggrieved person was not content with a decision of the Minister, he could appeal to the High Court.

Your Committee concluded that the above two legal instruments, the Act and Regulations, appeared to be in conflict and that the onus was on the Minister of Justice and the Minister of Tourism, Environment and Natural Resources to account for this irregularity in the above two legal instruments. The Regulations would have to be amended to conform to the principal Act so as to avoid any future conflict between the Ministry of Tourism, Environment and Natural Resources and the ECZ which may undermine the mandate of the Environmental Council of Zambia under the Act.

Submission by the Hon Minister of Justice and Attorney-General on Statutory Instrument No. 28 of 1997, the Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations, 1997

The Hon Minister of Justice and Attorney-General informed your Committee that the Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations, 1997 were issued pursuant to sections 6 and 96 of the *Environmental Protection and Pollution Control Act, Cap. 204*. Regulation 24 of the statutory instrument provided for appeals to the Minister from a decision of the Council.

Section 95 of the Act on the other hand provided that a person who was aggrieved with any decision or ruling made by an inspector may appeal to the Council within forty-five days after the date of receipt of the ruling or decision. The said Act did not provide for a further appeal against the decision of the Council to the Minister.

In view of the foregoing, Regulation 24 went beyond the provisions of section 95 of the Act. There was, therefore, need to harmonise the Regulations with the Act. The Regulations needed to be amended in order to revoke Regulation 24 to bring the Regulations in line with the principal Act.

In view of the Hon Minister's submission, your Committee wondered what the status of decisions made under Regulation 24 would be since it is *ultra vires* the main Act. In reply, the Hon Minister submitted that decisions which had been made using Statutory Instrument No. 28 of 1997, particularly Regulation 24, could be challenged in the courts of law.

Submission by the Hon Minister of Tourism, Environment and Natural Resources on Regulation 24 of Statutory Instrument Number 28, the Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations, 1997

Background

The Environmental Impact Assessment (EIA) Regulations were formulated as a tool for assessing the impact of developmental projects on the environment, in conformity with international environmental practices and standards. The EIA Regulations outline the complete procedure for developers or projects proponents to undertake environmental impact assessments, and also identify whether or not an Environmental Project Brief or an Environmental Impact Statement should be prepared for assessment of a project.

When a developer has completed the EIA process, the project documents prepared must be submitted to the Environmental Council of Zambia for review. The review takes into consideration any negative impact the project may have on the environment and determines whether or not adequate mitigating measures have been put in place by the developer to counter the same.

After reviewing the project documents, the Council renders a decision either authorizing the project to proceed or rejecting the project, and in each case gives reasons for so deciding.

Regulation 24 of the Environmental Impact Assessment Regulations (S.I. No. 28 of 1997)

Regulation 24 prescribed the procedure to be undertaken when a developer or project proponent is aggrieved by a decision of the Council made pursuant to the EIA Regulations and the procedure referred to above. It provided as follows:

24 (1) "If any party is aggrieved by the decision of the Council, that party may, in writing appeal to the Minister against the decision of the Council within a period of ten days after the receipt of the decision letter from the Council.

24 (2) The Minister shall render his decision within fourteen (14) days of receiving the appeal.

24 (3) If the aggrieved party is not content with a decision of the Minister, he may appeal to the High Court."

Regulation 24 was, however, inconsistent with the provisions regarding appeals as outlined in the principal Act, the EPPCA, which provided, under section 95 as follows:

"95 (1) A person aggrieved with any decision or ruling made by an Inspector under this Act may appeal to the Council within forty-five days after the date of receipt of the ruling or decision.

(2) The Council, within thirty days after receiving an appeal, shall make and convey its decision to the appellant."

Section 2 of the EPPCA states that "Council" means the Environmental Council established under section three.

To this end, Regulation 24 of S.I. No. 28 of 1997 shifted the appeal authority by conferring it on the Minister and not the Council.

The Ministry's view

While acknowledging that Regulation 24 was in conflict with section 95 of the EPPCA already referred to, it was perhaps of importance to apprehend the spirit in which the EIA Regulations were formulated. The EPPCA had intended for the ECZ Inspectorate to undertake any and every function of the Council, as prescribed in section 6 of the Act, which revolved mainly around activities addressing pollution control, such as the licensing of facilities and subsequent monitoring for compliance.

At the time of enacting the EPPCA, the environmental impact assessment process had not been fully conceived under the Zambia Environmental Regulatory Framework. It should be noted, in this regard, that the EPPCA was only enacted in 1990, while the ECZ as an environmental regulatory body became operational in 1992. During the enforcement of the EPPCA, it became necessary to legislate for the environmental impact assessment process, which was incorporated into the economic developmental process worldwide.

The process of preparation of the EIA Regulations was generally devoid of consideration of inconsistencies and/or conflict with certain provisions in the principal Act such as the appeal process prescribed therein. The justification for inclusion of the Minister in the project approval process was derived from section 6 (4) of the EPCA, which provides as follows:

“The Minister may give to the Council such general or specific directions with respect to the discharge of its functions as he may consider necessary and the Council shall give effect to those directions.”

The law provides that an aggrieved party has a right of appeal. In this case, it was appropriate that the Ministry was given authority to re-visit the case and provide guidance to ECZ. Meanwhile, it was the Ministry’s intention to address legislative inconsistencies under discussion herein. To this effect, the Ministry has submitted to the Law Development Commission that it re-visits Regulation 24 of S.I. No. 28 of 1997 in order to facilitate harmonisation with the principal (EPPCA) and related Acts for a coherent appeal process in the Zambian Environmental Regulatory Framework.

In addition, the Environmental Council of Zambia, under the Copperbelt Environmental Project, was embarking on a review of the Environmental Legislation. The review would be comprehensive and was intended to address gaps, conflicts and/or any inconsistencies currently obtaining in the (EPPCA) and its regulations.

Your Committee informed the Hon Minister that his colleague, the Hon Minister of Justice and Attorney-General, had submitted that Regulation 24 of Statutory Instrument No. 28 of 1997 was *ultra vires* the principal Act and, therefore, was **null and void**. In view of this, they asked the Hon Minister to state when Regulation 24 would be repealed in order to bring the Statutory Instrument into conformity with the principal Act.

The Hon Minister submitted that he could not give a time frame as other pieces of legislation being reviewed had taken long to be addressed by the Law Development Commission.

Your Committee, however, informed the Hon Minister that amending a Statutory Instrument need not take long as the process did not require the participation of the Law Development Commission.

Committee’s Observations and Recommendations

Your Committee observe that Statutory Instrument No.28 of 1998, particularly Regulation 24, is *ultra vires* the principal law, the *Environmental Protection and Pollution Control Act*, No.12 of 1990.

Your Committee, therefore, recommend that this Statutory Instrument be amended to bring it into conformity with the principal Act. This will ensure that the law, as enacted by Parliament, is respected. Furthermore, vesting the power of deciding whether a project is environmentally sound in the Environmental Council of Zambia will lessen disputes as has been evidenced in the past. A case in point is the Zambezi Oil and Transport saga in Ndola and many other cases in Lusaka and Kafue over which the Minister and the Environmental Council of Zambia have differed.

Ministry of Finance and National Planning

Statutory Instrument No. 58 of 2005, the Customs and Excise (Suspension) Regulations, 2005

4.2 The Statutory Instrument was issued in order to mitigate the high cost of jet fuel following the rise in crude oil prices on the international market. The Statutory Instrument, therefore, suspended the five percent customs duty payable on Jet (Aviation) Fuel and ceased to have effect on 31stDecember, 2005.

Committee's Observations and Recommendations

Your Committee approve the issuance of the Statutory Instrument.

Ministry of Finance and National Planning

Statutory Instrument No. 64 of 2005, the Customs and Excise (Excise Duty) (Suspension) Regulations, 2005

4.3 The Statutory Instrument was issued to mitigate the impact of the high cost of fuel following the rise in crude oil prices on the international market. The Statutory Instrument, therefore, suspended the excise duty on petrol, diesel and fuel oils when imported by persons licensed and approved by the Energy Regulation Board. The regulations ceased to have effect on 31stDecember, 2005.

Committee's Observations and Recommendations

Your Committee approve the issuance of the Statutory Instrument.

Ministry of finance and National Planning

Statutory Instrument No. 61 of 2005, the Customs and Excise (Suspension) (Amendment) (No. 2) Regulations, 2005

4.4 The Statutory Instrument was issued in order to revoke Statutory Instrument No.58 of 2005 and to suspend the customs duty payable on jet fuel, petrol and kerosene when imported by persons licensed by the Energy Regulation Board. This measure was undertaken in order to mitigate the impact of the high cost of fuel on the international market. The implication of the revocation was that the suspension of customs duty on kerosene would continue to have effect beyond 31stDecember, 2005.

Committee's Observations and Recommendations

Your Committee note the issuance of the Statutory Instrument.

Ministry of Energy and Water Development

Statutory Instrument No. 90 of 2005, the Energy Regulation (Minimum Products Stocks) Regulations, 2005

4.5 The Government decided to issue the Statutory Instrument to provide a legal framework for all Oil Marketing Companies to maintain minimum working stocks, thereby providing an emergency source of products in case of disruptions in the petroleum supply chain. The instrument also spelt out the way the Energy Regulation Board would implement the license condition and monitor the performance of the companies, including the specification of the offenses and penalties.

Committee's Observations and Recommendations

Your Committee note the issuance of the Regulations. They are, however, of the view that the Government needs to keep strategic stocks of fuel around the country, not only to avoid shocks in the economy in case of emergencies, but also for security purposes.

Judiciary

Statutory Instrument No. 68 of 2005, the High Court (Amendment) Rules, 2005

4.6 The Statutory Instrument was issued in order to increase the fees payable in the High Court, to reflect the true value of the services paid for in the Court Registry. This was because the fees were last reviewed in 1997.

Statutory Instrument No. 69 of 2005, the Industrial Relations Court (Amendment) Rules, 2005

4.7 The Statutory Instrument was issued in order to increase the fees payable in the Industrial Relations Court, to reflect the true value of the services paid for in the Court Registry. This was because the fees were last reviewed in 1997.

Statutory Instrument No. 70 of 2005, the Local Court (Amendment) Rules, 2005

4.8 The Statutory Instrument was issued in order to increase the fees payable in the Local Courts, to reflect the true value of the services paid for in the Court Registries. This was because the fees were last reviewed in 1997.

Statutory Instrument No. 71 of 2005, the Subordinate Courts (Civil Jurisdiction) (Amendment) Rules, 2005

4.9 The Statutory Instrument was issued in order to increase the fees payable in the Subordinate Courts, to reflect the true value of the services paid for in the Court Registries. This was because the fees were last reviewed in 1997.

Committee's Observations and Recommendations on Statutory Instruments Nos 68, 69, 70 and 71

Your Committee note the issuance of the Statutory Instruments. They, however, express concern that the high increases in court fees may deny many people access to justice through the courts of law. Your Committee, therefore, recommend that a future adjustment in court fees should reflect the ability of ordinary Zambians to afford the court fees.

Ministry of Finance and National Planning

Statutory Instrument No. 93 of 2005, the Customs and Excise (Excise Duty) (Suspension) (No. 2) Regulation, 2005

4.10 This Statutory Instrument was issued in order to reduce excise duty on ale lager and stout made from sorghum. This measure was undertaken in order to encourage the use of locally grown sorghum in the manufacture of sorghum beer thereby creating a market for such crops.

Observations and Recommendations

Your Committee note the issuance of the Statutory Instrument.

Ministry of Finance and National Planning

Statutory Instrument No. 1 of 2006, the Customs and Excise (Excise Duty) (Suspension) (Amendment) Regulations, 2005

4.11 The Statutory Instrument was issued in order to extend the partial excise waiver on finished petroleum products from 31st December, 2005 to 30th June, 2006. This measure was intended to mitigate the high cost of petrol, diesel and fuel oils following the sharp rise of oil prices on the international market and to also avert the fuel shortage situation, which the country underwent in 2005.

Committee's Observations and Recommendations

Your Committee approve the Statutory Instrument.

Ministry of Science, Technology and Vocational Training

Statutory Instrument No.24 of 2006, the Technical Education, Vocational and Entrepreneurship Training (Amendment) Act (Commencement) Order, 2006

4.12 It was explained to your Committee that in 2005, Parliament passed the Technical Education, Vocational and Entrepreneurship Training (Amendment) Act, No.11 of 2005.

In order to set and announce the commencement date of the amended Act, as stipulated in section 1(2) of Act No.11 of 2005, the Hon Minister issued Statutory Instrument No.11 of 2006. Through this statutory instrument, the commencement date for Act No.11 of 2005 was 10th March, 2006. With this instrument in place, the Hon Minister was in a position to dissolve the Board of TEVETA and appoint a new one that would meet the requirements stipulated in section 6(1) of the Technical Education, Vocational Training and Entrepreneurship Training (Amendment) Act No.11 of 2005.

Committee's Observations and Recommendations

Your Committee approve the issuance of the Statutory Instrument.

Ministry of Science, Technology and Vocational Training

Statutory Instrument No.25 of 2006, the Technical Education, Vocational and Entrepreneurship Training (Establishment of Institutions and Constitution of Management Boards) (Amendment) Regulations, 2006

4.13 The explanatory memorandum on the Statutory Instrument explained that the Management Board of Luanshya Trades Training Institute applied to the Minister for a change of name of the institute to Luanshya Technical and Business College in conformity with the re-alignment of the Institute's mission statement. The Institute was established under the provisions of Act No.13 of 1998 and effected through Statutory Instrument No.140 of 1999.

In giving consent to the Board's application, the Minister had to exercise powers contained in sections 9 and 10 of the Technical Education, Vocational Training and Entrepreneurship Training Act No.13 of 1998. It was for this reason that the Minister issued Statutory Instrument No.25 of 2006.

Committee's Observations and Recommendations

Your Committee note the issuance of the Statutory instrument.

CONCLUSION

5.0 Your Committee, Mr Speaker, would like to express their appreciation of your wise counsel and direction given to them during the past year.

Your Committee also wish to thank all the witnesses who submitted memoranda that provided the basis for them to make informed decisions on the issues under their consideration.

Lastly, your Committee wish to express their appreciation of the services rendered by the Office of the Clerk of the National Assembly throughout their deliberations.

Dr P D Machungwa, MP
CHAIRPERSON

Lusaka
May, 2006