

FIRST REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION FOR THE FOURTH SESSION OF THE TENTH NATIONAL ASSEMBLY APPOINTED ON 23RD SEPTEMBER, 2009

Consisting of

Mr C K Banda, SC, MP; (Chairperson) Mr B Chella, MP; Mr J C Kasongo, MP; Ms J M Limata, MP; Mr V M Mooya, MP; Mr C M M Silavwe, MP; Rev G Z Nyirongo, MP; and Mr R Muyanda, MP

The Honourable Mr Speaker,
National Assembly,
Parliament Buildings,
LUSAKA

Sir, following the guidance that your Committee should table the Report of the previous Committee for the Third Session of the Tenth National Assembly, your Committee studied the Report in detail and, on 30th October, 2009, adopted it.

Your Committee Mr Speaker, Sir, now have the honour to present the Report.

C K B Banda, MP
CHAIRPERSON

October 2009
LUSAKA

REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION FOR THE THIRD SESSION OF THE TENTH NATIONAL ASSEMBLY APPOINTED ON 21ST JANUARY 2009

Consisting of:

Mr C K Banda, SC, MP (Chairperson); Dr S Chishimba, MP; Mr C Kambwili, MP; Ms J M Limata, MP; Mrs S T Masebo, MP; Mr V M Mooya, MP; Mr C M Silavwe, MP; and Mr B Chella, MP.

The membership of your Committee was reduced to seven (7) with the resignation of Dr S Chishimba, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

Your Committee have the honour to present their report for the Third Session of the Tenth National Assembly.

Functions of Your Committee

2. Your Committee were guided in all their deliberation by the relevant Standing Orders which set 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 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, and any such debate is subject to a motion in the National Assembly which, if carried, would have the effect of a decision of the House.

3 Meetings of Your Committee

Your Committee held twenty-one (21) meetings during the period under review and considered a total of fifty-six (56) Statutory Instruments. Your Committee also undertook local tours to Livingstone and Lusaka.

PART I

4. CONSIDERATION OF STATUTORY INSTRUMENTS

MINISTRY OF LABOUR AND SOCIAL SECURITY

Statutory Instrument No. 1 of 2009 – The National Pension Scheme (Pensionable Earnings) (Amendment) Regulations 2009

The Statutory Instrument was issued in order to revise the National Pension Scheme contribution tables to be applied in each particular year.

Committee Observations and Recommendations

Your Committee note the issuance of the Statutory Instrument.

MINISTRY OF FINANCE AND NATIONAL PLANNING

Statutory Instrument No. 2 of 2009 - The Income Tax (Foreign Organisations) (Approval and Exception) Order 2009

The Statutory Instrument was issued in order to provide Income Tax relief to the African Development Bank and the African Export Import Bank. The two institutions are international financial institutions to whose protocol of establishment the Government of the Republic of Zambia is party.

Committee Observations and Recommendations

Your Committee note the issuance of the Statutory Instrument.

Statutory Instrument No. 3 of 2009: Value Added Tax (Zero Rating Order)

The Statutory Instrument was issued in order to make changes to the principal Value Added Tax (Zero Rating) order of 1996 in order to exclude some items such as consumables (fuel, tyres, lubricants, etc) from the list of items that qualify for zero-rating under any technical aid programme or project.

The Statutory Instrument was also issued to zero rate goods and services supplied or imported by a developer of a multi-facility economic zone (MFEZ) or industrial parks in order to encourage investment. The other object was to zero rate agricultural equipment and spares such as windmills, maize vehicles, tractors up to 60 HP, two wheel tractors and accessories. This measure would reduce impact costs and enable farmers expand production and make farming viable.

Committee Observations and Recommendations

Your Committee take note the issuance of the Statutory Instrument.

Statutory Instrument No. 4 of 2009: Value Added Tax (General Amendment Regulation)

The Statutory Instrument was issued in order to make changes to the principal Value Added Tax (General) (Amendment) Regulations of 1995 in order to increase the refund period for claiming input tax on exploration expenditures from five to seven years.

Committee Observations and Recommendations

Your Committee take note of the issuance of the Statutory Instrument

Statutory Instrument No. 5 of 2009: Taxation Provisional Charging Order

The Statutory Instrument was issued in order to give the Customs and Excise (Amendment) Bill, 2009, Value Added Tax (amendment) Bill, 2009 the force of law effective 31st January 2009 until the Bills become law.

Committee Observations and Recommendations

Your Committee note the issuance of the Statutory Instrument.

Statutory Instrument No. 6 of 2009: Customs and Excise Duties (Suspension of Duty on Manufacturing Inputs).

This Statutory Instrument was issued in order to suspend free duty payable on goods imported for use as inputs or a component in the manufacture of goods in Zambia. The Statutory Instrument would simplify the eligibility criteria that were previously administered under Statutory Instrument No. 23 of 1994 by removing the requirement to submit the evidence to prove "Uncompetitiveness" against similar imported goods.

Committee Observations and Recommendations

Your Committee note the issuance of the Statutory Instrument.

Statutory Instrument No. 7 of 2009: Customs and Excise Duties (Public Benefit Organisations)

The Statutory Instrument was issued to abolish the voucher system and replace it with a direct rebate. Under Statutory Instrument No. 60 of 1996, the Government issued a voucher to cover the taxes due on imports by approved organisations. The challenges included a heavily centralised registration process and delays in issuance of these vouchers which were reflected as outstanding payments to the Zambia Revenue authority (ZRA). The issuance of Statutory Instrument No. 7 of 2009 would simplify the administration process through granting of direct rebates.

Committee Observation and Recommendations

Your Committee note issuance of the Statutory Instrument

Statutory Instrument No. 8 of 2009: Customs and Excise Duties (Amendment Regulations)

The Statutory Instrument was issued to restrict tax exemptions to materials provided by third parties. These are companies that are contracted by organisations engaged in scientific, relief or other developmental projects. These are listed and approved by the Minister for tax relief.

The Statutory Instrument further exempts from customs and excise duty materials, equipments, machinery and accessories imported for the development of the multi facility zones (MFEZ), industrial parks and rural business.

Committee Observations and Recommendations

Your Committee note the issuance of the Statutory Instrument.

Statutory Instrument No. 9 of 2009 – The Loans and Guarantees (Authorisation) (Delegation of Functions) (No. 1)

In order to finance the Kalabo-Sikongo-Angola Border Road Project, the Government of Zambia and the OPEC Fund for International development (OFID) signed a Loan Agreement for US\$10.0 million on 13th February 2009. This loan was part of the co-financing requirement for the project among the Government of Zambia, OFID, Kuwait Fund and the Arab Bank for Economic Development in Africa (BADEA).

Under the *Loans and Guarantees (Authorisation) Act*, the Minister of Finance and National Planning delegated the authority to Mr Mathias Daka, who was a public officer serving as Charge d' Affaires at the Zambian Embassy in Switzerland and accredited to the Republic of Austria, to sign the above-mentioned agreement on his behalf.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument

Statutory Instrument No. 25 of 2009 - The Value Added Tax (Exemption) (Amendment) Order 2009

The Ministry of Finance and National Planning submitted that this Statutory Instrument was issued in order to exempt higher education for Value Added Tax purposes. This is intended to make higher education less costly and accessible to many in the country.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 26 of 2009 – The Value Added Tax (Zero-Rating) (Amendment) (No. 2) Order 2009

The Ministry of Finance and National Planning stated that this piece of legislation was issued in order to zero-rate tractors up to 90 HP. This measure was meant to reduce input costs and enable farmers expand production and make farming a viable sector.

Committees Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 58 of 2008 – The Customs and Excise (Remission) (Lumwana Mining Company Regulations 2008)

The Ministry of Finance and National Planning submitted that this piece of legislation was issued in order to exempt Lumwana Mining Company from excise duty on electrical energy, diesel and grinding balls. This was in accordance with the Development Agreement signed between the company and the Government of Zambia. After the cancellation of the Development Agreement, the piece of legislation continued to have effect in order to support private sector investment, particularly for Lumwana who are engaged into development of a new town.

This Statutory Instrument was issued was taking into consideration the capacity of local foundries to manufacture grinding balls locally. In this regard, while a limited period of five years has been provided, the enforcement of the Statutory Instrument will depend on the ability of the domestic industry to manufacture the product locally.

Committee’s Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 124 of 2009 - The Customs and Excise Act, the Customs and Excise (Suspension) (Amendment) Regulations 2008

The Statutory Instrument was issued to increase customs duty on imported petrol and diesel in order to level the cost of imported fuel to the locally manufactured products at Indeni Oil Refinery, whose feedstock was imported when oil prices were still high.

Committee Recommendations and Observations

Your Committee note the issuance of the Statutory Instrument.

MINISTRY OF MINES AND MINERAL DEVELOPMENT

Statutory Instrument No. 84 of 2008 - *Mines and Minerals Development Act: Mines and Minerals Development (General) Regulations, 2008*

The Statutory Instrument was issued to give effect to the Mines and Minerals Development (General) Regulations.

Committee Observations and Recommendations

Your Committee note the issuance of the Statutory Instrument.

Statutory Instrument No. 85 of 2008 *Mines and Minerals Development Act: Mines and Minerals Development (Prospecting, Mining and Milling of Uranium Ores and other Radioactive Mineral Ores) regulations, 2008*

The Statutory Instrument was issued in order to control the development and exploitation of uranium deposits.

Committee Observations and Recommendations

Your Committee note the issuance of Statutory Instrument.

MINISTRY OF AGRICULTURE AND COOPERATIVES

Statutory Instrument No. 90 of 2009 - the *Livestock Disease Act, the East Coast Fever (Amendment) Regulations, 2008.*

The Statutory Instrument was issued to lift the ban on the movement of sheep and goats from the Eastern province that was imposed in 1964.

Committee Observations and Recommendations

Your Committee note the issuance of Statutory Instrument.

MINISTRY OF HOME AFFAIRS

Statutory Instrument No. 41 of 2008 – The Transfer of Convicted Prisoners (Designated Country) Regulations 2008

The Ministry of Justice submitted that the regulations were made pursuant to the powers contained in section three of the *Transfer of Convicted Persons Act No. 26 of 1998*.

The objective of these regulations was to designate the Netherlands as a country to and from which convicted persons may be transferred.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument

Statutory Instrument No. 64 of 2008 - Immigration and Deportation (Amendment) Regulations 2008

The Ministry of Home Affairs submitted that Statutory Instrument No. 64 was done to respond to unfolding situations as obtaining in the global village. The Visa fees were adjusted upwards, having been stagnant for a long time, from:

US \$25 to US \$50 for single entry;
US \$40 to US \$80 for double entry; and
US \$76 to US \$160 for multiple entry.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 104 of 2008 - The Immigration and Deportation (Amendment) Regulations, 2008

The Ministry of Home Affairs submitted that Statutory Instrument No. 104 was issued five months after Statutory Instrument No. 64. The Instrument was done when the Ministry of Tourism Environment and National Resources announced the reduction in visa fees stating that the fees were high and impacting negatively on tourism and that since the increase in visa fees, the number of tourists had reduced tremendously. A proposal was made to re-adjust the fees downwards as a mitigatory measure, which saw the visa fee being reduced from US \$160 to US

\$80 for both multiple and double entry visas regardless of nationality. Statutory Instrument No. 104 of 2008 combined the visa fees for double entry and multiple entry to one where there is no distinction in terms of fees between double and multiple entry visas as they all attract the fee of US \$80.

It further scrapped the issue of reciprocity as in the case of American and British Nationals and introduced a segment of day Tripper visa which attracted a fee of US \$20. American and British nationals were now paying visa fees of US \$50 for single entry.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 101 of 2008 - The Parole Rules, 2008

Your Committee were informed that the statutory instrument was issued pursuant to the power contained in sections one hundred and thirteen B and one hundred and forty-six of the *Prisons Act Cap 97*.

It provided for rules in the administration of the parole system.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

MINISTRY OF JUSTICE

Statutory Instrument No. 53 of 2008 – The National Assembly By-Election (Milanzi Constituency No. 45) (Elections and Times of Poll) Order

The Ministry of Justice submitted that the order was made pursuant to the powers contained in Regulation 8 of the Electoral (General) Regulations, 2006.

The objective of the order was to stipulate the date and time of polls for the filling of a vacancy of the Parliamentary seat for Milanzi Constituency No. 45 following the death of Dr Chosani A Njobvu, MP.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 55 of 2008 – The Local Government By-Elections (Election Dates and Times of Poll) (No. 3) Order

The Ministry of Justice submitted that the order was made pursuant to the powers contained in section twelve of the *Local Government Elections Act 282*.

The objective of the order was to stipulate the dates and times of polls for the filling of a vacancy for Councillors in two wards in Siavonga and Kaoma.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 57 of 2008 – The High Court (2008 Sessions) Regulations

The Ministry of Justice submitted that the regulations were made pursuant to the powers contained in section nineteen of the *High Court Act Cap 27*.

The objective of these regulations was to stipulate the session dates for the sittings of the High Court for the year 2008.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 67 of 2008 – The National Constitutional Conference (Committees) (Amendment) Regulations 2008

The Ministry of Justice explained that the regulations were made pursuant to the powers contained in section thirty-three of the *National Constitutional Conference Act No. 19 of 2007*.

The objective of these regulations was to revoke the provision relating to the casting of a deciding vote in order to ensure that all the decisions of a committee were arrived at by consensus.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

MINISTRY OF LOCAL GOVERNMENT AND HOUSING

Statutory Instrument No. 12 of 2009 - The Local Government (Appointment of Local Government Administrator) (Chinsali District Council) Order, 2009

The Ministry of Local Government and Housing submitted that the Statutory Instrument was issued to suspend the Chinsali District Council and to appoint a Local Government Administrator. The Council was suspended by the Minister. Whenever, by reason of the refusal, failure or inability of a council adequately to discharge all or any of its functions the Minister considers necessary or expedient, in the interest of local administration to do so, may by statutory instrument, appoint a public officer and suspend all Councillors of the Council from performing their duties.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 39 of 2008 – The Local Government (Prohibition of Smoking in Public Places Regulations 2008

The Ministry of Local Government and Housing submitted that the By-Law was introduced to prohibit the public from smoking in areas designated as public places.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 40 of 2008 – The Local Government (Telecommunications Mast) (Levy) Regulations 2008

Your Committee were informed that the Statutory Instrument was introduced to levy all institutions that had erected telecommunications tower masts in the districts. The Statutory Instrument was also issued to standardize the charge on these masts for all the Councils.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 45 of 2008 – The Mazabuka Municipal Council (Pole Levy) By-Laws, Order, 2008

The Statutory Instrument was issued to increase the revenue base for the Council. This levy had already been introduced in other councils around the country.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory instrument No. 47 of 2008 – The Masaiti District Council (Sweet Potato Levy) By-Laws, 2008

Your Committee heard that the Statutory Instrument was issued to increase the revenue base for the Local Authority. This levy targeted the traders who exported the sweet potatoes from the district to other towns and had already been approved for other councils and it is being administered.

Committees Observations and recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 48 of 2008 – The Masaiti District council (Livestock Levy) By-Laws, 2008

The Ministry of Local Government and Housing submitted that the Statutory Instrument was issued to increase the revenue base for the Council. This levy had already been introduced in other councils around the country and it captured traders who were exporting cattle out of the district.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 49 of 2008 - The Masaiti District Council (Bird Levy) By Laws Order, 2008

The Ministry of Local Government and Housing explained that the Masaiti District Council was one of the newly created councils struggling to improve their revenue by coming up with measures that would help them achieve this objective. One such measure was the introduction of by laws. Therefore, this By-Law was introduced to create a wider revenue base for the Local Authority.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 50 of 2008 – The Masaiti District Council (Timber Levy) By-Laws, 2008

Your Committee were informed that the Statutory Instrument was issued to create a wider revenue base for the Council, which had limited revenue sources.

The Statutory Instrument was also issued to regulate the use of the abundant natural resources in the District. There were many traders in the District that were dealing in commercial timber which was depleting the timber in the District. Therefore, the levy would also help the Council generate some income that it could use to provide services to the community in the District.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory instrument No. 51 of 2008 – The Masaiti District Council (Charcoal Levy) By-Laws, 2008

The Statutory Instrument was issued to create a revenue base for the Council. There were quite a good number of traders trading in charcoal, who were not paying any form of levy to the Council.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 52 of 2008 – The Masaiti District Council (Sand Levy) by Laws, 2008

The Ministry of Local Government and Hosing submitted that the Statutory Instrument was issued to create more revenue bases for the Local Authority. There were many traders who were selling sand in the district at the expense of the local communities. The revenue realized from this levy would be used to provide services such as improvement of road infrastructure and other social amenities.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 62 of 2008 - The Luanshya Municipal Council (Sand Levy) By-Laws, 2008

The Statutory Instrument was issued to broaden the Council's revenue base. There were quite a good number of commercial traders in sand, who were exporting sand to other districts.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 63 of 2008 – The Luanshya Municipal Council (Timber-Levy) By-Laws, 2008

The Statutory Instrument was issued to create a wider revenue base for the Council, which had limited revenue sources.

The Statutory Instrument was also issued to regulate the use of the abundant natural resources in the District. There were many traders in the District that were dealing in commercial timber which was depleting the timber in the District. Therefore, the levy would also help the Council generate some income that it could use to provide services to the community in the District.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 72 of 2008 – The Local Government (Re-Appointment of the Local Government Administrator) Kapiri Mposhi

The Ministry of Local Government and Housing submitted that the Statutory Instrument was issued to extend the period for the Local Government Administrator for another ninety (90) days to enable the administrator complete his tasks.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 109 of 2008 – (Chief Recognition) No. 12 Order, 2008

The Ministry of Local Government and Housing submitted that the Statutory Instrument was issued to recognise Ms Musenge Baptista Mbokoshi Kaindu of Kauni area (Mbabala Island) as Chieftainess Mulongwe of the Ngumbo people of Samfya District in the Luapula Province of Zambia. This was after she was selected on 24th September, 2008 by the Royal Traditional Council and Provincial Administration according to the tradition and customs obtaining in the area.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 110 of 2008 – The Chief’s (Recognition No. 13) Order 2008

The Ministry of Local Government and Housing explained that the Statutory Instrument was issued to recognize Mr Winstone Chansa Chifumbe of Itabwa area as Chief Kaputa of the Itabwa people of Kaputa District in the Northern Province of Zambia. This was after Mr Chansa was successfully selected by the Council of Traditional Leaders and Provincial Administration of Northern Province at the meeting held at the Palace on 15th February 2008, according to the tradition and customs obtaining in the area.

Committee’s Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 111 of 2008 (The Chiefs Recognition) Order No. 14 2008

Your Committee heard that the Statutory Instrument was issued to recognise Mr Mulubwa Kaole Visto of Bwaushi area as Chief Kalasa-Lukangaba of the Ushi people of Mansa District in the Luapula Province of Zambia. This was after he was selected by the Royal Traditional Council and Provincial Administration according to the tradition and customs obtaining in the area at a meeting held at the Palace on 10th July, 2006.

Committee’s Observations and Recommendations

Your Committee note the Statutory Instrument.

Explanatory Memoranda to Statutory Instrument No. 112 of 2008: the Chiefs (Recognition) (No. 15) Order 2008

Your Committee were informed that the Statutory Instrument was issued to recognise Mr Evaristo Chama Pasha of Chinkutile area as Senior Chief Kalasa Mukoso of Kabende People of Samfya District in the Luapula Province of Zambia. This was after he was selected by the Royal Traditional Council and Provincial Administration at a meeting held on 17th December, 2007 at Samfya District Council Chamber in accordance with the tradition and customs obtaining in the area.

Committee’s Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 113 of 2008: The Chiefs (Recognition No. 16). Order 2008

The Ministry of Local Government and Housing submitted that the Statutory Instrument was issued to recognize Mr Josiah Mubukwanu Litia Nyumbu of Mushuwa/Nangóko area as Chief Chiengele of the Lozi people of Mongu District in the Western Province of Zambia. This was after Mr Mubukwanu was successfully selected by the Council of Traditional leaders and Provincial Administration of Western Province at a meeting held at the Chief’s Summer Palace, according to the tradition and customs obtaining in the area.

Committee’s Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 114 of 2008: The Chiefs (Recognition) (No.17) Order, 2008

Your Committee heard that the Statutory Instrument was issued to recognize Mr Isaac Mwendachabe of North Lukanga area as Chief Mukubwe of the Lima/Lenje people of Kapiri Mposhi District in Central Province of Zambia. The recognition was done after Mr Mwendachabe was selected by the Electoral College in accordance with the Lima/Lenje tradition and customs obtaining in the area.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 115 of 2008 - The Chiefs (Recognition) No. 18 Order 2008

The Ministry of Local Government and Housing stated that the Statutory Instrument was issued to recognize Mr Morris Ndhlovu of Chivuche area as Chief Mphamba of the Tumbuka people of Lundazi District in the Eastern Province of Zambia. The recognition was done after Mr Ndhlovu was successfully elected by the Electoral College in accordance with the tradition and customs of the Tumbuka people obtaining in the area.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 116 of 2008 - The Chief's (Recognition) No. 19) Order 2008

The Statutory Instrument was issued to recognize Mr Edward Chitimbwa of Pumpe area as Chief Chitimbwa of the Lungu people of Mulungu District in the Northern Province of Zambia. The recognition was done after Mr Chitimbwa was selected by the Electoral College at a meeting held at the Chief's Palace on 10th November 2008 in accordance with the Lungu tradition and customs obtaining in the area.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 117 of 2008 - The Chiefs (Recognition) No. 20 Order 2008

Your Committee were informed that the Statutory Instrument was issued to recognize Mr Tyford Kumwenda of Chilenje area as Chief Chifunda of the Senga people of Chama District in the Eastern Province of Zambia. The recognition was done after Mr Kumwenda was duly elected by the Electoral College in accordance with the Senga tradition and customs obtaining in the area.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 118 of 2008 - The Chiefs (Regulation) No. 21 Order 2008

The Ministry of Local Government and Housing submitted that the Statutory Instrument was issued to recognize Mr Dennis Mumba Chiteme of Chipawa Tumbwe and Titenge area as new Chief Mboshya of Lala people of Mkushi District in the Central Province. This was after Mr

Mumba was successfully selected by the Council of Traditional Leaders and Provincial Administration of Central Province at the meeting held at the Palace according to the tradition and customs obtaining in the area.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 120 of 2008 – The Local Government (Election of Mayor, Deputy Mayor, Chairman and Vice Chairman) Postponement Order 2008

Your Committee was informed that the Instrument was issued to postpone the elections of Mayors and their Deputies, the Chairmen and their Vice Chairmen countrywide. This was made to enable the Councils quickly adopt and approve their budgets for the 2009 civic year to enable the Ministry approve them.

Committees Observations and Recommendations

Your Committee observed that the Minister of Local Government and Housing has no powers to postpone the elections of Mayors, Deputy Mayors, Chairmen and Vice Chairmen. In this regard, the issuance of Statutory Instrument No. 120 of 2008 is *ultra vires* the Local Government Act, which provides in Section 16(2) that these elections be held after 1st September of each year but within that same year.

Your Committee, therefore, resolved to call the Attorney-General as well as the Permanent Secretary, Ministry of Local Government and Housing, to appear before them on Friday, 26th June, 2009 at 1430 hours. The witnesses were required to state whether the Minister of Local Government and Housing had powers to issue Statutory Instrument No. 120 of 2008 under powers delegated to him by Section 119 of the Local Government Act, Chapter 281 of the Laws of Zambia as read with Section 16 of the same Act.

SUBMISSION FROM THE MINISTRY OF LOCAL GOVERNMENT AND HOUSING

The Permanent Secretary explained that Statutory Instrument No.120 of 2008 was issued for three reasons, namely:

- (i) in September, 2008 it was difficult to hold mayoral elections due to the state funeral for the late President Levy Mwanawasa, SC.
- (ii) there were Presidential elections; and
- (iii) the Minister was challenged in the Courts of Law by an opposition party.

The Permanent Secretary stated that the above reasons had made it difficult to hold elections and the judicial challenge had caused the matter to drag on.

On the question of the Court outcome, your Committee heard that there was no Court ruling as there was an *ex curia* settlement leading to the Statutory Instrument being withdrawn.

The Permanent Secretary conceded that the law was straightforward and that the Ministry admitted to wrong-doing. He assured your committee that by September, 2009 new elections

would be held as per provision of the law despite the fact that those in office had only served a short term.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

MINISTRY OF COMMERCE, TRADE AND INDUSTRY

Statutory Instrument No. 65 of 2008 - The Trade Licensing (Fees) Regulations 2008

Statutory Instrument No. 125 of 2008 - The Trade Licensing (Fees) Regulations 2008

On both Statutory Instruments Nos. 65 and 125 of 2008, the Ministry of Commerce, Trade and Industry submitted that these were made pursuant to powers contained in section six and twenty-eight of the *Trade Licencing Fees Act*. The Statutory Instrument was making regulations on Trade Licencing Fees.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

MINISTRY OF EDUCATION

Statutory Instrument No. 122 of 2008 – The Education (High School Boards) (Establishment) Order 2008

The Ministry of Education submitted that pursuant to section nineteen of the Education Act, the following high school boards had been gazetted:

- (i) Nampundwe High School;
- (ii) Luanshya Central High Schools;
- (iii) Milemu High School;
- (iv) Ndeke Caritas High School;
- (v) Ndola Technical Girls High Schools; and
- (vi) Kafumbwe High School.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 10 of 2009 – The Education (High School Boards) (Establishment) Order 2009

The Ministry of Education explained that pursuant to section nineteen of the Education Act, the following high school boards had been gazetted:

- (i) Mukuni High School;
- (ii) Nkolola High School;
- (iii) Kapululira HighSchool, and
- (iv) Chikanta – Jonathan Sim High School.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 16 of 2009 – The Education (Upper Basic Schools) Order, 2009

The Ministry of Education submitted that the order was made pursuant to the powers contained in section 11 of the *Education Act Cap 134*.

The objective of the order was to declare the basic schools listed in the schedule as upper basic schools in order to increase access to secondary education in the North-Western Region.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

MINISTRY OF WORKS AND SUPPLY

Statutory Instrument No. 119 of 2008 - The National Council for Construction (Contractors) (Code of Conduct) Regulation

Your Committee heard that National Council for Construction (NCC) was mandated to promote, develop and regulate the construction industry in Zambia as enshrined in the *National Council Construction Act No. 13 of 2003*.

The Council, after being in existence for a few years, realized that some of its functions could not be effectively carried out in the absence of Regulations, therefore, the need to strengthen its regulatory functions and have a stronger grip on the industry.

Drawing authority from Section 27(2) (e) of *National Council for Construction Act No. 13 of 2003*, the Council decided to come up with a Contractors' Code of Conduct for Contractors to supplement the provisions of the Act.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

OFFICE OF THE VICE-PRESIDENT

Statutory Instrument No. 81 of 2008 – The Public Holiday (Declaration) 2008

The Office of the Vice President submitted that the Statutory Instrument was issued in accordance with the powers contained in section three paragraph 2 of the *Public Holidays Act Cap. 272*.

The objective of the notice was to declare 3rd September, 2008 a public holiday in view of the state funeral following the death of the late President, Dr Levy Patrick Mwanawasa, SC.

Committee's Observations and Recommendations

Your Committee note the Statutory Instrument.

Statutory Instrument No. 83 of 2008 – (Declaration) of the Date of the Presidential Election

The Office of the Vice President stated that the Statutory Instrument was issued pursuant to the powers contained in articles 38 and 44 of the Constitution of Zambia Act Cap, 1 of the Laws of Zambia.

The Statutory Instrument was issued in order to declare 30th October, 2008 an election date following the death of the late President, Dr Levy Patrick Mwanawasa, SC.

Committees Observations and Recommendations

Your Committee note the Statutory Instrument.

PART II

5. LOCAL TOURS FOR THE THIRD SESSION OF THE TENTH NATIONAL ASSEMBLY

- (i) Courtesy call on Southern Province Minister
- (ii) Tour of Kazungula Border Post
- (iii) Victoria Falls Customs Border Post
- (iv) Maramba Market, Livingstone
- (v) Ministry of Justice
- (vi) Government Printing Department
- (vii) Town Centre Market, Lusaka

(i) COURTESY CALL ON SOUTHERN PROVINCE MINISTER

Your Committee paid a courtesy call on the Provincial Minister, Hon D Munkombwe, MP, who in turn welcomed the Members to the province.

(ii) TOUR OF KAZUNGULA BORDER POST

Objective of Tour

The tour was made pursuant to Statutory Instrument No. 11 of 2008 – The Customs and Excise (General) (Amendment) Regulation, 2008. The purpose of the tour was to ascertain the efficiency of the ASYCUDA System in relation to goods clearance.

Additionally, the tour was also made following your Committee's consideration of Statutory Instrument No. 26 of 2009 – The Value Added Tax (Zero Rating) (Amendment) (No. 2) Order 2009, which was issued to zero rate tractors up to 90 horse power. This measure was meant to reduce input costs and enable farmers expand production and to make farming a viable sector. Your Committee's objective in this regard was to see the impact, if any, that the passing of this legislation had had.

The Station Manager at Kazungula Border Post submitted that there was an improvement in the working of the ASYCUDA System which was working at approximately 98% capacity/efficiency. He added, however, that there were some adjustments that would be required as the V stat was failing to cope with the volumes of trade. Your Committee heard that the frequent breakdowns in system affected revenue coming into the country because tourists who were coming into the country for an hour

or two to see the Victoria Falls were discouraged when border clearance took two hours or more. Sometimes tourists came when the system was down leading to data being inputted manually when there was already insufficient manpower. In this regard, the Station Manager explained that instead of using V stat, they were looking forward to using fibre optic using ZESCO transmission lines. He reiterated that the effectiveness of the system was fine but it was affected by the intermittent breakdowns.

On the issue of trucks/tractors, the Station Manager stated that the impact had not been seen. He explained that the few trucks that were being imported were not being imported by indigenous Zambians. He was of the view that there was need to empower local transporters by giving them contracts. Further he was of the view that there was a missing link hence the benefits of this piece of legislation were going to other nationals and not Zambians. He explained that the direct benefit of this law was to the individual and neighbouring countries and not the country. He stated that there was need to balance laws and the best way of legislating was to benefit the locals.

On the question of whether the ASYCUDA System had helped in revenue collection, your Committee were informed that it had and, in this regard, the collection of revenue had increased from K400 million per month in 2006 before ASYCUDA to K22 billion a month. Your Committee heard that the system was very efficiency as it was not being used above 80% of its capacity. The efficiency of the system was hampered by the lack of computers as there were only three in the whole station and also by the lack of sufficient staff who were at 54% of the establishment. The staffing complement had been affected by the freeze in employment at the Zambia Revenue Authority which had been on for the last three years. The Station Manager explained that ASYCUDA cannot work well without staff.

Regarding the zero rating of Value Added Tax on tractor up to 90 HP and whether this should be extended, the Station Manager stated that it was necessary to extend the period but that there was need to check on who was being empowered by using the diplomatic model where the truck could be on Red Book for five years and could not be sold in that period. He stated that currently importation of tractors was followed by immediate sale. He added that foreigners were the ones with the financial capacity to use this facility. Your Committee heard that the same principle used a few years ago on the importation of mini buses should be employed.

With regard to fraud, the Station Manager explained that issues of fraud had been eliminated because of the ASYCUDA System. He added, however, that fraud had not been eliminated between the manual and electronic systems.

Your Committee undertook a physical check of the facilities at the Boarder Post and learnt that smooth flow of traffic and the clearance rate was affected by the capacity of the pontoons. There were approximately 140 trucks per day but the pontoon only had the capacity of eighty trucks per day i.e. forty trucks from each side.

(iii) VICTORIA FALLS CUSTOMS BORDER POST

The tour objectives were to ascertain the efficiency of the ASYCUDA system in relation to goods clearance pursuant to Statutory Instrument No 11 of 2008.

The Station Manager submitted that the ASYCUDA System had been helpful to ZRA in providing proper controls. He explained that Victoria Falls was a small border post and it did not do a lot of clearing of goods.

Your Committee were informed that previously people were evading tax through the report system. They learnt that the ASYCUDA System had arrested the system of fraud and tax evasion. Debt collection was made easier as it was possible to block the Tax Payers Identification Number (TPIN) of those who did not pay.

The Station Manager explained that, previously the station used to be on dial up but currently, with optic fibre, connectivity had improved.

On zero rating of Value Added Tax on tractors up to 90HP, he explained that the station did not do motor vehicle clearance but only general import orders. He stated that Zambians had not benefited from the legislation and that other nationals who had the resources to import were benefiting.

The Station Manager said there was need for a deliberate government framework to ensure that Zambians benefited. The other nationals were externalizing monies realized to their countries of origin. He added that the number of imports of tractors had reduced, meaning that Zambians were not able to afford them despite being zero rated.

The Station Manager stated that the facility should be extended but with a deliberate policy where Zambians could access loans through some revolving fund.

On the question of whether NECOR was adding value or was just an added cost, your Committee heard that before the services of NECOR were engaged, there were delays and fraud were prevalent. NECOR was adding value but this value was diminishing as NECOR had achieved the objective but there was now need for other agents to be given access to the system as long as they did not endanger the system.

Your Committee undertook a physical tour of the facility and learnt that there were staffing challenges with six more needed.

(iv) MARAMBA MARKET, LIVINGSTONE

The tour objective was pursuant to your Committee's consideration of the Statutory Instrument No. 83 of 2007 - *The Market and Bus Station Act (Commencement Order), 2007*

In this regard, your Committee wanted to ascertain that market stalls were being given to indigenous Zambians.

Courtesy call on Livingstone Mayor

Your Committee started their tour by paying a courtesy call on the Mayor of Livingstone. During this meeting, your Committee were informed that, in Livingstone, all market stalls were allocated to indigenous Zambians. They were further informed that Maramba market was unique in that it was put up during the UNIP era and partly built by the council while the other part, Maramba extension, was a cooperative market.

Your Committee were informed that Livingstone, being the tourist capital, needed a modern market. The brief was followed by a physical tour of Maramba market.

(v) MINISTRY OF JUSTICE

The objective of the tour was for your Committee to familiarise themselves with the procedure in relation to the issuance of statutory instruments.

In this regard, the Chief Parliamentary Counsel explained that the first thing that the Ministry of Justice considers is whether a particular statutory instrument is allowed under a particular Act. This involves checking the Act thoroughly. She stated that the request to the Ministry of Justice sometimes took the form of a letter requesting the Ministry to do something, for instance, on commencement of an Act of Parliament where, at other times, the request could be in the form of drafts, especially those dealing with technical issues. At times, this may be in form of notes explaining why a statutory instrument is being passed.

Your Committee learnt that if a statutory instrument had retrospective effect, the Ministry of Justice had to ensure that this was provided for under the Act.

There were, however, certain issues that could only be provided for in a principal Act and not in a statutory instrument. These included:

- (i) appropriation of moneys;
- (ii) fundamental changes in policy;
- (iii) provisions that impact on human rights and fundamental freedoms;
- (iv) penalties and offences unless specifically provided for in the principal Act;
- (v) taxation;
- (vi) creation of statutory bodies; and
- (vii) creation of an Act.

The Chief Parliamentary Counsel explained that the time factor for working on a statutory instrument differed depending on the complexity of the subject matter. She further explained that sometimes the Ministry of Justice took long in working on statutory instruments due to staffing challenges.

After approval had been given for publication, the statutory instrument was sent back to the instructing authority and it had to be published in the government gazette within thirty days. At this point, ministries or issuing authorities are not allowed to change or correct the statutory instrument. If this is done, these changes have to be approved by the Ministry of Justice. Your Committee heard that there were bodies that were mandated to pass statutory instruments and these were ministries, local authorities, the President and commissions.

On your Committee's question regarding the Environmental Protection and Pollution Control Statutory Instrument, which was ultra vires the principal Act, as well as on the mayoral elections postponement, the Chief Parliamentary Counsel explained that both statutory instruments were mistakes. She explained that sometimes when the principal Act had not been read properly, one may issue a statutory instrument which is ultra vires.

It was also possible for draft persons to use precedent without reading the principal Act and statutory instrument properly. In this regard, there was need to research and inquire before passing a statutory instrument. She stated that there were instances when a

statutory instrument in the public interest was passed quickly and had powers so wide that it could fall within the ambit of the principal Act.

Specifically regarding the *Environmental Protection and Pollution Control Act* Statutory Instrument, she explained that the problem was with the instructing ministry which had given verbal instructions to the Ministry of Justice to process the Statutory Instrument to revoke the problem regulations. The Ministry was awaiting written instructions and had, in this regard, written to the relevant Ministry over the matter.

Regarding the revocation of statutory instruments that were ultra vires, your Committee heard that it was the issuing authority that had power to revoke. In this regard, the relevant ministry had to instruct the Ministry of Justice to revoke the Statutory Instrument. The process of revocation was quick as this would be passed within a day or two. Statutory Instruments which were no longer useful were equally revoked.

Your Committee were informed that, where individuals and ministries were overstepping their powers the Ministry of Justice ensured that its advice was put on record. The Ministry of Justice in such instances would write to the Permanent Secretary and rarely resorted to the Minister. However, when there was no response, the Ministry of Justice sometimes copied the letters to the Minister or the Vice President. Your Committee heard that the only time the Ministry of Justice copied State House was if the originator had copied State House. There were instances when the Minister was not properly advised by the officials in a ministry.

Your Committee were informed that the drafting of legislation could create problems where the person charged with creating regulations was unwilling to work.

A Statutory Instrument was effective from the date of publication unless it carried a date of commencement. The Chief Parliamentary Counsel stated that by and large, Statutory Instruments were an advantage as they allowed for details that could not be included in the principal Act. Furthermore dealt the Statutory Instruments left room for flexibility and mostly dealt with day to day problems. She added that there was possibility of abuse but this was rare as to date most Statutory Instruments remained unchallenged. Statutory Instruments prevented frequent changes to the principal Act.

Committee's Observations and Recommendations

Your Committee observe that a lot of money is being lost as a consequence of defiant permanent secretaries and ministers who were passing laws that were ultra vires.

Your Committee recommend that each new Committee on Delegated Legislation should be familiarized with the process of passing of Statutory Instruments.

(vi) GOVERNMENT PRINTING DEPARTMENT

Your Committee were informed that the department was established in 1901 in Fort Jameson (now Chipata) to serve North Eastern Rhodesia for the purpose of providing printing services and stationery to the Government of North Eastern Rhodesia. The department moved to Lusaka in 1935 and still continued to give printing services to the Government.

Your Committee learnt that the department's original service was the provision of legislative materials such as bills, Statutory Instruments and gazettes. They heard that the Government could do other printing works elsewhere but not the legislative documents mentioned above.

Challenges

The Government Printer explained that the challenges included poor recapitalisation and lack of equipment. He stated that sometimes workers in the department had to work for 24 hours over a three (3) week period continuously. He added that funding was poor and that in the year 2009 the department had not been funded for three months, although it was expected to produce bills, gazettes and statutory instruments at short notice.

Your Committee learnt that between 1964 and 2006, the department used to print ballot papers but this was taken away when a decision to print the ballot papers in colour was made. At that time, the department did not have facilities to print the ballot papers in colour. The department had subsequently obtained the relevant machines but the Electoral Commission of Zambia was asking for more in terms of security, including the installation of CCTV cameras.

Your Committee heard that the Government Printing Department needed an assurance that the printing of ballot papers would be given to the department before it could procure security paper. The printing of Government cheques had also been withdrawn from the department.

Acts of Parliament and Statutory Instruments

Your Committee heard that the department scrutinised the statutory instruments before printing to ascertain:

- (i) that they had been signed by the issuing authority;
- (ii) the date when signed; and
- (iii) whether they had been approved by Ministry of Justice through the Office of the Parliamentary Counsel.

When the Statutory Instruments arrived at the department, copy preparation was done by putting the document in the Government printing department house style or format, type facing as well as type sizing. These were the guiding factors and this work was always treated with urgency. Your Committee heard that, at assent stage, they were treated as Bills for signature and put on different coloured paper. After signing, they came back to the department and were formally printed and ready for public sale.

All these had to be contained in the Government Gazette informing the public about the Bills, Acts as well as the Statutory Instruments. The Government Printer lamented that the Zambian public was not keen to read these legal documents. In this regard, he was of the view that Government Printing Department should be authorized to open a website.

Authority for printing Statutory Instruments

The Government Printer explained that there were two authorities and these were:

- (i) the official stamp from the Parliamentary Counsel; and

(ii) the signature of the person empowered to issue the statutory instrument.

He stated that the date of signing was also important as the statutory instrument had to be published within twenty-eight days of signing.

On the question of Appropriation-in-Aid, the Government Printer explained that this assisted the Department to function. He explained that in 2008 the Appropriation in Aid amounted to K3 billion while in 2009 it was only K1.6 billion and this was almost depleted.

As regards the issue of the website for the department, your Committee heard that the Ministry of Works and Supply had a website where all departments featured. They heard, however, that legislative materials were not attached as it was unclear whether there was need for clearance from the Ministry of Justice. There was also concern that there would be loss of revenue for the department if the documents were freely available on the website.

Your Committee proceeded to undertake a physical tour of the departments which included the following:

- (i) Computer room;
- (ii) Camera section; and
- (iii) Manning and designing.

(viii) TOWN CENTRE MARKET, LUSAKA

Your Committee were informed that the market was a joint venture between Lusaka City Council and a private developer. In this regard, the middle part of the market belonged to the Council with stalls being allocated to Zambians and the perimeter shops belonged to the developer who was at liberty to allocate to any person he pleased. The Director for markets explained that the stands in the middle were at a rent of K150,000 per month whereas the developer charged US \$1,350 per month per shop.

She explained that the Council had gone into a Public Private Partnership in order to come up with a modern market. However, the stalls for Zambians in the middle had not been done as there was more construction of the shops in the perimeter thereby overtaking the principle of markets. Your Committee heard that the investor needed to recoup his investment. The Lusaka City Council was not privy to the rent amount the developer was charging. The Director explained that the lease was for sixty years and that Lusaka City Council had tried to rectify this by seeking advice from the Attorney-General, who informed them that they had entered into the contract knowingly. Your Committee heard that the Council had reached a deadlock on the issue.

Your Committee undertook a physical tour of the market and discovered that some of the stalls, especially, along the perimeter were allocated to foreigners.

Committee Observations and Recommendations

Your Committee observe that the stands in the perimeter were part of the market and that the law had intended to empower Zambians. In this regard, they recommend that Government compels the private developer to allocate stands to Zambians in compliance with the law.

PART III

6. CONSIDERATION OF THE ACTION-TAKEN REPORT

CONSIDERATION OF THE ACTION-TAKEN REPORT ON THE PARLIAMENTARY COMMITTEE REPORT ON DELEGATED LEGISLATION FOR THE SECOND SESSION OF THE TENTH NATIONAL ASSEMBLY

Ministry of Tourism, Environment and Natural Resources

Statutory Instrument No. 28 of 1997 – The Environment Protection and Pollution Control (Environment Impact Assessment) Regulations

Para 8.1 Page 17

Your Committee were disappointed at the inertia and delay by the Ministry in revoking the old Statutory Instrument even after the then Minister of Justice and Attorney General had called for its withdrawal. The action by the Ministry was tantamount to disrespect of your Committee. Your Committee awaits the new statutory instrument.

Your Committee were informed that Part III of the said report discussed the Environment Council of Zambia and the Environmental Protection and Pollution Control Act (EPPCA), Chapter 204 of the Laws of Zambia provisions. Three issues were discussed, namely:

- (i) Supremacy of Environmental Council of Zambia decisions;
- (ii) Fines and Penalties; and
- (iii) Environmental Impact Assessment

An update on the issues raised above was presented below:

- (i) Supremacy of Environmental Council of Zambia decisions

The Government could not understand in what context this issue was discussed. The understanding of Environmental Council of Zambia, however, was that the *Environmental Protection and Pollution Control Act*, being the principal law on environment, gave superior mandate to the Electoral Commission of Zambia.

Your Committee took note of the response from the Government and recommended that they be provided with an update on the following:-

- Review and amendment of the *Environmental Protection and Pollution Control Act* and the maintenance of the supremacy of the Environmental Council of Zambia and establishment of fines and penalties to deter would be offenders.
- The Minister's assent and gazetting of the Environmental Council of Zambia proposed amendments to the Environmental Impact Assessment (EIA) Regulations Statutory Instrument No. 28 of 1997.

7. CONCLUSION

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

Your Committee also wish to thank all the witnesses who submitted memoranda to them for providing the basis for them to make informed decisions on the issues before them.

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

C K B Banda, SC, MP
CHAIRPERSON

September 2009
Lusaka