



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON LOCAL GOVERNANCE, HOUSING AND CHIEFS' AFFAIRS

ON THE SOLID WASTE REGULATION AND MANAGEMENT BILL, N.A.B. No. 18 OF 2018

FOR THE

THIRD SESSION OF THE TWELFTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON LOCAL GOVERNANCE, HOUSING AND CHIEFS' AFFAIRS ON THE CONSIDERATION OF THE SOLID WASTE REGULATION AND MANAGEMENT BILL, N.A.B. No. 18 OF 2018

Consisting of:

Mr N Samakayi, MP (Chairperson); Mrs S S Mulyata, MP (Vice Chairperson); Mr G Chiyalika, MP; Mr M M Kabanda, MP; Mr M Chikote, MP; Dr E I Chibanda, MP; Mr E Musonda, MP; Mr C Chali, MP; Mr D Livune, MP; and Dr C Kambwili, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

The Committee has the honour to present its Report on the consideration of the Solid Waste Regulation and Management Bill, N.A.B No. 18 of 2018.

2.0 MEETINGS OF THE COMMITTEE

The Committee held eight meetings to consider the Solid Waste Regulation and Management Bill, N.A.B No. 18 of 2018.

3.0 PROCEDURE ADOPTED BY THE COMMITTEE

The Committee requested written submissions from various stakeholders. The stakeholders were further requested to appear before the Committee to orally brief it on the contents of their memoranda and clarify issues that arose from various presentations. The witnesses who appeared before the Committee are at Appendix II of this Report.

4.0 BACKGROUND OF THE BILL

The management of solid waste in Zambia had over the years been a challenge for towns and cities, mainly due to increased population and economic activities resulting in increased generation of waste. Local Authorities, whose mandate included the management of solid waste, were often characterised by dysfunctional waste management systems with much of the waste in the streets, roadsides, drainages and open areas remaining uncollected. Currently, solid waste management was regulated primarily by the *Local Government Act, Chapter 281* of the laws of Zambia, the *Environmental Management Act No. 12 of 2011* and Statutory Instrument No. 100 of 2011. To this effect, the 2015 Living Conditions Monitoring Survey Report estimated that only 7 percent of households countrywide (5 percent urban and 2 percent rural) had solid waste collected for safe disposal. Consequently, this trend had inevitably compromised the environmental quality of many urban areas, resulting into a situation that had contributed into poor public health.

The Government of the Republic of Zambia realised that if the management of solid waste was left unchecked, it would only grow bigger and pose an increased burden on the municipal budget. Arising from this, the Ministry of Local Government, in conjunction with the Millennium Challenge Account, Zambia (MCAZ), conducted a study on the state of solid waste management in Lusaka. The study validated the need to enact solid waste legislation to address the challenges caused by the inefficient solid waste management and to maximise on the economic benefits of an efficient and effective solid waste system.

Against this background, the Government recognised the need to strengthen the solid waste management sector and create a conducive environment for the private sector to create more opportunities by way of enacting solid waste management legislation.

5.0 OBJECTS OF THE BILL

The Solid Waste Regulation and Management Bill, N.A.B. No 18 of 2018 seeks to provide for:

- a) the sustainable regulation and management of solid waste;
- b) general and self-service solid waste services;
- c) the incorporation of solid waste management companies and define their statutory functions;
- d) the licensing and functions of solid waste service providers, operators and self-service solid waste providers;
- e) the regulation, operation, maintenance and construction of landfills and other disposal facilities;
- f) the setting and approval of tariffs for management of solid waste and provision of solid waste services; and
- g) matters connected with, or incidental to, the foregoing.

6.0 SALIENT PROVISIONS OF THE BILL

The salient features of the Bill are as set out below.

PART I - PRELIMINARY PROVISIONS

Clauses 1 to 5

This part provides for the title of the Bill, definitions of the key terms used in the Bill and that this Bill once enacted will not apply to hazardous waste, e-waste and healthcare waste and waste regulated under the *Environmental management Act, No. 12 of 2011*.

Further, this Part provides for key concepts and principles of solid waste management and regulation, such as, solid waste being a resource and the provision of universal access to basic solid waste services.

PART II - MANAGEMENT OF SOLID WASTE

Clauses 6 to 19

This part provides for the method of management of solid waste by local authorities. Clause 8 of this part empowers a local authority to establish, by way of a resolution, a solid waste management company in its area of jurisdiction. Clause 9 provides that an entity shall be incorporated before it can manage a solid waste management company. This part additionally, provides for the appointment of members of the Board of a solid waste management company as well as the Board's functions.

Clause 13 provides for the functions of a solid waste management company while Clause 14 provides for the general powers of a solid waste management company which are to monitor the management of risk by licensed solid waste service providers or provide information to the public on the rights and obligations of consumers with respect to solid waste management.

Clause 15 mandates local authorities and solid waste management companies to prepare a three year management and operating plan outlining the financial projections annually relating to solid waste management. Additionally, the clause places an obligation on the Minister responsible for solid waste to submit a copy of the said plan to the Minister responsible for finance.

Clauses 16 and 17 provide for operating procedures and codes of practice for, and reports on, solid waste by local authorities and solid waste management companies respectively.

PART III - REGULATION OF SOLID WASTE

Clauses 20 to 35

Clause 20 provides that the Minister responsible for solid waste shall, subject to the *Compulsory Standards Act, No. 3 of 2017* and the *Standards Act, No. 4 of 2017* and in consultation with the Minister responsible for environment, prescribe environmental standards relating to solid waste management. In relation to public health standards, the Minister responsible for health shall be consulted. The Clause provides failure or refusal to comply with prescribed standards, resulting in possible suspension of a license or termination of a contract

Under Clause 21, the Civil Service Commission is mandated to appoint a Director in addition to other members of staff, who shall be a civil servant and head the department responsible for solid waste management. Clause 22 empowers the Minister to designate an object or substance as solid waste, by way of a statutory instrument. Additionally, the Minister is in Clause 23 mandated, by way of a statutory instrument, to divide or sub-divide solid waste into various categories. Clause 24 places responsibilities on an owner or occupier of a property relating to solid waste. Clause 25 mandates both public and private bodies to dedicate specific hours every month to cleaning their premises as prescribed.

The sorting of solid waste shall be undertaken by a solid waste generator, in a manner provided for in Clause 28, whereas Clause 29 provides that a local authority or licensed solid waste service provider shall collect solid waste from its district or service zone in accordance with the service plan submitted. The disposal of solid waste is catered for under Clause 31 which provides that a local authority or licensed solid waste service provider shall dispose solid waste in a landfill or prescribed disposal area.

Clause 33 criminalises the intentional burning of solid waste otherwise than as prescribed by law and clause 34 prohibits the intentional burying of non-organic waste. Clause 35 provides for the issuance of a restoration order. The effect of the order is that it empowers the Director to order the removal or restoration of a site, where there has been unlawful disposal of solid waste.

PART IV – LICENCES, PERMITS AND REGISTRATION

Clauses 36 to 49

Clause 36 provides that a person shall not provide solid waste services unless with a license or permit issued under this Act. However, the Clause does not apply to a local authority.

Under Clause 37, a solid waste service provider may apply for a license to the department in order to provide these services in the prescribed manner and on payment of prescribed fee.

Clause 39 permits the Director to refuse an application for a license, in an instance where the application does not meet the requirements of the Act or the activity to be carried out contravenes or is likely to contravene any other written law, among other things.

On the other hand, Clause 40 provides for the grant of service providers' license, its validity and renewal, where the Director shall within 30 days of receipt of the report as per clause 53 grant the solid license. Additionally, once the license is granted it shall be valid for a period of five years with the option of renewal. This part additionally provides for instances where a licensed solid waste provider fails to commence operations within three months from the date of grant of a license and the repercussions therefore. The solid waste service provider ought to notify the department, failing which the license shall be considered to have lapsed.

Clause 42 prohibits and criminalises the transfer of a solid waste provider's license without the prior approval of the Director. Clause 45 provides for procedures to be undertaken in instances where a person who intends to provide a self-service relating to solid waste to a gated community. Additionally, Clause 46 prohibits the construction, operation, management or maintenance of a landfill or disposal facility without a permit being issued. The Department is mandated in Clause 48 to establish and maintain a register of all solid waste management companies, license, permits and certificate holders in a prescribed manner and form, which register shall be made available to the public both physically and electronically. Clause 49 empowers the Minister to direct a solid waste service provider, in

instances where a license is cancelled, to continue operating under the control of a statutory manager. The statutory manager shall be appointed on terms and conditions that the Minister may consider necessary. All expenses connected with the appointment shall be a charge on the solid waste service providers providers' revenue.

PART V - SOLID WASTE SERVICES PROVISION

Clauses 50 to 66

Clauses 50 and 51 provide for the protection of the consumers' interests, and that investment in solid waste services were provided, economical, profitable and competitive in accordance with the *Competition and Consumer Protection Act, No. 24 of 2010*.

Clause 52 empowers a local authority or solid waste management company to limit the number of licensed solid waste service providers or registered operators from the construction, operation or maintenance of landfills or disposal facilities in a serviced zone. Clauses 53 and 54 provide for the assessment of solid waste service providers and operators and feasibility study and business plan, respectively. A local authority or solid waste management company shall have the power to obtain information from a person that may assist the local authority or solid waste management company perform its function.

Clause 57 provides a requirement for a local authority or solid waste management company, licensed solid waste service provider to provide information and make returns to the Director. Clause 58 empowers a local authority or board or solid waste management company to conduct a hearing before exercising the power to recommend a tariff or establish a code of conduct. The notice of such hearing ought to be published in the Gazette.

Clause 59 mandates a local authority or solid waste management company to keep a register of licensed solid waste service providers, registered operators and self-service waste and other disposal facilities on payment of a prescribed fee, if necessary. Moreover, clause 62 provides for the functions and responsibilities of licensed service providers, self-service solid waste providers and registered operators. The Bill in Clause 63 recognises and empowers local solid waste service providers, self-service solid waste provider or registered operators to enter into service level agreements with a local authority or solid waste management company for the provision of solid waste services. Clause 65 empowers local solid waste service providers, self-service solid waste providers or registered operators to exercise any power necessary or incidental to the discharge of their functions. Further, Clause 66 places community obligations, at the direction of the Minister, on a local authority or local solid waste service provider.

PART VI – SOLID WASTE TARIFFS

Clauses 67 to 71

Clause 67 empowers a local authority to prescribe tariffs for the management of solid waste and in determining the tariff it will take into account things such as the cost of

providing solid waste management and financial sustainability. The Director is under Clause 68 empowered to apply a compulsory or an additional tariff for solid waste management. Clause 69 imposes an administrative penalty on persons who contravene the provisions of the Act which are not criminal offences. Clause 70 permits the establishment of a billing system by a local authority, solid waste service company, licensed solid waste service provider, self-service solid waste provider or registered operator. Clause 71 further empowers the Minister on the advice of Cabinet to make regulations imposing additional transfers on premises in commercial or industrial areas as well as special tariffs for the purpose of raising revenue.

PART VII – GENERAL PROVISIONS

Clauses 72 to 86

This part provides for the general clauses that are applicable throughout the Bill. Clause 73 provides for the power of inspectors which range from the inspection of premises and records to powers to arrest, subject to the approval of the Inspector-General of Police. This part additionally provides for the immunity of inspectors during the course of their duty and recognises offences under the Act as being cognisable for the purpose of the *Criminal Procedure Code, Chapter 88 of the Laws of Zambia*. Clause 77 provides for the issuance of enforcement notices where there is a likely contravention of the provision of the Act. These notices may be enforced by an inspector, police officer and an authorised officer.

This part provides for general offences related to solid waste, offences by principal officer of a body corporate or unincorporated body, general penalty as per clauses 79, 80 and 81, respectively. Clause 84 provides for the appeal procedure in an instance of an aggrieved person. A local authority is under clause 82 empowered, subject to the written consent of the Director of Public Prosecutions, to compound offences by collecting a sum of money as the Town Clerk or Council Secretary considers appropriate.

Further, Clause 85 empowers the Minister, in consultation with appropriate authorities to make regulations in order to ensure the proper management of solid waste.

Clause 86 provides for transitional provisions where a person who was providing solid waste services prior to the commencement of the Act shall apply for a licence or permit within 90 days of the commencement of the law.

7.0 CONCERNS BY STAKEHOLDERS

All the stakeholders who appeared before the Committee supported the Bill and stated that the enactment of this legislation was long overdue as its enactment would ensure that solid waste management was effectively regulated. They also noted that the Bill was an effort to revolutionise capital investment through public-private partnership arrangements which, if well harnessed, could contribute to economic growth and job creation. However, they raised concerns as set out below.

Lack of a Provision on the Issuance of a Commencement Order

Stakeholders raised concern that the clause had no provision for the issuance of a commencement order, by way of a statutory instrument by the Minister. This entailed that the Act would take effect upon assent by the President and subsequent publication in the *Gazette*. They contended that this was a serious omission.

Reference to a non-existent Local Government Act, 2018

Stakeholders were concerned that the Bill made reference to the Local Government Act, 2018, a piece of legislation that had never been presented to the National Assembly, and was therefore nonexistent.

Clause 2 - Interpretation

- i. On the interpretation of 'Authorised Officer' in the Bill which included an employee or agent of a solid waste management company, stakeholders were of the view that an employee or agent of a solid waste management company should be removed as one of the Authorised Officers as he/she could not be authorised considering that the company would be a private entity. Other stakeholders also noted that this definition was not very clear as it did not state whether this officer was supposed to be authorised in writing to enforce the Act, or whose responsibility or authority it was to confer such authority on such a person. Stakeholders recommended that this ambiguity be clarified.
- ii. Stakeholders submitted that the definition of "Solid Waste" should be recast to exclude healthcare waste which would not be regulated under the Bill as envisaged under Clause 3.
- iii. Stakeholders noted that while the phrase "Registered Service Provider" has been extensively used in the Bill, it had not been defined under interpretation clause. They stated that the term should be defined.

Clause 5 - Key Concepts and Principles of Solid Waste Management and Regulation

Some stakeholders noted with concern that while this Clause outlined the key concepts and principles of the Bill, the omission of resource efficiency under the Clause was a source of concern. They submitted that the principle of resource efficiency be included under the Clause and that this provision be cross-referenced with the provisions of Clause 6 of the *Environmental Management Act, No. 12 of 2011*. Related to this, other stakeholders submitted that another principle be included under the Clause relating to environmentally and economically sustainable solid waste management.

Clause 6 - Management of Solid Waste by Companies

On Clause 6 (5) (b), stakeholders noted that a landfill was just one of the many disposal facilities, therefore, the Clause should be recast to replace the word landfill with treatment and disposal site. In addition, the Water Resources Management Authority (WARMA) should be included in the Clause. In view of this, it was recommended that the Clause be recast to read as follows:

"determine the location of treatment and disposal site in accordance with international best practice, in consultation with the Zambia Environmental Management Agency and the Water Resources Management Authority "

Clause 8- Resolution to Establish Solid Waste Management Company

Stakeholders expressed concern in particular with Clause 8 (3) which provided that

"Despite subsection (2), a local authority may provide solid waste management services during an emergency and where a solid waste management company fails or neglects to provide solid waste services".

The stakeholders contended that the institution mandated to deal with emergencies was the Disaster Management and Mitigation Unit. In this vein, it was recommended that the clause be amended accordingly.

Other stakeholders were of the opinion that Clause 8 (3) should make it mandatory for the solid waste management company to provide the service. This was premised on the fact that as soon as the local authority delegated the function to the waste management company, it would maintain a very lean structure to provide supervisory functions. In addition, there would be no need for the local authority to maintain plant and machinery that would be idle most of the time. It was also recommended that appropriate sanctions should be prescribed for a solid waste company that failed to undertake the function.

Clause 9- Incorporation of Solid Waste Management Company, Shareholders and Directors

- i. Clause 9 (4)- some stakeholders noted with concern that the membership of the Board of a solid waste management company under this Clause did not provide adequate representation for the private sector despite the private sector being major players. In light of this omission, it was recommended that the Clause be amended to provide for equitable representation of the public and private sectors on the Board. In addition, it was recommended that the Bill should explicitly provide that the representation from private membership based organisations should be from organizations with a national character such as the Zambia Chamber of Commerce and Industry (ZACCI) or the an organisation representing solid waste providers. Other stakeholders submitted that a representative from the Ministry of Commerce Trade and Industry should be included on the Board.

Related to the above, other stakeholders were of the strong opinion that the number of people to sit on the Board should be reduced from the proposed eleven to not more than nine, in order to reduce on costs associated with Boards.

- ii. Clause 9 (4) - stakeholders expressed concern with the inclusion of matters related to a Board such as its constitution, composition, and qualifications of members under the Clause which was dealing with incorporation of a solid waste management company. It was strongly recommended that a stand-alone clause be introduced to exclusively deal with matters of the Board.

Clause 10- Name of Solid Waste Management Company

Clause 10 (1) – stakeholders were of the view that the Clause which provides that the name of a solid waste company incorporate the words “solid waste management be deleted as it was unnecessary.

Clause 13- Functions of solid waste companies

- i. Clause 13 (1) (d)(f)(h)(m) and (r) – stakeholders expressed concern on the functions of the solid waste company as espoused under the Clause. They were of the strong opinion that the highlighted Clauses should be deleted from the Clause and placed under the Department under Clause 21 as the company would be a regulated entity. Related to this, stakeholders recommended that the Water Resources Management Authority and the Zambia Bureau of Standards be included under Clause 13 (1) (r).
- ii. Clause 13 (3) (a) – most stakeholders expressed concern over the provisions in the Clause which required the solid waste management company to engage a contractor to collect tariffs on its behalf and account to it”. They contended that empowering a third party company to collect tariffs could lead to misapplication or even misappropriation of the funds, thereby delaying the remittance of the funds to service providers. It was recommended that the service providers should be given the responsibility to collect tariffs.
- iii. Clause 13 (4) which provides that a solid waste company shall not in the performance of its functions be subject to the direction of any person or authority, stakeholders submitted that the Clause be deleted as the Company ought to be viewed as a regulated entity.

Clause 14- General Powers of Solid Waste Company

- i. Clause 14 (b) - stakeholders submitted that the Clause be deleted as the function of taking actions to enable the Government to comply with international agreements relating to solid waste should be vested in the Department as opposed to a regulated entity.
- ii. Clause 14 (k) (ii) - stakeholders expressed concern on the Clause which required the solid waste management company to enforce prescribed standards relating to landfills and other disposal facilities.” They argued that since the solid waste management company was going to be responsible for the management of landfills, it was important that another party, such as the Director, should be mandated to prescribe standards for the landfill and ensure that they were adhered to.

Clause 16- Operating Procedures and Code of Practice

Clause 16 (1) - stakeholders submitted that the Clause prescribing operating procedures and code of practice should be recast to remove the solid waste company from performing this function. This function should be vested in the Department as opposed to a regulated entity.

Clause 17- Reports on Solid Waste Management

Clause 17 (1) (c) - stakeholders expressed concern that the Water Resources Management Authority was omitted under the Clause despite its mandate on the management of water resources. It was recommended that the Clause be amended to include the Water Resources Management Authority.

Clause 19- Community Solid Waste Management Service

Clause 19 (3) - stakeholders submitted that this Clause, which allowed local authorities to collaborate with other persons or bodies for any purpose associated with the management of solid waste in communities, should be amended to provide that the local authority would have a duty to ensure the collaborator(s) adhered to standard practice on solid waste.

Clause 20- Environmental and Public Service Standards

- i. Clause 20 (1) (b) - stakeholders submitted that the Clause should be recast to remove the responsibility of monitoring and enforcing the prescribed standards from the solid waste management company and to place this responsibility upon the local authority.
- ii. Clause 20 (b) - stakeholders submitted that the Clause, which provided for the solid waste company to perform the monitoring and enforcement of prescribed standards should be recast to remove the company from performing this function as the company should be viewed as a regulated entity.

Clause 22 - Designation of Solid Waste, Service Zones and Solid Waste Management Areas

Stakeholders noted with concern that the Clause 22 (3) (a) empowered the Minister to designate service zones and solid waste management areas and strongly submitted that this responsibility should lie with the local authority. This would also be in line with Article 147 (1) of the Republican Constitution as well as the Decentralisation Policy. In addition, other stakeholders recommended that Multi Facility Economic Zones (MFEZs) should be included under the clause.

Clause 23 - Solid Waste Categorisation and Handling

Stakeholders submitted that the reference to “health care waste” be deleted in Clause 23 (2)(b)- as such waste would not be regulated under the Bill in accordance with Clause 3 of the Bill.

Clause 24 - Responsibilities of Owner or Occupier Regarding Solid Waste

Stakeholders noted that Clause 24 (4) should be recast to exclude a private company to undertake this function as the collection of waste from public places was the sole responsibility of local authorities as provided for under Clause 7. Private companies by nature were more focused on profit making than service provision.

Clause 26 – Prescribed Containers

- i. Clause 26 (1)- stakeholders noted that the Clause should be recast in order to require the solid waste management company to provide the appropriate solid waste container. This was important to ensure that there was a standardised container meeting relevant

specifications as well as a mechanism for container replacement could be put in place where there was premature breakage or vandalism for containers.

- ii. Clause 26 (5) - stakeholders noted that the clause, which required that prescribed containers for disposal of solid waste shall be a condition for the provision of a license to a solid waste provider should be recast as the provision would be extremely onerous on solid waste service providers. It was strongly recommended that this cost must be assumed by the solid waste management company.

Clause 29 – Collection of Solid Waste

Stakeholders noted that **clause 29 (2)** should be recast to include the solid waste management company so as to avoid any future challenges in relation to the cleaning of open spaces. They recommended that the clause should read as follows:

“subject to the other provisions of this Act, nothing in this Act shall prevent or prohibit the local authority or a solid waste management company acting on behalf of the local authority from, directly or indirectly, collecting solid waste from the street, main road or other public area.”

Clause 31 – Disposal of Solid Waste in Landfill or Other Disposal Facility

Clause 31 (1) – stakeholders noted that this clause in its current form was at variance with good practice of solid waste. In this vein, they submitted that the clause should be recast to read as follows:

“a local authority or licensed solid waste service provider shall recycle, reuse or treat the solid waste or use any other prescribed disposal method, depending on the type, quality and quantity of the solid waste”

It was stated that this was in line with the solid waste management good practice which was being promoted.

Clause 37 – Application for Solid Waste Service Provider’s License

Clause 37 (2)- some stakeholders noted that the Clause, which required that the waste management provider at the time of application should submit necessary approvals from the Zambia Environmental Management Agency (ZEMA) and the Water Resources Management Agency, (WARMA) may be inefficient and cause unnecessary delays. They also noted that this may also increase the cost of doing business. They were of the view that the process of enforcing compliance should be internalised by the Department as opposed to referring the applications to ZEMA and WARMA.

a) Clause 38 – Submission for Assessment of Solid Waste Service Provider

Clause 38 (1) - on this clause, some stakeholders expressed concern over the requirement that applications for licenses, permits and registration be submitted to Director at the Ministry responsible for waste management. They contended that this was contrary to the spirit of decentralisation. They were of the opinion that applications should be submitted to the local authority and be determined by it while the Director should only hear appeals.

Clause 39 – Refusal to Issue Solid Waste Service Provider License

Clause 39 (b) – stakeholders were of the view that the reference to “Solid Waste Management Company” be deleted and “solid waste service provider” to be replaced by applicant.

Clause 40 – Grant of Service Provider’s License, Validity and Renewal of License

- i. Clause 40 (1) – stakeholders opined that the reference to “Solid Waste Management Company” should be deleted as the company should not be vested with regulatory power.
- ii. Clause 40 (2) – stakeholders expressed concern over the Clause which provided that a solid waste service provider’s license would be valid for a period of five years and may be renewed for a further five years. They contended that the period of five years set in the Bill was too short and would increase the cost of doing business, especially that some equipment for solid waste management was very expensive. In addition, they submitted that best practice showed that the period for renewal of licenses in other jurisdictions was between fifteen to twenty five years. It was recommended that the clause should be amended accordingly.

Clause 43 – Variation of Solid Waste Service Provider’s License

Clause 43 (a) - stakeholders expressed concern with the Clause which empowered the Director to, on his own volition, vary the service provider’s license if, among other things, there had been a change in the shareholding or beneficial interest in the licensed solid waste service provider. They contended that the provision was not justifiable in light of the settled principle of company law that a shareholder and a company were separate legal entities. On incorporation, a company becomes a separate legal entity which assumes its own existence independent of the individuals or persons who incorporated it. Therefore, a change in shareholding should not be the sole reason for varying a service provider’s license. It was, therefore, recommended that the clause be amended accordingly.

Clause 45 – Self-Service Solid Waste Providers

Clause 45 (1)- stakeholders noted that the Clause included the terms “gated community” and “housing estate” which were not defined in clause 2. Stakeholders strongly recommended that the two terms should be clearly defined in order to avoid misinterpretation.

Clause 46 – Permits to Construct, Operate of Maintain Landfills or Other Disposal Facilities

Clause 46 (3) – stakeholders expressed concern that the Clause did not cross reference the *Water Resources Management Act, 2011* and should be amended accordingly.

Clause 49 – Appointment of Statutory Manager

Clause 49 (3) - stakeholders were of the view that the reference to “solid waste management company” be deleted as the company should not be vested with regulatory power.

Clause 51 – Provision of Solid Waste Services

Clause 51 (3)- stakeholders noted that the clause which puts an obligation on a licensed solid waste management service provider, waste management service provider or self-service solid waste provider to notify the local authority, Disaster Management and Mitigation Unit or the solid waste management company in whose jurisdiction they operate, of an imminent emergency or disaster was progressive. However, the absence of provisions for corresponding sanctions for failure to report an imminent emergency or disaster, this provision would be rendered unenforceable and, therefore, ineffective. . Stakeholders, therefore, recommended that appropriate sanctions be provided for in the Bill..

Clause 53 to 56 – Assessment of Solid Waste Service Providers and Operators; Monitoring Performance of Licensed Solid Waste Service Providers, Registered Operators and Self-Service Solid Waste Providers; and Power to Obtain Information and Expert Advice

Stakeholders recommended that the reference to “solid waste management company” in these clauses should be deleted as the company should not be vested with regulatory power.

Clause 57 – Requirement to Provide Information, Data and Make Returns to Director

Clause 57 (7) – stakeholders noted that the Clause provided that a person to whom a reasonable request was made under Clause 57, and who refused or failed to comply with the request without justification committed an offence and would be liable to a fine. However, the Clause did not state or make provision for instances where such a person defaulted in paying the fine. It was proposed that the Clause should be amended accordingly.

Clause 59 – Register of Licensed Solid Waste Service Providers, Registered Operators and Self- Service Solid Waste Providers

Clause 59 (1) – stakeholders noted that the provision under the Clause was already being undertaken by the Patents and Company Registration Agency (PACRA). It was, therefore, recommended that the Clause be deleted.

Clause 64 – Specific Functions Relating to Licensed Solid Waste Service Providers and Registered Operators

Clause 64 (b) – stakeholders noted that the Clause should be amended to cross reference the *Water Resources Management Act, 2011*.

Clause 66 – Performance of Community Obligations

Clause 66- stakeholders observed that the Clause, which required a local authority and a licensed solid waste service provider to undertake community obligations at the direction of the Minister which may involve any activity aimed at keeping public areas clean and free of solid waste, should be revised to include the solid waste management company in undertaking such community obligations.

Clause 67 – Criteria for Setting and Approval of Tariffs

Clause 67 (1) - stakeholders noted that the power being given to the local authority to prescribe tariffs without reference to a given period and formula was too broad and not in line with best practice. It was strongly recommended that the adjustment of solid waste tariffs should be subject to periodic review coupled with an indexing formula, taking into account the factors listed in Clause 67 (2).

Clause 68 – Compulsory, Generalised and Additional Tariffs for Certain Purposes

Clause 68 (2)- stakeholders expressed concern over the Clause which provided that the Director may apply a commercial and industrial waste collection tariff to all commercial and industrial premises in a solid waste management area. They contended that in order to ensure the sustainability of the sector, solid waste management service providers should be allowed to maintain the right to negotiate and agree bulk waste collection contracts with commercial and industrial generators and to be paid directly by them. Allowing the Director to regulate tariffs for commercial and industrial premises could result into logistical challenges on the part of service providers.

Clause 71 – Special Solid Waste Tariffs

Clause 71 (1) – stakeholders noted that it was not necessary to explicitly mention Cabinet in this provision as the advice by Cabinet was implied. They recommended that the clause be amended accordingly.

Clause 72 – Notices Related to Solid Waste

Clause 72 (1) - stakeholders submitted that the Clause, that provided for the serving of a written notice on any person requiring that solid waste owned, possessed or under the control of that person by a local authority, solid waste management company, a licensed solid waste provider, self-service solid waste provider or registered operator, gave too much power to the service providers, which could result in abuse. Stakeholders submitted that the clause should be recast to read as follows:

“a local authority, solid waste management company, a licensed solid waste provider, self-service solid waste provider or registered operator, may serve a written notice through the local authority on any person requiring that solid waste owned, possessed or under the control of that person”

Clause 73 – Powers of Inspector

Clause 73 (5) – stakeholders submitted that this Clause should be recast to empower the inspector without requiring the approval from the Inspector General of Police to undertake an arrest. It was, therefore, recommended that the Clause be revised as follows:

“an inspector may, arrest a person where the inspector has reasonable grounds to believe that the person has committed or is likely to commit an offence under this Act”

Clause 77 and 83 – Enforcement Notices and Administrative Penalties

Clause 77 (1) - stakeholders were of the view that the reference to “solid waste management company” in these clauses be deleted as the company should not be vested with regulatory power.

Clause 78 – Enforcement Powers

Clause 78 (2) (b) – stakeholders noted that the Clause should be recast and be amended as was the case in the *Public Health Act and Food and Drugs Act*. It was stated that the two laws did not require a warrant but just the production of an identity. In this vein, it was recommended that the clause be recast to read as follows:

“enter a private property or premise, after notifying the owner or occupier of the intention to do so upon producing an identity card”

Clause 84 - Appeals

Clause 84 – stakeholders were of the view that the Clause should be separated to allow the appeals against the solid waste management company, solid waste provider or registered operator to be made to the Director, while appeals from decisions of the Director to be made to the Minister.

8.0 OTHER CONCERNS

- i. Most stakeholders submitted that caution should be exercised when establishing single purpose companies in the provision of public services because such entities denied the public their democratic right to hold such bodies accountable. Further, while it was not mandatory for the local authorities to establish the solid waste companies, the regulatory functions given to the solid waste management companies in various parts of the Bill should be ordinarily vested in the Department under Clause 21. It was strongly recommended that these provisions vesting regulatory functions to the private companies be removed from the Bill. Other stakeholders held the strong opinion that the establishment of the solid waste management companies under Clause 8 (1) (a) be deleted.
- ii. Stakeholders noted with concern that most parts of the Bill appeared to have been drafted without due consideration of not only the provisions of Article 147 of the Republican Constitution on devolved system of governance, but also the Decentralisation Policy whose implementation had since commenced. In this light, stakeholders strongly recommend that the Bill should be recast to take into account these serious national programmes and policies. It was further reiterated that the local authority should be left with powers to regulate and enforce the law.
- iii. A number of stakeholders noted that the Bill seemed to suggest that the solid waste management company should have the same powers as the local authority in most instances. They expressed worry that this may be a source of conflict in the implementation of the Act. It was strongly recommended that all the regulatory functions should be vested in the local authority so that the company could be a creation of the local authority and a regulated entity.
- iv. Stakeholders expressed concern that while the Bill under Clause 5 provided for key concepts and principles of solid waste management and regulation which included recycling, no explicit provisions on waste recycling had been made in the Bill. In this vein, stakeholders were of the strong view that there should be a clause in the Bill for

the local authority and solid waste management company to recycle specific solid waste such as plastics and others for generation of products and by-products such as energy. This would bring about huge economic returns.

- v. Stakeholders raised concern with the manner the Bill was drafted with regard to combining the regulations and procedures together. It was recommended that the regulations and procedures in the Bill be separated. It was further observed that there was need to carry out a Regulatory Impact Assessment (RIA) of the Bill's impact on the ease of doing business.
- vi. Some stakeholders noted that merely passing the proposed Bill without the revision of other related pieces of legislation may not fully address the challenges that the country was facing regarding solid waste management. They recommended that the revision of various pieces of legislation on solid waste management should be prioritised so that all the pieces of legislation relating to solid waste could be synchronised.
- vii. Stakeholders expressed concern over the arrangement of clauses relating to a company and its board. Clause 8 provided for a resolution to establish a solid waste management company while Clause 9 provided for incorporation of a company, constitution of a board, as well as tenure of and removal from office of a board member. Clause 10 provided for the name of solid waste management company while Clause 11 and 12 provided for the functions of a board, board charter and minimum service level guarantees, respectively. Clause 13 provided for the functions of a company while Clause 14 provided for the general powers of a company. Stakeholders recommended that the logical way of presenting the clauses was as follows:
 - a resolution to establish a solid waste management company;
 - incorporation of a company;
 - name of solid waste management company;
 - the functions of a company;
 - the general powers of a company;
 - constituting of a board, as well as tenure of office and removal from office of a board member;
 - functions of a board; and
 - board charter and minimum service level guarantees.

COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

9.0 Having considered the submissions and taking into account the concerns raised by stakeholders, the Committee makes observations and recommendations as outlined below.

- i. In Clause 1, The Committee is concerned that no provision has been made for the issuance of a Commencement Order, by way of a statutory instrument by the Minister. This entails that the Act will take effect upon assent by the President and subsequent publication in the *Gazette*. The Committee notes that this is a very a

serious omission, especially that the Bill makes reference to the Local Government Act, 2018, a piece of legislation that is nonexistent. The lack of a provision for a Commencement Order therefore means that once the Act come into effect, it will be referring to an Act that does not exist. The Committee recommends that Clause 1 be amended to include a provision for the issuance of a Commencement Order by the minister.

- ii. The Committee notes that while the Bill under Clause 5 provides for key concepts and principles of solid waste management and regulation which includes recycling, regrettably, no explicit provisions on waste recycling have been included in the Bill. In this vein, the Committee recommends that a clause be introduced in the Bill to specifically provide for recycling of specific solid waste, such as plastics, by local authorities and solid waste management companies and generation of products and by-products such as energy.
- iii. The Committee raises concern over the provisions of Clause 9 (4) relating to the composition of the Board of a solid waste management company. It contends that the prescribed composition of the Board is not representative. In light of this omission, the Committee recommends that there should be equitable representation of both the public and private sector on the Board. In addition, the clause should explicitly provide that the representation from private membership based organisations should be from organisations that have a national character or an organisation representing solid waste management service providers, among others. A representative from the Ministry of Commerce Trade and Industry should also be included on the Board.

Another matter of concern relating to this clause is the number of persons proposed to sit on the Board. Considering the financial ramifications associated with Boards, the Committee holds the strong opinion that the number of Board Members be reduced from 11 to 9.

- iv. On Clause 9 (4), the Committee expresses concern over the inclusion of matters such as the constitution, composition, and qualifications of board members in a Clause dealing with incorporation of the solid waste management company. The Committee recommends that a stand-alone Clause be introduced to exclusively deal with matters of the board as is the case in other pieces of legislation.
- v. The Committee is concerned with the functions of the solid waste company espoused under Clause 13 (1) (d)(f)(h)(m) and (r) of the Bill. It is the considered view of the Committee that the highlighted provisions are misplaced and should be deleted from this Clause. They should instead be placed under the functions of the Department in Clause 21 as the company would be a regulated entity. The Committee, therefore, recommends that Clauses 13 and 21 be amended accordingly.

- vi. The Committee notes with concern the provisions of Clause 13 (3) (a) which empower the solid waste management company to authorise a third party to collect tariffs on its behalf. Not only is this provision a risk on revenue collection, but it also has the potential to lead to possible misapplication and misappropriation of funds. Further, this may lead to delays in remitting the funds to service providers. The Committee recommends that the Clause be amended to replace third parties on collecting tariffs with service providers.
- vii. On Clause 22 (3) (a) which empowers the Minister to designate service zones and solid waste management areas, the Committee notes that this responsibility should be placed with the local authority in line with Article 147 (1) of the Republican Constitution as well as the Decentralisation Policy. In this vein, the Committee recommends that this Clause be recast to empower the local authority to perform this function, subject to approval by the minister. In addition, the Multi Facility Economic Zones (MFEZs) should be included as areas to be designated under the Clause.
- viii. The Committee notes with concern the provisions of Clause 26 (5) which requires the solid waste management service providers to provide prescribed containers for disposal of solid waste as a condition of license granted to a solid waste service provider. The Committee contends that the requirement will be extremely onerous on solid waste management service providers because of the anticipated costs associated this exercise thereby undermining the good intentions of the Bill. The Committee, therefore, recommends that this cost should be assumed by the solid waste management company. The clause should be amended accordingly.
- ix. The Committee notes that the provisions under Clause 37 (2) which require that the solid waste management service provider should submit necessary approvals from ZEMA and WARMA at the time of application may cause unnecessary delays due to red tape. The Committee strongly recommends that the process of enforcing compliance should be internalised by the Department as opposed to referring the applications to ZEMA and WARMA. Clause 37 (2), should, therefore, be amended accordingly.
- x. The Committee notes with concern the provisions of Clause 38 (1) regarding the requirement that applications for licenses, permits and registration be submitted to a Director at the ministry responsible for waste management. It contends that this is contrary to the spirit of decentralisation. In this vein, the Committee strongly recommends that the Clause be recast to allow for applications to be submitted to the local authority and to be determined by it in line with the Decentralisation Policy.
- xi. The Committee notes that Clause 40 (2) which provides that a solid waste management service provider's license is valid for a period of five years and may be renewed for a further five years should be re-considered as the period of five years is too short and the service providers may not be able to recoup their

investment in that period, especially that some of the equipment used solid waste management is very expensive and highly specialised. The Committee recommends that the period be reviewed to a more reasonable time of ten years in order to promote the growth of public private partnership, as envisaged in the Bill. The Clause should be amended accordingly.

- xii. The Committee is concerned with Clause 67 (1) which gives absolute power to the local authority to prescribe tariffs without a requirement to take into account a given period and formula. It contends that this does not sit well with best practice and could be subject to abuse on communities who are already over burdened with taxation. The Committee recommends that the clause should be amended to provide that the adjustment of solid waste tariffs should be subject to periodic review, coupled with an indexing formula taking into account the factors listed in Clause 67 (2).
- xiii. The Committee notes that Clause 84, which provides for appeals, should be separated to allow the appeals against the solid waste management company, solid waste provider or registered operator be made to the Director, while appeals from the Director's decision should be made to the Minister. It is recommended that the clause be amended accordingly.

The Committee notes that while the intentions of legislating the management of solid waste are welcome, caution should be exercised when establishing single purpose companies in the provision of public services because this denies the public their democratic right to hold such bodies accountable due to their inherent inertia. Further, given that it is not mandatory for the local authorities to establish the solid waste companies, and that the solid waste management companies will themselves be regulated, the regulatory functions placed on the solid waste management companies in various parts of the Bill should be placed within the mandate of the Department under Clause 21. The Committee, therefore, strongly recommends that all provisions vesting regulatory functions in the solid waste management companies be expunged from the Bill.

Further, the Committee also recommends that the provisions on the establishment of the solid waste management companies under Clause 8 (1) (a) of the Bill be deleted so as to empower the Department and the local authority with this function. In addition, the Committee recommends that Clause 8 (1) (b) be revised to read as follows:

“enter into an agreement with another local authority, two local authorities or a public or private body for the management of solid waste”

- xiv. The Committee notes that legislative provisions on solid waste management are scattered in various pieces of legislation. In this regard, passing the proposed Bill without the revision of other related pieces of legislation may not fully address the challenges regarding solid waste management. The Committee recommends that the

revision of other related pieces of legislation on solid waste should be prioritised so that the legislative landscape can be synchronised. In addition, a supremacy clause should be included in the Bill in order to make it the principal legislation on all matters relating to solid waste management.

10.0 GENERAL OBSERVATIONS AND RECOMMENDATIONS

- i. The Committee wishes to place on record its concerns on the very short period given to it to consider the Bill. From the outset, the Solid Waste Regulation and Management Bill is a new piece of legislation which not only affects players in commerce, trade and industry, but also the ordinary citizens. In the view of the Committee, more time should have been given to have wider consultations with all the players, especially the ordinary citizens.

The brevity of time for consideration of the Bill has a bearing on the work of the Committee in its quest to fully scrutinise proposed legislation and ensure that all contentious issues are highlighted and addressed. Regrettably, it was also noted by the Committee that a number of stakeholders were not consulted during the drafting stages of the Bill as they were seeing the Bill for the first time when they were invited to appear before the Committee.

In light of this concern, your Committee, cognisant of the anticipated revision of the National Assembly of Zambia Standing Orders, 2016, is of the strong view that Standing Order 102 (2) should be explicit on the timeframe to be given to Committees to scrutinise Bills in order to accord stakeholders an opportunity to make meaningful contributions to Bills. It is the Committee's view that prescribed timeframes for consideration of Bills by Committees will improve the process.

- ii The Committee reiterates its earlier concern that whereas reference has been made in several parts of the Bill to the Local Government Act, 2018, that piece of legislation has not been presented to the National Assembly and, is therefore, non-existent. It is the considered and strong view of your Committee that passing the Solid Waste Regulation and Management Bill in the absence of the Local Government Act, 2018 compromises the desired outcomes. Your Committee is also seriously concerned with the emerging practice by the Executive, which appears to have taken root, to present Bills to the National Assembly of Zambia that make reference to pieces of legislation that do not exist.

A case in point relates to the enactment and operationalisation of the *Public Finance Management Act, 2018*, which makes reference to the *National Planning and Budgeting Act, 2018*, a piece of legislation that does not exist. Another Bill which was considered by the National Assembly is the Constituency Development Fund Bill, N.A.B No. 9 of 2018 which also makes reference to the Local Government Act, 2018, a nonexistent Act. In addition, your Committee regrets that there is no provision in the Bill for the issuance of a Commencement Order by the minister.

In light of these concerns, although the Committee fully supports the Bill, it strongly urges the House to defer the Bill until the *Local Government Act, 2018* is passed by the National Assembly.

CONCLUSION

11.0 The Committee wishes to express its gratitude to all stakeholders who appeared before it and tendered both oral and written submissions despite the short period given to them. The Committee also wishes to thank you, Mr Speaker, for according it an opportunity to scrutinise the Bill. The Committee also appreciates the services rendered by the Office of the Clerk of the National Assembly and the permanent witnesses from the Ministry of Justice.

We have the Honour to be, Sir, the Committee on Local Governance, Housing and Chiefs' Affairs mandated to consider the Solid Waste Regulation and Management Bill, N.A.B No. 18 of 2018 for the Third Session of the Twelfth National Assembly.

Mr N Samakayi, MP
(Chairperson)

Mrs S S Mulyata, MP
Vice Chairperson

Mr G Chiyalika, MP
(Member)

Mr M M Kabanda, MP
(Member)

Mr M Chikote, MP
(Member)
Dr E I Chibanda, MP
(Member)

Mr E Musonda, MP
(Member)

Mr C Chali, MP
(Member)

Mr D Livune, MP
(Member)

Dr C Kambwili, MP
(Member)

December, 2018
LUSAKA

APPENDIX I

OFFICERS OF THE NATIONAL ASSEMBLY

Ms C Musonda, Principal Clerk of Committees
Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)
Mr H Mulenga, Deputy Principal Clerk of Committees (FC)
Mr S Chiwota, Senior Committee Clerk (SC)
Mr S C Samuwika, Committee Clerk
Mr C Chishimba, Committee Clerk
Mr E Chilongu, Committee Clerk
Mrs B M J Mwandemena, Personal Secretary II
Mr D Lupiya, Committee Assistant
Mr M Kantumoya, Parliamentary Messenger
Ms L Choolwe (Intern)

APPENDIX II- THE WITNESSES

MINISTRY OF JUSTICE

Mr A Nkunika, Permanent Secretary (Legislative Drafting)
Mrs M K Bwalya, Acting Chief Parliamentary Council
Ms L Mukuka, Parliamentary Counsel
Mrs M Chibambo, Parliamentary Counsel

LUSAKA CITY COUCIL

Mr A Mwansa, Town Clerk
Ms M Maambo, Acting Director Planning
Mr B Kajoba, Director of Finance

LOCAL GOVERNMENT ASSOCIATION OF ZAMBIA

Mr M Mbolela, Executive Secretary
Ms M Wamumba, Information Officer

MINISTRY OF FINANCE

Dr E M Pamu, Permanent Secretary (Budget and Economic Affairs)
Mr D Banda, Assistant Director
Mr R Banda, Principal Economist
Mr P Mfungo, Acting Principal Economist
Mr V Yande Hamaleka, Acting Senior Economist

MINISTRY OF LOCAL GOVERNMENT

Mr V Mwale, MP, Minister
Mr A Malupenga, Permanent Secretary
Mr P Phiri, Acting Director Planning
Mr J Mulwanda, Permanent Secretary
Dr M Yambe Sinyange, Head Capacity Building
Ms M Kapeya, Legal Officer
Ms I Hamuganyu, Principal Local Government Officer
Mr N Siame, Director Infrastructure
Mr P Phiri, Assistant Head – Planning
Mr H K Ngwale, Senior Solid Waste Management Officer

ZAMBIA CHAMBER OF COMMERCE AND INDUSTRY

Mr M Nyirenda, President
Mr A Chitalu, ZACCI secretariat
Mr G Sakala, ZACCI secretariat
Mr J D Moran , ZACCI member
Mr S Maglov, ZACCI member
Mr S Eakiel, ZACCI member
Ms P M Chikwandi, ZACCI member

SOLID WASTE ASSOCIATION OF ZAMBIA

Mr P Muleya, President
Mr G L Hussein, Vice President
Mr J Nakaanga, Treasurer
Mr Mwansa, Member

MINISTRY OF COMMERCE, TRADE AND INDUSTRY

Ms K Siame, Permanent Secretary
Ms G N Zulu, Director
Mr S Munyalata, Director – Co-operations
Mr E Soko, Acting Director
Mr M Chivumo, Senior Planner
Mr A Mutale, Chief Economist

WATER RESOURCE MANAGEMENT AUTHORITY

Mr O Silembo, Acting Director
Mr L Namayanga, Deputy Director

MINISTRY OF LANDS

Ms V Mwiche, Acting Permanent Secretary
Mr L Shunga, Assistant Surveyor General
Mr M Chisupa, Principal Registrar
Mr O Mugara, Director of Finance

MINISTRY OF ENERGY

Ms R K Machina, Acting Permanent Secretary
Mr M Chipula, Principal Planner
Mr E Chileshe, Senior Planner
Mr M Chiwale, Director Legal

RUFUNSA DISTRICT COUNCIL

Mr B Kapumpa, Council Secretary

ZAMBIA ENVIROMENTAL MANAGEMENT AGENCY

Mr J Msimuko, Director General
Mr D Kapindula, Manager Operations
Mr K Mwale, Director – Legal
Mr G Sikandi, Director – Operation

MINISTRY OF WATER DEVELOPMENT, SANITATION AND ENVIRONMENTAL PROTECTION

Dr Bishop E Chomba, Permanent Secretary
Mr Tobias Musonda, Director
Ms Namataa Kalaluka, Director
Mr A Banda, Director, HRD
Mr K Nyundu, Director

Mr Stephen Mulenga , Head – PSU
Mr O Katooka , Director

KITWE CITY COUNCIL

Mr B L Lwanga, Town Clerk
Ms E Abwino Banda, Chief Valuation Officer
Ms E N Musa, Chief Health Inspector

MINISTRY OF HEALTH

Mr J Mulwanda, Permanent Secretary
Dr A Kabalo, Director
Mr K C Mubaje, Assistant Director
Mr E Malikana, AD-HP
Dr M N Siyanje, AD-HP
Ms F M Kapeya, RPA – Legal Officer
Ms F Mwale, Chief Environmental Health Officer
Mr I Hamuganyu, Principal Officer Environmental Health