

SECOND 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 B Banda, SC, MP (Chairperson); Mr B Chella, MP; Mr J C Kasongo, MP; Mrs 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,

Your Committee has the honour to present its second report for the Fourth Session of the Tenth National Assembly.

Functions of Your Committee

2. Your Committee was guided in all its deliberations 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.”

3 Meetings of Your Committee

Your Committee held thirteen meetings during the period under review and considered a total of fifty-six Statutory Instruments. Your Committee also undertook local tours to Nyimba, Siavonga, Livingstone and Lusaka.

PART I

4. CONSIDERATION OF STATUTORY INSTRUMENTS

MINISTRY OF COMMERCE, TRADE AND INDUSTRY

Statutory Instrument No. 13 of 2009 - The Multi-Facility Economic Zones (General)(Amendment) Regulations, 2009

The Ministry of Commerce, Trade and Industry submitted that in its quest to catalyse industrialisation and expand the manufacturing base in Zambia, Government, through the Ministry of Commerce, Trade and Industry, introduced a new developmental model in the form of industrial parks.

Therefore, Statutory Instrument No. 13 of 2009 incorporated the regulations governing the development and setting up of companies in the newly introduced industrial parks.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

MINISTRY OF LABOUR AND SOCIAL SECURITY

Statutory Instrument No. 1 of 2010 - The National Pension Scheme (Pensionable Earnings) (Amendment) Regulations, 2010

Following the adjustments in the National Average Earnings, the National Pension Scheme Authority (NAPSA) had revised the contribution tables to be issued for NAPSA contributions in respect of the applicable national average monthly earnings, social security ceiling, minimum total average monthly earnings contributions and maximum total monthly contributions for the period January to December 2010.

In accordance with Section 19 (3) and (5) of the National Pension Scheme Act, the Minister was empowered through the Statutory Instrument to annually adjust the levels of pensionable earnings by an index base on national average earnings. The Authority determined the national average earnings annually by applying statistics and data compiled by the Central Statistical Office.

The issuance of the Statutory Instrument was in line with the Government policy that sought to index pension benefits against inflation. The Statutory Instrument had been cleared by the Ministry of Justice for publication.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

MINISTRY OF LOCAL GOVERNMENT AND HOUSING

Statutory Instrument No. 14 of 2009 - The Chiefs (Recognition) Order, 2009

The Ministry of Local Government and Housing submitted that the Statutory Instrument was issued to recognise Mr Eric Festo Lavu Mwanza of Kanyanga area as Chief Nyamphande of the Nsenga people of Petauke District in the Eastern Province of Zambia. This was after he was selected by the Royal Traditional Council and Provincial Administration according to traditions and customs obtaining in the area at a meeting held at his palace on 11 October 2006.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 17 of 2009 - The Local Government (Election of Mayor, Deputy Mayor, Chairman and Vice-Chairman) (Postponement) (Revocation) Order, 2009

The Ministry of Local Government and Housing submitted that the Statutory Instrument was issued to revoke Statutory Instrument No. 120 of 2008 which postponed the election of Mayors and their Deputies and Chairpersons and their Vices to enable councils hold elections for these civic leaders.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 19 of 2009 - The Chiefs (Withdrawal of Recognition) Order, 2009

The Ministry of Local Government and Housing submitted that the Statutory Instrument was issued to withdraw the recognition of Mr Benson Felix Mbuji of Chalimba area as Chief Chikwa of the Senga people of Chama District in the Eastern Province.

This was after Mr Mbuji was rejected by his subjects and the entire council of traditional leaders and provincial administration of Eastern Province.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 36 of 2009 – The Local Government By-Election (Election Dates and Time of Poll) Order, 2009

The Office of the Electoral Commission submitted that the Statutory Instrument was issued to legally back the local government elections set out in the attached schedule to the Statutory Instrument.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 39 of 2009 - The Local Government (Appointment of Local Government Administration) (Chinsali District Council Revocation) Order, 2009

The Ministry of Local Government and Housing submitted that the Statutory Instrument was issued to revoke Statutory Instrument No. 12 of 2009, which suspended the Chinsali District Council, so that the Council's suspension could be lifted to enable Councillors resume the performance of their functions.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 40 of 2009 - The Chiefs (Recognition) (No. 4) Order, 2009

The Ministry of Local Government and Housing submitted that the Statutory Instrument was issued to recognise Mr Beston Kabanya Mukoko Muluka of Chitungulu area as senior Chief Mukumbi of the Lunda people of Solwezi District in the North-Western Province of Zambia. This was after his position of Ordinary Chief was upgraded to that of Senior Chief.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 41 of 2009 - The Local Government By-Election (Election Dates and Time of Poll) (No. 2) Order, 2009

The Office of the Electoral Commission submitted that the Statutory Instrument was issued to set dates for filing of nomination papers and elections in various wards of councils set out in the Statutory Instrument.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 43 of 2009 - The Chiefs (Recognition) (No. 6) Order, 2009

The Ministry of Local Government and Housing submitted that the Statutory Instrument was issued to recognise Mr John Mubanga of Impuki and Mumbulu areas as Chief Mpepo of the Bemba people of Mpika District in the Northern Province of Zambia. This was after he was selected by the Royal Traditional Council and Provincial Administration according to the traditions and customs obtaining in the area at a meeting held at his palace on 6 October 2007.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

MINISTRY OF AGRICULTURE AND COOPERATIVES

Statutory Instrument No. 18 of 2009 - The Control of Goods (Import and Export) (Agriculture) (Prohibition of Importation) Order, 2009

The Ministry of Agriculture and Cooperatives submitted that the Zambian National Farmers Union had invested heavily in irrigation, for growing wheat over the past years. The farmers had also invested in bulk storage facilities, combine harvesters, tractors, planters, bulk trucks and weighbridges. Most of these commercial farmers had employed local Zambians on their wheat farms. This was a long term effort for sustainable employment, especially, in rural areas. There was need to protect the local wheat production in order to safeguard the huge investments being put in the wheat industry. This investment was in line with Government's policy of guaranteeing food security for the nation and developing Zambia's abundant natural resources of arable land and water resources. However, this investment was jeopardized by some multi-national milling companies in the year 2009, who imported cheap foreign wheat into the country on the pretext of lowering prevailing food prices. These millers bought very cheap wheat overseas and resold it in Zambia at the expense of local Zambian wheat.

In previous years, there was an understanding with the Government that wheat imports would only be allowed after the entire local wheat crop had been purchased. Specific amounts of wheat imports were allowed to cater for any shortfall in that particular year. However, this understanding was abrogated by some millers, who imported wheat during 2009, while local wheat was still unsold. The millers were also offering unattractive prices for the local wheat, which was far below the cost of production.

It was against this background that Zambia National Farmers Union requested the Government, to issue a Statutory Instrument for the temporary ban of wheat imports. This Statutory Instrument was put into effect from March 2009. Given that the new wheat crop was being harvested, the temporary restriction on wheat imports was lifted, with effect from December, 2009.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

MINISTRY OF TOURISM, ENVIRONMENT AND NATURAL RESOURCES

Statutory Instrument No. 20 of 2009 - The National Forest No. P 54 West Mvuvye (Cessation) Order, 2009

The Ministry of Tourism, Environment and Natural Resources submitted that the Statutory Instrument on National Forest No. P 54 West Mvuvye (Cessation) Order, 2009 was issued in order to downgrade the status of the forest reserve from national to local in order to facilitate the Joint Forest Management which would allow the Zambia Forestry Department, Non-Governmental Organisations and business persons to partner with local communities to manage the forest and related natural resources. The

purpose of creating Mvuvye National Forest Reserve was mainly for protection of flora and fauna.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 21 of 2009 - The Local Forest No. P 54 West Mvuvye (Declaration) Order, 2009

The Ministry of Tourism, Environment and Natural Resources submitted that the Statutory Instrument on Local Forest No. P 54 West Mvuvye (Declaration) Order, 2009 was issued for the purpose of changing the status and declaring the same area as a Local Forest Reserve in order to facilitate the Joint Forest Management which would allow the Zambia Forestry Department, Non-Governmental Organisations and business persons to engage with local communities to manage forest and related natural resources sustainably.

Benefits that would accrue to Local communities

Your Committee was informed that forest products made a significant contribution to rural livelihoods of local communities in Mvuvye. There was a high level of domestic dependency on forest products for day-to-day subsistence, including fuel, shelter, food, medicines and household utility items. Forests provided goods, employment and business opportunities (e.g. pit-sawing and trading in wild fruits). Forests provided safety-nets in times when households were faced with stress and shocks, ranging from cheap utility products that replaced expensive commodities for home use to opportunistic harvesting and sale of surplus forest produce to raise cash income to coping strategies, e.g. foods that stretch household stocks over the long dry season and provide relief in times of famine.

Therefore, the benefits of the local communities in the Joint Forest Management (JFM) area included the following:

- (a) access and use of forest produce to sustain livelihoods which included firewood, foods (fruits, insects, tubers) and construction materials, culture and traditions;
- (b) opportunities for income generating activities through sell by local communities of forest produce to improve household incomes; and
- (c) the local communities benefited from the micro-climate in the area and helped in adaptation and mitigation to climate change.

The role of the investor in the Joint Forest Management

The Investor, in collaboration with the local community, was expected to have the following roles:

- (a) to provide business opportunities through investment in the area which would offer employment and market for products and services from the local communities;
- (b) to act as a catalyst in the development of market linkages and to assist in promoting local products such as wood and non-wood products, community lodges and traditional art, thereby enhancing household incomes; and
- (c) enter into an agreement with the Joint Forest Management committee and contribute to the local level development fund as may be stipulated in the Joint Forest Management Plan.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 22 of 2009 - The Local Forest No. 188 Bbondo (Cessation) Order, 2009

The Statutory Instrument on Local Forest No. 188 Bbondo (Cessation) Order, 2009 was issued in order to degazette the forest reserve to allow the expansion of Gwembe Township and support other developmental programmes in the district. The purpose of creating Bbondo Local Forest Reserve was mainly for production of poles, firewood and other wood and non-wood forest products.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 23 of 2009 - The Local Forest No. 190 Musisa (Cessation) Order, 2009

The Ministry of Tourism, Environment and Natural Resources submitted that the Statutory Instrument on Local Forest No. 190 Musisa (Cessation) Order, 2009 was issued in order to degazette the forest reserve to allow the resettling of people and open agricultural land in Gwembe and Choma districts. The purpose of creating Musisa Local Forest Reserve was mainly for production of poles, firewood and other wood and non-wood forest products in Gwembe and Choma districts.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 24 of 2009 - The National Forest No. 62 Munyama (Cessation) Order, 2009

The Ministry of Tourism, Environment and Natural Resources submitted that the Statutory Instrument on National Forest No. 62 Munyama (Cessation) Order, 2009 was issued in order to degazette the forest reserve to allow the resettling of people and open agricultural land in the new Chibombo District. The purpose of creating Munyama National Forest Reserve was mainly for production of timber, poles, firewood and other wood and non-wood forest products by then in Kabwe Rural District.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 49 of 2009 - The National Heritage Conservation Commission (National Monuments) (Mulobezi Open Museum) (Declaration) Order, 2009

The Ministry of Tourism, Environment and National Resources submitted that the Statutory Instrument on Mulobezi Open Air Railway (Declaration) order, 2009, was issued for the purpose of giving total protection of this historical site as a National Monument, which allowed the National Heritage Conservation Commission (NHCC) to facilitate the complete conservation and management of the site and all its outstanding rolling stock resources, for sustainable tourism and for the diversification of the tourism product.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 50 of 2009 - The Libala Limestone (Declaration) Order, 2009

The Ministry of Tourism, Environment and Natural Resources submitted that the Statutory Instrument was issued for the purpose of giving total protection status of this area as a National Monument which would allow the National Heritage Conservation Commission (NHCC) to facilitate complete research, education, sustainable tourism development and the diversification of the tourist product. Initially,

the site had enjoyed a temporary declaration and since all the necessary steps towards a permanent declaration had been done, it was only ideal that the site be granted a permanent declaration.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 51 of 2009 - The National Heritage Conservation Commission (National Monument) (Kota Kota Hills Reserve) (Declaration) Order, 2009

The Ministry of Tourism, Environment and Natural Resources submitted that the Statutory Instrument on Kota Kota Hills Reserve (Declaration) Order, 2009 was issued for the purpose of giving total protection status of this area as a national monument which would allow the National Heritage Conservation Commission (NHCC) to facilitate complete conservation and management of this neck of land and all of its natural resources for education, sustainable tourism diversification and development.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

MINISTRY OF MINES AND MINERALS DEVELOPMENT

Statutory Instrument No. 27 of 2009 — The Mines and Minerals Development (Mining Rights and Non-Mining Rights) Order, 2009

The Ministry of Mines and Minerals Development submitted that the Statutory Instrument was issued in order to extend the compliance period for holders of mining rights to conform to the *Mines and Minerals Act of 2008* by another year to 31st March, 2010 to allow most holders to be compliant by that date.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

MINISTRY OF JUSTICE

Statutory Instrument No. 30 of 2009 — The Small Claims Court (Limit of Jurisdiction) (Liquidated Claims) Rules, 2009

The Ministry of Justice submitted that the Rules were made pursuant to the powers contained in section 5 of the *Small Claims Act, Cap 47* of the Laws of Zambia. The objective of the Rules was to limit the jurisdiction of the Small Claims Court to liquidated claims of not more than twenty million Kwacha.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 31 of 2009 - The Small Claims Court Rules, 2009

The Ministry of Justice submitted that the Rules were made pursuant to the powers contained in section 5 of the *Small Claims Act, Cap 47* of the Laws of Zambia. The objective of the Rules was to provide guidelines on how the proceedings before the Small Claims Court were to be conducted.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 35 of 2009 — The National Assembly By-Elections (Chitambo Constituency No. 12) (Election Dates and Times of Poll) Order, 2009

The Ministry of Justice submitted that the Order was made pursuant to the powers contained in Regulation 8 of the *Electoral (General) Regulations, 2006*, and its objectives were to stipulate the date and time of polls for the filling of a vacancy of the Parliamentary seat for Chitambo Constituency No. 12 following the death of the Hon Nasim-ul-gani A Hamir.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 52 of 2009 — The National Constitutional Conference (Extension of Duration of Conference) Order, 2009

The Ministry of Justice submitted that the Order was made pursuant to the powers contained in section 22 of the National Constitutional Conference Act, 2007 and its objective was to extend the duration of the Conference for a further period of ten months.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 53 of 2009 — The National Assembly By-Election (Kasama Central Constituency No. 090) (Election Date and Time of Poll) Order, 2009

The Ministry of Justice submitted that the Order was made pursuant to the powers contained in Regulation 8 of the *Election (General) Regulations, 2006*, and its objectives were to stipulate the date and time of polls for the filling of a vacancy of the Parliamentary seat for Kasama Central Constituency No. 12 following the resignation of Mr Saviour Chishimba.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 59 of 2009 — The Constitution of Zambia (Proclamation No. 2 of 2009) Summoning of Parliament

The Ministry of Justice submitted that the Proclamation was made pursuant to *Article 88(1) of the Constitution of Zambia* and its objective was for the President to Summon the Fourth Session of the Tenth National Assembly which resumed in Lusaka on 18th September, 2009.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

MINISTRY OF FINANCE AND NATIONAL PLANNING

Statutory Instrument No. 34 of 2009 — The Loans and Guarantees (Authorisation) (Delegation of Functions) (No. 3) Order, 2009

The Ministry of Finance and National Planning submitted that the Statutory Instrument was issued

to delegate powers of the Minister to a public officer to sign the agreement in the schedule to the Statutory Instrument.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 56 of 2009 - The Value Added Tax (Exemption) (Amendment), Order 2009; and

Statutory Instrument No. 57 of 2009 - The Value Added Tax (Zero-Rating) (Amendment), Order 2009

The Ministry of Finance and National Planning submitted that the Statutory Instruments were issued in order to link the Value Added Tax Zero Rating and VAT Exemption orders to the *Customs and Excise (Public Benefits Organisation) (Rebate, Refund or Remission) Regulations of 2009 (Statutory*

Instrument No. 7 of 2009). The V.A.T Zero-rating and V.A.T Exemption Orders in their current form still made reference to revoked regulations under Statutory Instrument No. 60 of 1996.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instruments.

Statutory Instrument No. 66 of 2009 — The Mines and Minerals Development (Remission of Mineral Royalties) (Luanshya Copper Mines Plc) Regulations, 2009

The Ministry of Finance and National Planning submitted that the Statutory Instrument was issued in order to provide for the remission of Mineral Royalties payable by Luanshya Copper Mines Plc to the value of nine million United States Dollars (US \$9,000,000) as Government contribution towards the sale and purchase of the Mine.

In response to your Committee, the Secretary to the Treasury submitted that in December 2008, Enya Holdings B.V (Enya), the major shareholder in Luanshya Copper Mines plc (LCM), had informed Government that the viability of the mine had been negatively impacted by the global economic downturn which had resulted in the mine being placed on care-and-maintenance and retrenchment notices issued to 1,639 employees. In addition, 67 contractor engagements were terminated.

During the same period, the Company owed about US \$20 million to third party creditors. Total debt for the Company including shareholder loans stood at US \$111.2 million. The Company had proposed to the Government that this debt should be settled by the sale of movable and non-core assets at Luanshya Copper Mines Plc that were estimated at about US \$30 million. The Government, however, rejected this proposal as it would have meant complete shut down of the mine. If the assets were to be sold, it would have meant that any new investor would have not been able to start production immediately as they would have to procure the necessary movable assets, some of which took up to nine months to procure and deliver.

The Secretary to the Treasury stated that the Government then constituted a technical team, chaired by the Secretary to the Treasury to engage Enya Holdings in finding an equity partner who would invest in Luanshya Copper Mine and buy off the 85 percent share holding by Enya.

On agreement with Enya, the Government facilitated the due diligence at the LCM by interested investors and tender formalities for the engagement of a new investor. A selective tender was done and out of five companies that submitted bids, China Non Ferrous Metal Mining (Group) Limited (CNMC) emerged as the preferred bidder. Negotiations were then conducted between Enya and CNMC on the purchase price with CNMC offering to buy the mine at US \$30 million while Enya had offered a selling

price of US \$55 million. Following these negotiations, which were mediated by the Government, the two sides finally agreed on the price and shares were sold to CNMC at US \$50 million. It must also be noted that the proceeds from the sale of Enya shares were solely meant to pay third party creditors.

Agreement relating to Investments and Concessions for the Luanshya Copper Mines PLC

Your Committee was informed that upon the conclusion of the sale of the 85 percent Enya's share holding to CNMC at the price of US \$50 million, the Government and CNMC then negotiated an Agreement relating to investment and concessions for Luanshya Copper Mine. The main objective of drawing CNMC into this agreement was to ensure that the company initiated the recapitalisation and was committed to immediately commence production at the Baluba mine as well as the development of the Muliashi project. With regard to the Muliashi project, CNMC committed to invest and start production within 2 years. In addition, the Government negotiated an increase in its shareholding by 5 percentage points bringing the total GRZ shareholding, through ZCCM-IH, to 20 percent.

Other commitments by the new company were in the area of health, education and sports. In health, the Company committed to improving the quality of medical services including the operation and management of the mine hospital. With regard to education, the company committed to run the Trust school as well as Luanshya Craft School and provide training services to technicians of the new company and local people. In the area of sport, the company committed to ensuring that basic sports and recreational services were available to all its employees and their dependants.

In return, the Government through this Agreement gave two concessions to the company. These were:

- (a) remission of mineral royalties up-to a maximum of US \$9 million payable for the minerals obtained from Luanshya Copper Mines Plc; and
- (b) exemption from paying any statutory taxes relating to the share purchase and the sale Agreement, which basically was the property transfer tax. Although technically, this tax was payable by the seller, in this case Enya, in practice, Enya would have included it in the selling price.

This Agreement was concluded and signed on 7th July, 2009. Following this Agreement, the Government had issued Statutory Instrument No. 66 of 2009 to provide for the remission of mineral royalty as Government contribution to revamping operations of the mine and safeguard the welfare of the employees and the community of Luanshya. The Government also issued Statutory Instrument No. 69 of 2009 to provide for the property transfer tax exemption on the transfer of shares from Enya to CNMC in order to augment resources from the sale of the 85 percent shares to be solely dedicated to settle the third party creditors.

Other options that the Government considered

Your Committee was informed that there were two other options that the Government evaluated before agreeing to the remission of US \$9 million.

(a) Concessions

The Government preferred not to give any concession to investors. This option would have either delayed or halted mining activities in Luanshya. In addition, the Government would have been forced to take over the social responsibility which the Mines usually provided.

Consequently, the Government resolved to offer incentives through mineral royalty which was payable when production commenced and not before.

(b) Other Agreements

The Government resolved to tax concession of US\$9 million on condition that the Mines took over the social responsibility such as provision of education, health and recreation facilities.

On the question of putting the US\$9m in abeyance and to be paid later, your Committee was informed that there was no room to revisit the remission of US\$9m as credibility in agreements was important especially when one of the parties was a government.

Regarding the other bidders who were unsuccessful, the Secretary to the Treasury explained that although Zambians would have been preferred, they had lacked the financial capacity to succeed.

As regards the total for the property transfer tax waived, your Committee learnt that it was US\$1.5 million.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 68 of 2009 — The Property Transfer Tax (Exemption) Order, 2009

The Ministry of Finance and National Planning submitted that the Statutory Instrument was issued in order to provide for Property Transfer Tax exemption on the transfer of assets from the former Kariba North Bank Company Limited (KNBC) to ZESCO Limited as the former had since acquired the properties of KNBC without any monetary consideration.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 69 of 2009 — The Property Transfer Tax (Exemption) Order (No. 2) 2009

The Ministry of Finance and National Planning submitted that the Statutory Instrument was issued in order to provide for Property Transfer Tax exemption on the transfer of ordinary shares in Luanshya Copper Miners Plc by Enya Holdings B V to China Non-Ferrous Metals in accordance with the agreement with the Government in order to augment resources from the sale of shares to be solely dedicated to settling the third party creditors.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 75 of 2009 — The Income Tax (Turnover Tax) (Amendment) Regulations 2009

The Ministry of Finance and National Planning submitted that the Statutory Instrument was issued in order to enhance Turnover Tax collection by providing a definition of an "income tax month" in a charge year. The definition of an "income tax month" would make it easy for tax payers to file the tax returns on time in a respective charge year. In addition, since tax payers under the presumptive tax may not receive income every month, the amendment also provides a requirement by the tax payers to notify the Commissioner-General of receipt of income they may not maintain in books of accounts.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 76 of 2009 – (The Customs and Excise) (Public Benefit Organisation) (Rebate, Refund or Remission) (Amendment) Regulation, 2009

The Ministry of Finance and National Planning submitted that the Statutory Instrument was an amendment to the Customs and Excise (Public Benefit Organisation) (Rebate, Refund or Remission) (Amendment) Regulation, 2009 (Statutory Instrument No. 76 of 2009). It provides for the exemption of import taxes for organisations that supplemented Government's efforts such as NGOs, churches, schools and hospitals. The amendment was introduced in order to rationalize the exemption policy, by strengthening the eligibility criteria, with the view of broadening the tax base while at the same time according the exemption to deserving organisations by:

- (i) limited customs duty exemption for public benefit organisations that availed services to the public for free, or at a fee similar to that levied by a Government institution providing a similar service;
- (ii) exclude religious organisations that were not engaged in the provision of facilities or activities for the benefit of the public, other than the dissemination of a religious doctrine; and
- (iii) updating the approval, rejection and cancellation forms to conform to existing administrative procedures of checks and balances to minimize revenue losses.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 77 of 2009 - (The Customs and Excise) (Suspension) (Amendment) Regulation, 2009

The Statutory Instrument was introduced in order to:

- (a) increase excise duty on diesel from 7 percent to 10 percent. In 2008, the Government reduced excise duty on diesel from 30 percent to 7 percent, in order to mitigate the cost of rising fuel prices on the international market. In view of the revenue shortfall in the 2010 budget and recognizing the reduced levels of oil prices on the international market, it was proposed that excise duty on diesel be increased by 3 percent points in order to cover the financing gap in the budget;
- (b) suspend customs duty on insecticide treated curtains when imported by persons approved by the Environmental Council of Zambia in order to mitigate the cost of malaria prevention and control. This was also in line with the Roll Back Malaria Programme. All materials used in the fight against malaria were supposed to be tax free. The Government had so far removed taxes on mosquito nets and insecticides used in the treatment of the nets. It was proposed to extend this treatment to insecticide treatment curtains; and
- (c) suspend customs duty on motor vehicles specially designed for the transportation of waste or refuse which was in line with Government Policy to remove duty on capital equipment so as to reduce the cost of doing business.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 78 of 2009 - (The Customs and Excise) (General) (Amendment) (No.4) Regulation, 2009

The Statutory Instrument provides for deletion of the Rules of Origin set out in the Eleventh Schedule of the Customs and Excise (General) Regulation (Statutory Instrument No. 103 of 2007), so as to simplify the procedure, by only making reference to the rules of origin as agreed and annexed to the trade

agreement. Under the current procedure, the Government had to issue a Statutory Instrument in order to implement each rule of origin as agreed under the SADC Trade Protocol. This process had proved cumbersome and tedious, particularly, for SADC, where the rules of origin were product specific and had to be agreed from time to time. Under the new proposal, once these rules were agreed by Member States and were annexed to the trade agreement, the law would allow the Zambia Revenue Authority to immediately allow preferential treatment on goods imported under such rules, unlike now where they had to wait for the Government to gazette such rules.

The Statutory Instrument also provides for the investors that were approved under the ZDA Act and were granted incentives by the Minister to be gazetted for record purposes. This would also provide for accountability and transparency. It further provided for customs and duty exemption for business enterprises located in a multi-facility economic zone (MFEZ), and developers of an MFEZ as provided by the ZDA Act, so as to promote the development of these zones.

The law also provides for the Minister to delegate to the Commissioner General to effect tax rebates on mining equipment to holders of mining rights. Currently, this rebate was being done by the Minister on a case by case basis. It was proposed that the Minister should only provide policy guidance and the day-to-day operations be delegated to the Commissioner-General as it was purely an administrative function.

Further, the Statutory Instrument introduces fees for replacing red books for motor vehicles and customs documents in order to allow the Zambia Revenue Authority recover the cost of replacing these documents. The fee to be charged for replacing either the red book or custom documents was set at two hundred and seventy-eight fee units or equivalent to K50,040.00.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 79 of 2009 — The Value Added Tax (Exemption) (Amendment) (No. 3) Order, 2009

The Ministry of Finance and National Planning submitted that this piece of legislation was issued in order to zero-rate, for V.A.T purposes, the sale of commercial property. The measure was aimed at mitigating the cash flow for developing commercial properties intended for sale and also to enable property development to claim input V.A.T as they developed their properties, but would only pay output V.A.T at the time of disposal of their properties.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 80 of 2009 – The Value Added Tax (General) (Amendment) (No. 2) Regulation, 2009

This Statutory Instrument was issued in order to compel suppliers eligible for registration to apply as soon as they attained the registration threshold. In addition, the measure would not allow such suppliers to claim corresponding input VAT rendering the measure punitive.

Currently, suppliers who did not register after becoming eligible were subjected to penalties for late registration and failure to register. This had given suppliers an option not to register and to only pay

penalties in cases where the tax liability was higher than the penalties payable, if they remained unregistered when they were eligible to register.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 81 of 2009 - The Value Added Tax (Zero Rating) (Amendment) (No. 2) Regulations, 2009

The Statutory Instrument was issued in order to:

- (a) bring the VAT liability of treated curtains in line with that of mosquito nets (zero rated) so that the Government doubled its effort in combating malaria, thereby achieving set goals on the fight against malaria;
- (b) delete the words "Agricultural Equipment and Spares" of Group 9 of the Zero Rating Schedule and replace them with the words "Agricultural Equipment and Accessories", in order to provide clarity on accessories that qualified for zero rating for easy administration of the law.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

MINISTRY OF DEFENCE

Statutory Instrument No. 38 of 2009 — The Defence (Regular Force) 2009 Purpose of Action Taken

The Ministry of Defence submitted that it was necessary to amend the mandatory retirement age of officers from fifty-five to sixty years. It also provided a provision that, if the President considered that it was desirable in the public interest, the President could allow that officer to continue to serve in the Regular Force for further periods, not exceeding twelve months at a time, until the officer attained the age of sixty-five years. However, officers could voluntarily retire upon reaching the age of fifty-five by giving a twelve months notice and thereby cease being on continuous service.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 82 of 2009 – The Zambia National Service (Officers) (Applications) Regulation, 2009

The Ministry of Defence submitted that this Statutory Instrument was issued to harmonize the application of the regulations therein in order to administer the Defence Services uniformly.

The harmonization came in the light of the fact the three Defence Services enjoyed the same Conditions of Service with similar roles and functions and operated under one ministry.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

MINISTRY OF COMMUNICATIONS AND TRANSPORT

Statutory Instrument No. 94 of 2009 - The Road Traffic (Marking) Regulations, 2009

The Statutory Instrument was issued pursuant to the powers contained in section two hundred and thirty-three of the *Road Traffic Act, 2002*.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 95 of 2009 - The Road Traffic (Chevron Signs) Regulations, 2009

The Statutory Instrument was issued to give notice pursuant to powers contained in sections one hundred and seventy-two and two hundred and thirty-three of the *Road Traffic Act, 2002*.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Statutory Instrument No. 96 of 2009 - The Road Traffic (School Traffic Wardens) Notice, 2009

The Statutory Instrument was issued to give notice pursuant to powers contained in sections one hundred and seventy-two and two hundred and thirty-three of the *Road Traffic Act, 2002*.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

PART II

5 LOCAL TOURS

Local Tour of West Mvuvye Local Forest, Nyimba

The tour was made pursuant to Statutory Instrument No. 20 of 2009, the National Forest No. P 54 West Mvuvye (Cessation) Order. The Order was issued in order to downgrade the status of the forest reserve from national to local in order to facilitate the joint forest management between the Zambia Forestry Department, Non-Governmental Organisations, business persons and the local community. The tour also related to the issuance of Statutory Instrument No 21 of 2009 - the Local Forest No. P 54 West Mvuvye (Declaration) Order, 2009. This order was issued for the purpose of changing the status and declaring the same area as a Local Forest Reserve in order to facilitate the Joint Forest Management which would allow the Zambia Forestry Department, Non-Governmental Organisations and business persons to engage with local communities to manage forest and related natural resources on sustainable basis.

Your Committee's objective was to ascertain that the rights of the local communities were and would not be impinged on as a consequence of the issuance of the Statutory Instruments.

Submission by Colonel Mbawa, Nyimba District Commissioner

Your Committee paid a courtesy call on the District Commissioner who submitted that there was an investor who had acquired a certificate of title in the forest reserve. The District Commissioner stated that the investor claimed to have invested US\$2 million in the reserve, but that the physical inspection of the area was at variance with these claims. He stated that out of the four boreholes sunk by the investor, only the one at Chieftainess Mwape's palace was working. Your Committee heard that the investor had

promised to build a school which he did not finish. The investor had provided desks and one classroom at Chieftainess Mwape's palace, but not for the community. The District Commissioner explained that in this regard the local communities were saying that they had not benefited from the investment.

Your Committee was informed that according to the agreement, the Council had given the investor 5,000 hectares, but that the Ministry of Lands gave him 15,000 hectares. Your Committee was informed that the local communities were of the view that the investor was occupying almost 30,000 hectares. The District Commissioner explained that the investor was involved in game ranching and that there was no joint management with the local community.

Meeting with investor, Mr Zaeed Patel

The investor submitted that he started game ranching in 2005. He explained that prior to that, the forest was depleted of game and that it was free for all including charcoal burners. He stated that he had identified the area and had subsequently met with Chieftainess Mwape and other stakeholders where the benefits to the community were discussed. These included employment, sinking of boreholes, rehabilitation of a school and the grading of the road. Your Committee was informed that he obtained title deeds for the land of approximately 13,000 to 14,000 hectares in 2005 for a period of 99 years.

The investor stated that his total investment in the area was US\$2 million which included the sinking of four boreholes, repair of a bridge, rehabilitation of a school, provision of desks and books as well as assistance to the Zambia Wildlife Authority (ZAWA) camp. He informed your Committee that he employed around 50 people whose salaries ranged from K250,000 to K800,000. He stated that a joint management forest had yet to be put in place.

Committee's Observations and Recommendations

- (i) Your Committee observes that the purpose and objective of passing the Statutory Instrument are at variance with the facts on the ground as the issuance of Statutory Instrument No. 20 of 2009, the National Forest No. P 54 West Mvuvye (Cessation) Order, was issued four years after the investor was given titled deeds in the then National Forest Reserve.
- (ii) Your Committee observes that there was no presence of the Forestry Department, Non Governmental Organizations and the local community in the management of the Forest Reserve as envisaged by the Statutory Instrument.
- (iii) Your Committee observes that the Statutory Instrument downgrades the forest reserve from a national reserve to a local reserve and that a Joint Forest Management which is supposed to manage the forest reserve had not yet been constituted.
- (iv) Your Committee observes that the investor, Mr. Zaeed Patel owns 15, 000 hectares of land to which he holds valid title within the now local Forest Reserve, P54 and as such this is private land to which the local community has no claim or say.

In this regard, your Committee recommends the following:

- (i) a Joint Forest Management Committee must be constituted without any further delay; and
- (ii) the Government must clarify whether the Joint Forest Management will also apply to the 15, 000 hectares of land that was privately held under title by Mr. Z. Patel.

Tour of Kariba North Bank Power Station

The tour was made pursuant to Statutory Instrument No. 68 of 2009, the Property Transfer Tax (Exemption) Order in order to provide for Property Transfer Tax exemption on the transfer of assets from

the former Kariba North Bank Company Limited to ZESCO limited as the former acquired the properties without any monetary consideration.

The objective of the tour was to have an on-the-spot-check of the assets which were the subject of the tax exemption.

Meeting with the Station Manager

The Station Manager submitted that Kariba North Bank consisted of a generating plant and a housing estate. He stated that the generating plant consisted of both movable and non-movable assets and that staff composed part of the assets. Your Committee was informed that the administrative records and inventory of assets was kept at headquarters by the Company Secretary. Your Committee also learnt that the housing stock comprised thirty high cost houses, sixty medium cost houses, sixty-nine low cost houses, eleven blocks of 259 single room flats, a recreation club, a guest house and a mess hall.

Committee's Observations and Recommendations

Your Committee notes the Statutory Instrument.

Tour of Kota Kota Hills Reserve

The tour was made pursuant to Statutory Instrument No 51 of 2009, the National Heritage Conservation Commission (National Monument) (Kota Kota Hills Reserve) (Declaration) Order which was issued to give total protection status of the area as a national monument. Your Committee's tour objective was to have an on-the-spot check of the resources at Kota Kota as well as to ascertain that the rights of the local communities were not being infringed as a result of declaring privately owed property a national monument.

Meeting with the Archeologist, National Heritage Conservation Commission

Your Committee was informed that the owner of Kota Kota had approached the National Heritage Conservation Commission (NHCC) in 2006 to help him carry out a survey of the whole area as he was trying to put up a game ranch but that there was rare flora and fossils on the property. Investigations by the National Heritage Conservation Commission revealed that Kota Kota was astatically a striking place as it comprised the largest peninsula which created an extremely narrow isthmus. Culturally, it had archeological materials from the middle stone age tools and fossils in large quantities. The fossils were an extension of the Chirundu belt. Further NHCC discovered anthropological resources which comprised ritual sites (Malembe).

Your Committee was informed that these discoveries prompted NHCC to act out of fear that these important resources could be desecrated or damaged as they were on private property. Your Committee further heard that it was rare to find a combination of fossils, archeological as well as anthropological material all on one site.

Your Committee heard that a national monument was public property and had rules. In this regard, the NHCC had discussed all the implications of the declaration with the proprietor who was agreeable to the declaration of Kota Kota as a national monument. In this regard, though the declaration would not stop the owner from carrying out developments on the property, it would limit some of his activities as he would have to inform NHCC of his plans.

Your Committee was informed that the site was difficult to access during the wet season and that even if the Members went by boat on Lake Kariba, they would need 4X4 vehicles to take them from the lodge to the sites discussed. Consequently, your Committee unanimously resolved to defer to a later date the physical tour of the site in view of the lack of access to the sites.

Tour of Libala Limestone National Monument

The tour was made pursuant to Statutory Instrument No. 50 of 2009, the National Heritage Conservation Commission (National Monument) (Libala Limestone National Monument) which was issued to give total protection status of the area as a national monument. Your Committee's tour objective was to have an on-the-spot check of the resources at Libala Limestone National Monument as well as to ascertain that the rights of the local communities were not being infringed as a result of passing this Statutory Instrument.

Meeting with Acting Director, East Central Region, Chief National Heritage Officer and Heritage Planner from the National Heritage Conservation Commission

Your Committee, during its tour of the Libala Limestone National Monument, was informed that the site exhibited different types of land formations. The rocks at the site were originally one rock which had over time due to weather formed into different rocks of varying shapes. Your Committee was informed that the said rocks were a mirror of the type of rock formation that existed in Lusaka.

Your Committee further heard that the site was being used for studies by students from the School of Geology at the University of Zambia, other researchers and persons interested in rock formations.

Your Committee was informed that in Zambia, most of the Limestone was not exposed and the site was one of the few places where limestone was fully exposed. The other place was in the Mumbwa District in the Central Province of Zambia. Therefore, the proximity of the site to the Central business area made it more advantageous to declare it a national monument.

Your Committee was further informed that without a law providing for the declaration of the site as a National Monument, the site would be heavily vandalized by stone crushers and that there would be too much pressure from land developers on the piece of land for land development purposes.

The officers from the National Heritage Conservation Commission stated that fencing off of the property would only be undertaken once funds were sourced. The delay in fencing was also attributed to the lack of an enabling environment.

The officers of the Commission further stated that the Site would be of economic value to the nation as it would be a tourist attraction and that it would also be used for recreational purposes.

Committee's Observations and Recommendations

In noting the Statutory Instrument, your Committee recommends the need for the site to be developed as it would attract more scholars and tourists. Your Committee further notes the need to fence off the area, beautify it as well as publicize the site so that more citizens and other foreigners would take interest in visiting the site.

PART III

6. CONSIDERATION OF THE ACTION-TAKEN REPORT

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

Your Committee had no outstanding matters from their previous report.

7. CONCLUSION

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

Your Committee also wishes to thank all the witnesses who submitted memoranda to it for providing the basis upon which it made informed decisions on the issues tabled before it.

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

C K B Banda, SC, MP
CHAIRPERSON

June 2010
LUSAKA