REPUBLIC OF ZAMBIA

REPORT OF THE COMMISSION OF INQUIRY INTO THE OPERATIONS OF THE ZAMBIA REVENUE AUTHORITY

December, 2011

Report

of the

COMMISSION OF INQUIRY INTO THE OPERATIONS OF THE ZAMBIA REVENUE AUTHORITY

30th November, 2011

His Excellency, Mr. Michael C. Sata
President of the Republic of Zambia
State House
LUSAKA

Your Excellency,

In accordance with the provisions of the Inquiries Act Chapter 41of the Laws of Zambia, your Excellency appointed us the undersigned Commission of Inquiry under Statutory Instrument No. 117 of 2011.

We were constituted and commanded to investigate and report on the operations of the Zambia Revenue Authority (ZRA).

Your Excellency, we feel greatly honoured to have been appointed to this Commission and would like to thank you most sincerely for having afforded us the rare opportunity to serve our country in this capacity

After a month of hard work, the Commission is pleased to, and has the honour to submit to His Excellency its report on the said investigation.

We have the honour to be, Your Excellency your obedient servants,

MR. KINGSLEY CHANDA
CHAIRMAN

MR. KATEMA MUTALE
VICE CHAIRMAN

MR. SANGAYAKULA SANGA
COMMISSIONER

MRS. PEGGY K. MULONGOTI
COMMISSIONER

MR. FREDRICK CHISHALA
COMMISSIONER

MS. AGNES M. MUSUNGA
SECRETARY

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LIST OF ABBREVIATION AND ACRONYMS

ACO	Assistant Customs Officer
ASYCUDA	Automated Acquired Customs Data Management
BOQ	Bill of Quantity
CCTV	Close Circuit Television
DBSA	Development Bank of South Africa
FAD	Fiscal Affairs Department
FBP	Five Border Company
IMF	International Monetary Fund
ISO	International Standards Organisation
IT	Information Technology
MDD	Management Development Division
MOFNP	Ministry of Finance and National Planning
MoU	Memorandum of Understanding
OSBP	One Stop Border Post
PAYE	Pay As You Earn
PPP	Public-Private Partnership
PSMD	Public Service Management Division
SC	State Council
SI	Statutory Instrument
SPV	Special Purpose Vehicle
TA	Transaction Advisor
TPIN	Tax Payer Identification Number

UNZA	University of Zambia
VAT	Value Added Tax
VDP	Value for Duty Purposes
WTO	World Trade Organisation
ZABS	Zambia Bureau of Standards
ZANIS	Zambia National Information Service
ZBCC	Zambia Border Crossing Company
ZDA	Zambia Development Agency
ZKVC	Zambia Kasumbalesa Venture Company
ZPPA	Zambia Public Procurement Agency
ZRA	Zambia Revenue Authority

EXECUTIVE SUMMARY

Introduction

1. In the exercise of the powers under the provisions of the Inquiries Act Volume 4 Chapter 41 of the Laws of Zambia, the President of the Republic of Zambia, Mr. Michael C. Sata, appointed the Commission of Inquiry into the Operations of the Zambia Revenue Authority (ZRA). The appointment was contained in Statutory Instrument No. 117 of 2011.

Sittings and Tours

2. The Commission conducted sittings in Lusaka, Kitwe, and Ndola. The Commission also decided to have tours and sittings in border areas of Chirundu, Livingstone, Kasumbalesa and Nakonde to appreciate issues on the ground. During the sittings, the Commission received submissions from a total of 103 witnesses. These included present and former officials from Zambia Revenue Authority, Zambia Public Procurement Agency, Zambia Development Agency, Ministry of Works, Supply, Transport and Communication, Ministry of Justice and Ministry of Finance and National Planning. In addition, submissions were received from customs clearing agents, importers, transporters, representatives from private companies, and individuals.

Organisation of the Report

1. This report comprises three parts which consist of chapters. The first part gives the overview of the scope and coverage of the Commission. The second part provides analysis of the information submitted to the Commission while the third part discusses the summary of findings and recommendations.

Summary of Findings and Recommendations

2. The Commission found that there were some serious irregularities pertaining to awarding of contracts and operations of the ZRA and concessions based on the submissions from all witnesses and reviewed documentation in form of contracts, Acts of Parliament, minutes of meetings, evaluation reports, corporate plans, bid documents and other documentation,

Contracts for the Procurement of Scanners

3. The Commission found that in the awarding of contracts for the procurement of ten scanners, the first two scanners procured from Smiths Detection were through an open tender criterion. The Commission found that the procurement was competitive, transparent and Government obtained value for money.

4. The Commission established that the eight scanners procured from China were financed from a loan negotiated by the late President Mwanawasa in two tranches of US$25 million each. The loan condition was that scanners be procured from China. However, in procuring scanners from China, the Commission found that the ZRA decided to single source the procurement of these scanners. The Commission therefore found that the loan condition to procure only from China did not mean that an open tender for other Chinese firms was not permissible. Considering that the loan was to be repaid by Zambian Tax Payer's money, an open tender to allow for participation of other Chinese firms should have been done in order to allow for competition, transparency and obtain value for money. **The Commission recommends that in the Procurement of goods and services open tender be encouraged as much as possible.**

5. The Commission established that Government obtained a loan of US$100 million from China for various projects. US$25 million was for the procurement of four scanners from Nuctech, a local supplier in China. In 2009, an additional four scanners were also procured from the same local supplier in China at a total of US$25 million as an addition to the original loan of US$100 million.

6. The Commission found that in applying for authority to direct bid Nuctech and reduce the floatation period from eight weeks to one week from ZPPA, the then Commissioner General of ZRA, Mr. Chriticles Mwansa justified direct bidding of the scanners purporting that there was "urgency". To further justify direct bidding, the former Commissioner General informed the Commission that after the placement of mobile scanners at Chirundu and Livingstone, importers had shifted their routes to other borders, particularly at Mwami, Chanida and Nakonde borders. The Commission did not find any statistical evidence that traffic had been diverted from Chirundu and Livingstone to the said small ports.

7. Further, the Commission found the reason of "urgency" not plausible because by November 2011 only one re-locatable scanner had been deployed at Chirundu and yet there was already a mobile one. The rest of the scanners though delivered had not been installed in the borders that were used to justify the urgent procurement. Therefore, the request to urgently direct bid eight scanners and reduce the floatation period was not justified since there was no inhibiting factors for not applying open tender criteria in the purchase of Nuctech scanners.

8. The Commission found that despite the "urgency" as the basis for the procurement of scanners, the equipment remained uninstalled, unused and unsecured except for one. Out of the eight, only one scanner at Chirundu was in use. In the Commission's view this is tantamount to gross negligence given the

colossal amount of money, borrowed to the tune of US$50 million to procure the scanners.

9. **In view of this observations on the procurement of scanners, the Commission recommends that further investigations be instituted by relevant Government security wings in order to ascertain the actions and/or inactions of the former Commissioner Generals who justified direct biding, the former Vice President to assist with the introduction of Nuctech in the transaction, the ZPPA management and the Central Tender Committee for approving direct biding without verifying details. Urgent measures be put in place to ensure that the scanners are secured and installed at the earliest possible time.**

Contracts for Operation and Maintenance of Scanners

10. In the operations and maintenance of the Smith scanners, the supplier was required to partner with a local firm. The Commission found that Cargo Scan Limited, a company that partnered with Smith Detection, was not in existence at the time the bid closed, a requirement in the tender document. Therefore, Smith Detection did not have a local partner in compliance with the bid document. In other words, there was a misrepresentation by Smith Detection vis-à-vis participation in the tender.

11. Section 32(1) of the Public Procurement Act provides for direct bidding. In relation to the Cargo Scan Contract, ZRA invoked Section 32(2)(c) which provides for 'additional goods, works or services must be procured from the same source because of the need for compatibility, standardization or continuity'. For the purposes of competitiveness, transparency and value for money, the Commission is of the view that prior to the expiry of the warranty period, ZRA should have gone for open tender, to procure a local company to operate and maintain the scanners.

12. The Commission is of the view that ZRA should have developed internal capacity to operate and maintain scanners. This is in view of the fact that the Smith Detection Contract had a provision and a budget for training of ZRA officers. The Commission observed that during the warranty period there were no efforts by ZRA to ensure skill transfer to its officers but instead waited for the contract to end and direct bid Cargo Scan to operate and maintain the scanners. **The Commission recommends that ZRA considers terminating Cargo Scan contract as it has adversely affected the operations of the institution. In this regard, ZRA should follow relevant legal procedures to engage a suitable service provider or utilize its own staff.**

13. The Commission found serious irregularities in the awarding of the contract to Bradwell International. Firstly, Bradwell was awarded a contract to maintain and operate scanners when ZRA staff had already been trained to operate the scanners and Nuctech was responsible for maintaining the scanners. Secondly, in direct bidding Bradwell, it was purported that there were security concerns that Government needed to take care of, in contracting Bradwell, however these concerns were refuted by the Managing Director of Bradwell. Thirdly, in paying Bradwell government issued a Statutory Instrument (SI) that required trucks which were over 3.5 tones to pay an examination fee of K360 000 at all borders regardless of whether scanners had been deployed or not. Fourthly, in sharing the examination fee, Bradwell was to get a Lion's share of 85 percent while government, the owners of the scanners, was to get a meager 15 percent. Finally, the urgency that characterized the awarding of the contract and putting in place an SI was extraordinary. **The Commission recommends that the contract with Bradwell International be terminated as the maintenance can be carried out by Nuctech and operations by ZRA. There is also need to build local capacity in the operation and maintenance of scanners in**

collaboration with existing training institutions in the country such as technical Colleges and local Universities

Concessioning of Borders

14. The Commission was surprised that the concession for Kasumbalesa was awarded to Baran Trade and Investments Limited without any tender process making the contract not competitive and transparent.

15. Border operations are about revenue collection and national security. The Commission observed that the concessionaire at Kasumbalesa is responsible for opening and closing of the border. This is a risk to national security as this function is legally a responsibility of designated government officials (customs officers and immigration officers) under the Customs and Excise Act Cap 322 and the Immigration and Deportation Act No. 18 of 2010. Therefore, the Government abrogated its responsibility by allowing the concessionaire to perform such a sensitive task without any legal basis.

16. The lack of supervision by the local authority, in this case the Chililabombwe Municipal Council and the then Ministry of Works and Supply during the construction process means that an independent valuation of the investment of US$25 million claimed by the concessionaire cannot be ascertained. The Commission observed that the refusal by the concessionaire to submit building plans and drawings and not to agree to be supervised by relevant Government authorities was deliberate and designed to hide the real cost of the investment in order to justify the US$ 25 million investment claim.

17. The Commission observed that, the concessionaire would recoup his US$25 million investment within two years without considering operational costs. Assuming that 300 7-axle trucks and 150 6-axle trucks use the border facility per day, then

Zambia Kasumbalesa Venture Company would collect about US$20.5 million per annum without consideration of their operational costs.

18. Regarding the Nakonde border concessioning, the Commission finds it illogical for a border that was under construction to have been concessioned when works were proceeding well and a colossal amount of K23 billion in certified works had been done. The works done were at 75 percent completion level.

19. The Commission observed that the Council of Ministers' decision to "reward" one concessionaire with five other borders in addition to Kasumbalesa puts the country at great risk and in a vulnerable position in that in case of any dispute at one border this could potentially affect all other borders.

20. **The Commission recommends that the Kasumbalesa, Nakonde and four other border concessions be terminated immediately. With regards to Kasumbalesa Concession, the Government takes over the DBSA loan and finance it through reduced crossing fees and the facility be managed by the Government through the (ZRA) immediately.**

Tax Deferment to Varun Beverages

21. The Commission finds that the tax deferment that was granted to Varun beverages was illegal. The Commission finds that the deferment was applied on locally produced goods and this action was in contradiction with the intent and content of Section 58 of the Zambia Development Agency Act. The special deferment that was awarded to Varun did not fall within the ambit of the VAT deferment scheme nor the Time to pay arrangement that exist under the Customs and Excise Act. The Law provides that a tax deferment by the Minister should be done through an SI as provided for in section 89 of the Customs and Excise Act Cap. 322 and Section 15 of the Value Added Tax Act Cap. 331 of the Laws of Zambia. In this regard, there was no SI issued for this deferment. Therefore, the deferment is illegal.

22. **The Commission recommends that the concession of tax that was awarded to Varun Beverages (Zambia) Limited be cancelled. Varun be compelled to start paying all current taxes immediately and be allowed to sign a time to pay agreement for a period of twelve months in order to liquidate all deferred taxes as stipulated by the law.**

Contract for Computerized Direct Trader Input Services

23. The Commission noted that though NECOR had consistently been awarded the contracts for Direct Trader Input services from the year 2002, the awarding of the contracts was through a competitive process.

24. On the possibility of ZRA over paying NECOR for services of Data Capture that are done at remote sites, the Commission established that ZRA had put in place a mechanism to counter the possibility of overpayment. The countering has been achieved by use of Declarant Numbers, where the ZRA isolates declarations by declarants who have remote accessibility to the ZRA's ASYCUDA system.

25. **The Commission recommends that ZRA to consider acquiring its own software that will enable traders to have remote access to ASYCUDA and eliminate the monopoly that NECOR was enjoying. This would reduce the ASYCUDA fees that were being paid by traders and ZRA would have funds to further invest in trade data capturing technologies**

Chirundu Office Crisis: Hallmark Contract

26. The Commission observed that in as much as Hallmark might have had a legitimate contract with the Ministry of Works and Supply, the contract was entered into without stakeholder consultation vis-à-vis, ZRA and other border operators.

27. The Commission observed that Hallmark had reneged on its contractual obligations. The Commission further observed that there was a legitimate concern regarding the high rental charges which are prohibitive for small operators at the border. **The**

Commission therefore, recommends cancellation of the Hallmark contract. The Commission further recommends that Government through the Ministry of Transport, Works, Supply and Communication hands over the Chirundu Border infrastructure to ZRA who should be responsible for its management.

28. The Commission heard that many government agencies have set up at borders in the recent past. Currently, Zambia has eleven different government agencies at the borders enforcing different pieces of legislation. This has significantly contributed to border delays and over burdened the business with multiple compliance requirements. **The Commission recommends for implementation of an Integrated Border Management (IBM) System in order to minimize duplicity as a result of having too many government agencies performing different roles**.

Issues Arising from Customs Clearing Agents

29. The Commission observed that Chirundu One Stop Border Post (OSBP) had low staffing levels which compelled management to assign non customs officers to help perform customs functions. This caused animosity among customs clearing agents. **The Commission recommends that ZRA fills all vacant positions at all the borders according to the establishment in order to address the current understaffing and improve border efficiency**

30. The Commission found merit in the complaints by the Customs Clearing Agents in as far as the fee paid to Banks at border posts. It was unfair for Agents to be charged for Manager's Cheques when cash could be deposited into ZRA account in the same bank. **The Commission recommends that, ZRA considers stationing their cashiers in the commercial banks at the borders (especially those banks that operate within ZRA premises) to enable**

clients pay cash directly to ZRA without having to purchase bank certified cheques.

31. The Commission noted that there was genuine complaint by Stakeholders against the practice of obtaining Tax Payer Identification Numbers (TPINs) from Lusaka and filing tax returns in Kasama, away from Nakonde. This was said to be contributing to border delays and congestion. **The Commission recommends that ZRA further decentralizes the issuance of TPINs and filing in of tax returns**

Other Zambia Revenue Authority Operational Issues

32. The Commission observed that the ZRA strategy and structure required urgent review in order to respond to the new challenges arising from the development in the economy; the Commission established that the current ZRA structure is not consistent with provisions of the ZRA Act especially as it relates to Commissioner positions. **The Commission recommends creation of a position at Commissioner level to deal with domestic VAT and domestic Excise Duty, creation of a specialized mining unit to focus on taxation of the mining industry headed by a Deputy Commissioner based on the Copperbelt and Northwestern Province and to also deal with other large scale tax payers, and the reinstatement of the position of Revenue Treasurer.**

33. The Commission noted that Zambia Revenue Authority was not operating at the required optimum staff levels and consequently, service delivery has been negatively affected. **The Commission recommends that ZRA recruits more staff according to the approved establishment and subject to the proposed changes to the structure.**

34. The Commission notes that the current funding of the ZRA does not take into account the performance of the Authority as it is based on yellow book annual

appropriation. **The Commission recommends timely financing of ZRA operations and a mechanism of providing additional incentives based on revenue performance.**

PART 1: OVERVIEW OF SCOPE AND COVERAGE OF THE COMMISSION

APPOINTMENT AND ESTABLISHMENT OF THE COMMISSION OF INQUIRY

Introduction

1. The Commission of Inquiry into the operations of Zambia Revenue Authority (ZRA) was appointed by the President of the Republic of Zambia, His Excellency Mr. Michael C. Sata, under the provisions of the Inquiries Act Chapter 41 of the Laws of Zambia. The appointment was publicized through a Statutory Instrument No. 117 of 2011 (Appendix I).

2. The appointment of the Commission followed serious concerns from Government and the President in particular over the awarding of contracts by ZRA management to various institutions and the operations of ZRA in general.

3. The Commission comprised the following:

Mr. Kingsley Chanda	-	Chairman
Mr. Katema Mutale	-	Vice Chairman
M. Sangayakula Sanga	-	Commissioner
Ms. Peggy K. Mulongoti	-	Commissioner
Mr. Fredrick Chishala	-	Commissioner
Ms. Agnes M. Musunga	-	Secretary

4. The Commissioners were sworn in by His Lordship the Honourable Chief Justice of Zambia, Mr. Justice Earnest S. Sakala, at the Supreme Court in Lusaka on 31st October, 2011 while the Vice Chairperson was sworn in on 3rd November, 2011.

Terms of Reference

5. The terms of reference of the Commission of Inquiry as reflected in Statutory Instrument No. 117 of 2011 were as follows:

i. The awarding of contracts to various institutions by the management of the Zambia Revenue Authority;

ii. Whether the contracts referred to in paragraph (a) were awarded in accordance with the applicable laws and procedures;

iii. Whether there were any improper or illegal activities that occurred in the operations at Zambia Revenue Authority; and

iv. Matters connected with, or incidental to the foregoing.

Method of Work

6. After the swearing in ceremony, the Commission held its inaugural meeting on 1st November 2011 at the Mulungushi International Conference Centre to discuss the Terms of Reference and draw up a programme of work (See Appendix II).

7. Pursuant to the Terms of Reference, the Commission requested ZRA for all contracts that it had executed from January 2006 to October 2011. In addition, the Commission requested for all board papers, corporate plans, training programmes, minutes from management tender committee meetings and other relevant documentation. Further, requests were also made to Zambia Public Procurement Authority (ZPPA) to provide necessary information pertaining to ZRA contracts.

8. The commission obtained documents on the operations of the Public-Private Partnership (PPP), Statutory Instruments, tax exemption documents and loan agreements. During public hearings the commission received both oral and written submissions. (See Appendix III).

9. On 4th November 2011 the Commission paid a courtesy call on the Minister of Finance and National Planning, Mr. Alexander B. Chikwanda, MP. The Minister requested the Commission to broaden its scope of work and delve into structural and operational areas of the ZRA with a view to helping Government come up with a lasting solution to matters that constrain the operations of ZRA.

10. The Commission had sittings in Lusaka, Kitwe, Ndola, Chirundu, Livingstone, Kasumbalesa and Nakonde.

11. The Terms of Reference of the Commission and the programme of sittings were widely publicized in both print and electronic media. Additionally, the Commission held a press conference on 4th November 2011 to further clarify and disseminate its Terms of the Reference.

12. The Commission engaged a Legal Counsel, Mr. Martin M. Lukwasa, from the Attorney General's Chambers, Ministry of Justice to render legal advice.

13. The Commission used powers under Section 13 (2) of the Inquiries Act to summon current and former officers from Government and private institutions. In addition the Commission received testimonies from persons who approached it on their own accord as a result of wide publicity of its sittings. The former Attorney General Mr. Abyudi J. Shonga Jnr, SC appeared before the Commission but could not make submissions since there was no clearance from the President pursuant to the official Oaths Act Chapter 5 of the Laws of Zambia.

14. To ensure transparency and effective dissemination of information, the print and electronic media were allowed to cover all the sittings and tours without censure. Members of the public were allowed to sit-in during the hearings.

15. All witnesses gave evidence on oath. The Commission ensured that it explained the Terms of Reference to the witnesses. All the submissions before the Commission

were recorded verbatim using tape recorders which were later transcribed for purposes of record. Other witnesses made written submissions.

16. The Commission invited experts in scanning technology from Evelyn Hone College and the University of Zambia (UNZA) to provide information regarding scanners. The Commission also invited experts from Management Development Division (MDD) of Cabinet Office to discuss the ZRA Organisational Structure.

17. The Commission concluded its public hearings within the stipulated period and proceeded to compile the report.

Acknowledgements

18. During its sittings the Commission received support from individuals and Institutions, without whose support, it would have been difficult for the Commission to fulfill its mandate on schedule.

19. The Commission would like to place on record its appreciation and indebtedness to the following institutions:

Cabinet Office

District Commissioner's Office – Nakonde

Evelyn Hone College

Kitwe City Council

Ministry of Finance and National Planning

Ministry of Health – Nakonde

Ministry of Information and Tourism

Ministry of Justice

Ministry of Transport, Works, Supply and Communication

Ndola City Council

University of Zambia

Zambia Air Force

Zambia Public Procurement Agency

Zambia Revenue Authority

20. In addition, the Commission wishes to appreciate the input of the following support staff:

Mr. Chola J. Chabala, Monitoring & Evaluation, Specialist, MOFNP (Rapportuer)
Mrs. Beatrice Kachinda, Senior Collector, Zambia Revenue Authority (Rapportuer)
Mr. Mulele Maketo Mulele, Principal Economist, MOFNP (Rapportuer)
Ms. Elizabeth M.T. Siatwambo, Chief Human Resource Development Officer, MOFNP
Mr. Joseph Mulibo, Assistant Accountant, Cabinet Office
Ms. Exildah Matongo Chikompa, Stenographer, MOFNP
Ms Ethel Kunda, Stenographer, Ministry of Agriculture
Ms. Hazel M. Mwenya, Typist, Cabinet Office
Ms. Theresa Fungamwango, Registry Officer, Public Service Management Division
Ms. Agness Zulu, Office Orderly, Cabinet Office
Ms. Daisy Phiri, Office Orderly, MOFNP
Ms. Edith Kaluba, Maintenance Technician, Zambia News Information Services
Mr. Michael Malumo, Maintenance Officer, ZAN I S
Ms. Loveness N. Mbulo, Ministry of Justice (Retired)
Mrs. Maureen M Mvula, Ministry of Justice (Retired)
Mr. David Munali, Driver, MOFNP
Mr. Bornwell Mpilibuka, Driver, Cabinet Office
Mr. Dickson Shawa, Driver, MOFNP
Mr. Solomon Mwale, Driver, MOFNP
Mr. Baron Mtonga, Driver, MOFNP
Mr. Boniface Chobela, Driver, MOFNP

OVERVIEW OF ZAMBIA REVENUE AUTHORITY

Historical background

1. The Zambia Revenue Authority was created under Act number 23 of 1994 with a mandate to collect tax revenue on behalf of Government. The Authority is charged with other responsibilities such as :

   i. To ensure that all monies collected are properly accounted for and banked;

   ii. To properly enforce all relevant statutory provisions related to taxation;

   iii. To provide statistical information on revenue to the Government;

   iv. To give advice to Ministers on aspects of tax policy; and

   v. To facilitate international trade

2. The Zambia Revenue Authority Act, Cap 321 further prescribed the structure of the Zambia Revenue Authority, with the Governing Board that was established under Section 10. The composition of the board is prescribed and it includes the Secretary to the Treasury, the Permanent Secretary responsible for legal affairs, the governor of the Bank of Zambia, a representative of the Law Association of Zambia, 3 three persons each representing the Zambia Confederation of Chambers of Commerce and Industry, the Zambia Institute of Certified Accountants and the Bankers' Association of Zambia; and two other members appointed by the Minister.

3. The appointment of the chief executive officer of the Zambia Revenue Authority is also prescribed under the same Act and the powers to establish the organizational structure of the Authority are vested in the Commissioner-General in consultation with the Governing Board.

Mission of the Zambia Revenue Authority

4. The Mission of the Zambia Revenue Authority is derived from the purpose of its existence; that is to collect revenue on behalf of the Government. The Mission has taken into consideration, the strategies that need to be employed for the Zambia Revenue Authority to meet the purpose of its existence, the standards that ought to be maintained to meet the needs of its customers (Tax payers) and values that the organization should uphold.

5. The Mission of the Zambia Revenue Authority therefore sets the tone for the institution's overall strategy and in that vein, corporate plans are devised in such a manner as to ensure the overall strategy and the set objectives are met.

AREAS OF FOCUS AND REPORT ORGANISATION

Areas of Focus

1. The Commission reviewed 108 contracts for the period January 2006 to October 2011 relating to Zambia Revenue Authority (ZRA), Public-Private Partnership (PPP) and the Ministry of Transport, Works, Supply and Communication. (MTWS&C), (See Appendix IV).

2. After the review, the Commission focused on the following problematic contracts:

    i. Smith Detection Limited of France
    ii. Nuctech Company Limited of China
    iii. Cargo Scan Systems Limited of Zambia
    iv. Bradwell International of the United Kingdom
    v. Baran Trading Limited of the United Kingdom
    vi. Five Border Company Limited of Zambia
    vii. NECOR Limited
    viii. Hallmark Limited

3. In addition to the contracts that were reviewed, the Commission also reviewed the structure of ZRA in line with the demands by the Minister of Finance for the Commission to broaden its scope of work and delve into structural and operational areas of the ZRA. Specifically the Commission examined the prevailing ZRA structure in respect of its capacity to deliver in the obtaining economic, political and social dispensation

4. Further, the Commission reviewed the tax concessions and statutory instruments. Specifically the Commission reviewed the Tax concession that was given to Varun

Beverage Limited (PEPSI) and Statutory Instruments relating to the charging of fees to finance the operation and maintenance of scanners.

Organisation of the Report

5. This report comprises three parts which consist of chapters. The first part gives the overview of the scope and coverage of the Commission. The second part provides analysis of the information submitted to the Commission while the third part discusses the summary of findings and recommendations.

PART 2: ISSUES ARISING FROM SUBMISSIONS

PROCUREMENT OF SCANNERS

Background to Procurement of Scanners

1. Government got concerned with the declining of tax revenue between 2004and 2006 as a percentage of GDP from 17.5 percent to 16.4 percent, respectively. As a result a team comprising of officers from ZRA and Ministry of Finance and National Planning was constituted to explore various options designed to enhance revenue collection. One of the options identified was the use of container scanners by ZRA for customs operations.

2. The need to procure scanners was inconformity with the Revised Kyoto Convention on trade facilitation on trade to which Zambia is a signatory. This protocol requires signatories to modernize, simplify customs and other border procedures. The revised Kyoto Convention provides for *"the simplification, harmonization and modernization of Customs procedures. This Convention contains modern Customs formalities and procedures, harmonized Customs documents for use in international trade and transport, and provides for the use of risk management techniques and the optimal use of information technology by Customs administrations."* The optimal use of information technology includes among other things use of non-intrusive inspection techniques such as container scanners.

3. Scanning technology is used for many things among which include evaluating disease processes to choice of treatment method, chemotherapy, radiotherapy, surgery, investigate effectiveness of treatment, and facilitates research into disease pattern. Scanning technology is used to identify/locate, microscopic cracks in pipes (industrial), Crack in walls of building (Architecture application). In the customs context, scanning technology is used to inspect shipping containers for purposes of detecting special nuclear materials, detection of suspicious cargo, verification of materials declared, general identification of contraband for tariff collection. This

was the major interest of the Government when the decision to procure scanners was made.

4. Following this decision, ZRA acquired 10 container scanners two from Smith Detection of France and eight from Nuctech Company Limited of China, of which only 3 are deployed in Chirundu and Livingstone. Chirundu has two scanners; one re-locatable and the other mobile. Livingstone has one mobile scanner. Prior to the visit to the border by the Commission there had been complaints before the Commission that two mobile scanners deployed in Chirundu and Livingstone were not operational. At the time of the visit to the said borders the Commission ascertained that effectively only the re-locatable scanner at Chirundu was operational.

Smith Detection Scanners – Procurement Process

5. The Government assigned a team of officials from ZRA and MOFNP to undertake study tours to Zimbabwe, Tanzania, Kenya and South Africa for the purpose of understanding how the scanners operate and how best to implement the use of scanners in Zambia. Following the successful tour for the team, the MOFNP provided K20 billion for the procurement of two scanners.

6. The procurement of the two mobile scanners, was done through an open tender. The bidders and their bid values were as follows;

   i. Rapiscan Africa Limited (US$4.2 million),
   ii. Smith Detection (US$ 3.6 million),
   iii. Basix Technologies (Pty) Limited (US$2.04 million),
   iv. Nuctech Company Limited (US$3.8 million).

   Although Basix Technologies had the lowest bid, it failed on the eligibility criteria, being that it was not a manufacturer of cargo scanners and did not poses ISO certification. Smiths Detection was awarded the contract to supply, delivery, install, commission, operate and maintain the container scanners on the basis of bid completeness, qualifications, capability, and meeting the general technical requirements.

Smith Detection Scanners - Observations

7. The Commission took note of the fact that the purchase of two scanners from Smith Detection was done by open tender and financed by the Government of Zambia. This allowed for competition among companies and the best bidder won. It should be noted, that Nuctech Company Limited which later supplied eight scanners also participated in this tender and lost on the basis of their financial proposal.

8. However, the Commission noted that at the time of the bid Smith Detection had no local partner as per tender requirement. This is due to the fact that at that time Cargo Scan was unincorporated.

Smith Detection Scanners – Recommendations

9. The Commission is not making any recommendation on this procurement as it was satisfied that the normal tender process was followed and the Government of the Republic of Zambia obtained value for money.

Nuctech Scanners - Background

10. In 2007, the then Republican President Levy P. Mwanawasa SC, visited China and negotiated for a credit line of US$100 million for storage shades under Food Reserve Agency (US$11 million), Government Complex (US$25 million), Earth Moving Equipment (US$39 million), Irrigation (US$12.5 million), and Water and sanitation (US$12.5 million). It must be noted that the then Republican President delegated the coordination of the use of the loan from China which included the procurement of four scanners to the then Vice President, Mr. Rupiah B. Banda. On

the advice of the Chinese Government, the irrigation and water and sanitation projects were dropped in preference for the procurement of 4 scanners at a total cost of US$25 million. The Chinese Government advised that the two projects were not viable and were unlikely to generate enough revenue to meet loan obligations. Despite the advice from the Chinese Government, the then Minister of Finance and National Planning Mr. Ng'andu Magande, objected to the variation of funds to favour procurement of scanners. However, the then Vice President Mr. Rupiah Banda was of the view that six additional scanners be procured (See Appendix V).

11. Further, a letter by the then Secretary to the Treasury Mr. Evans Chibiliti cautioned the Government to take into account recommendations from the study tour undertaken by the technocrats on the various challenges being faced by countries that were using scanners. He cautioned that there was need to learn lessons arising from the management and operations of the two mobile scanners before Government could commit itself to procuring more scanners, (See appendix VI). Despite the foregoing, the process of procuring the first four scanners from Nuctech commenced.

12. When Mr. Rupiah B. Banda assumed the office of Republican President, he directed the former Minister of Finance and National Planning, Honourable Dr. Situmbeko Musokotwane to request the Chinese Government for an increase in the loan by US $ 25 million to purchase four additional scanners bringing the total number to eight. Dr. Musokotwane, however advised that there was no need to purchase four scanners as the six scanners (two from Smith Detection and four from Nutech) were adequate to cover the major entry points and the rest of the borders had little traffic to justify the purchase of the additional scanners, (See appendix VII). This advice was ignored, as Government proceeded to procure four additional scanners from Nuctech.

Nuctech Scanners – Procurement Process

13. All the eight scanners from NUCTECH were procured using single sourcing criteria (now referred to as direct bidding). The reasons advanced for procuring the Scanners from NUCTECH, by the then Commissioner General of ZRA, Mr. Chriticles Mwansa to the ZPPA were as follows:

    i. One of the conditions of the loan is to source and procure the scanners from a firm that is registered and with its head office based in China; and

    ii. the container scanners are urgently required to enhance efficiencies in the collection of Government Revenue and facilitation of trade and provide assurance of security of the supply chain;

14. Mr. Mwansa further sought authority to invite the tender under a reduced tender floatation from eight weeks to one week due to the urgency of the matter. He also requested to waive the requirement for bid security due to the earlier request, (See letter on Appendix VIII). Approval to single source was given by ZPPA through Mr. David Kapitolo on 5th March 2009, a day after receiving Mr. Mwansa's request which was dated 4th March 2009, (See Appendix IX).

15. According to Section 32 (1) of the Public Procurement Act, direct bidding is allowed under the following circumstances:

    i. the goods, works or consulting or non-consulting services are only available from a single source and no reasonable alternative or substitute exists;
    ii. due to an emergency, there is urgent need for the goods, works or services making it impractical to use other methods of procurement because of the time involved in using these methods;

iii. additional goods, works or service must be procured from the same source because of the need for compatibility, standardization or continuity;

iv. an existing contract could be extended for additional goods, works or services of a similar nature and no advantage could be obtained by further competition; or

v. the estimated value of the goods, works or services does not exceed the prescribed threshold

Nuctech Scanners – Observations

16. The Commission is of the view that the first justification given to procure only from China did not mean that an open tender for other Chinese firms was not permissible. One of the witnesses in fact confirmed that Nuctech was not the only manufacturer of Non-Intrusive Scanners within China. Considering that the loan was to be repaid by Zambian Tax Payer's money, an open tender to allow for participation of other Chinese firms should have been done in order to allow for competition, transparency and obtain value for money.

17. The second justification for single sourcing of the scanners was based on the purported urgency of the matter. To further justify single sourcing, the former Commissioner General Mr. Chriticles Mwansa, informed the Commission that after the placement of mobile scanners at Chirundu and Livingstone, importers had shifted their routes to other borders, particularly at Mwami, Chanida and Nakonde borders. The Commission did not find any statistical evidence that traffic had been diverted from Chirundu and Livingstone to the said small ports. Further, the Commission found the reason of "urgency" not plausible because by November 2011 only one scanner had been deployed at Chirundu and yet there was already a mobile scanner. The rest of the scanners though delivered had not been installed in the borders that were used to justify the urgent procurement. Therefore, the

request to urgently direct bid eight scanners and reduce the floatation period was not justified.

18. The other aspect that the Public Procurement Act under Section 32 (2) (b) addresses is that limited bidding can be used when open tender is impractical. However, the Commission found no inhibiting factors for not applying open tender criteria in the purchase of Nuctech scanners.

19. On ZPPA approval of the request by ZRA to direct bid Nuctech for the supply of the scanners the Commission found the Central Tender Committee grossly negligent in

    i. In approving direct bidding of scanners from Nuctech a company that failed in the first open tender bid;
    ii. Accepting deployment of the four scanners in small ports without critical economic justification;
    iii. In failing to ask for detailed information and justification for the purchase of the four additional scanners;
    iv. In failing to conduct independent verifications through its inspectorate department.

20. The Commission observed that the advice from the then Secretary to the Treasury, Mr. Chibiliti to the then Vice President's office and initially from the ZRA on lack of justification for procurement of four additional scanners was ignored.

21. During the tour of border posts the Commissioners were informed that the scanners were not installed for various reasons which ranged from land not being secured and appropriate infrastructure not being in place. Further the Commission established that the scanners were not properly stored and secured.

Nuctech Scanners – Recommendations

22. Arising from the above observations, the Commission recommends as follows:

i. Further investigations be instituted by relevant Government security wings in order to ascertain the actions and/or inactions of the former Commissioner Generals who justified the direct biding, the former Vice President to assist with the introduction of Nuctech in the transaction, the ZPPA management and the Central Tender Committee for approving direct biding without verifying details;

ii. In future, the Procurement of goods and services should be done through open tender as much as possible; and

iii. Urgent measures be put in place to ensure that the scanners are secured and installed at the earliest possible time;

MAINTENANCE AND OPERATION OF SCANNERS

1. Sophisticated technological equipment such as scanners require well trained personnel to maintain and operate. Suppliers of equipment are expected to provide training and prepare good personnel who upon expiry of warranty period take over the maintenance and operation of the equipment. Therefore, the tenders of scanners that ZRA floated had a conditionality that required development of local capacity to operate and maintain scanners. The suppliers gave a 12 month warranty under which they could operate and maintain the said scanners. In the case of Smith Detection, the company was required to partner with a local company so that they could build capacity. Therefore, Cargo Scan Systems Limited was engaged as a local company by Smith Detection. The contract with Nuctech provided a 12 months warranty with four year operation and maintenance cover. Bradwell International limited was later contracted for the Nuctech scanners even before the warrant period elapsed and the four year operational and maintenance cover had started.

Cargo Scan – Procurement Process

2. Smith Detection partnered with Cargo Scan, to fulfill the requirements of the tender. However, Cargo Scan was non existent at the time. Cargo Scan was only registered six days after the contract was awarded contrary to tender requirements. The tender closed on 19th October, 2007 and the contract was signed on 7th December, 2007, while Cargo Scan was incorporated on 13th December, 2007, (See Appendix X).

3. Upon the expiry of the warranty period, ZRA decided to direct bid Cargo Scan for the operation and maintenance of scanners for three years; from 17th August 2009 to 16th August 2012 at a cost of K10.4 billion broken down into local and foreign

costs of K7.9 billion and K2.5 billion, respectively. The above breakdown translates to K143.8 million per month for each scanner based on the following reasons:

a. The warranty period in the bid document under the Systems Operation provided that, during the first 12 months after completion of the facilities, the Contractor would ensure full time system operation by providing the service of a System Operator on each mobile scanner. This service was to be executed by a fully trained, English speaking and experienced technician from the Contractor working in liaison with a Zambian Company identified by the Contractor to work in partnership with it, and

b. The local representatives had been trained by Smith Detection and with their full 12 months partnership they were competent enough to handle the operation and maintenance service and fully support the operations of the scanners.

4. Cargo Scan contract states that they shall; "provide necessary spare parts for preventive maintenance and shall obtain for their stocks or from the warehouses of outsourced sub-contractors". However, in a number of instances, ZRA was required to purchase or cover the cost of spare parts.

Cargo Scan – Observations

5. Cargo Scan Limited was not in existence at the time the bid closed. Therefore, Smith Detection did not have a local partner in compliance with the bid document. In other words, there was a misrepresentation by Smith Detection vis-à-vis participation in the tender and ZRA Tender Committee should have taken this into consideration.

6. Section 32(1) of the Public Procurement Act provides for direct bidding. In relation to the Cargo Scan Contract, ZRA invoked Section 32(1)(c) which provides for

‘additional goods, works or services must be procured from the same source because of the need for compatibility, standardization or continuity’. For the purposes of competitiveness, transparency and value for money, the Commission is of the view that prior to the expiry of the warranty period, ZRA should have gone for open tender, to procure a local company to operate and maintain the scanners.

7. The Commission is of the view that ZRA should have developed internal capacity to operate and maintain scanners. This is in view of the fact that the Smith Detection Contract had a provision and a budget for training of ZRA officers. The Commission observed that during the warranty period there were no efforts by ZRA to ensure skill transfer to its officers but instead waited for the contract to end and direct bid Cargo Scan to operate and maintain the scanners. In any case local capacity exists for training personnel at Zambian Technical Colleges and local Universities.

8. The Commission observed with great concern, the failure by ZRA to implement Central Tender Committee decision of 30th June 2009, directing the Commissioner General to appoint a contract Manager for each contract in line with the provisions of the Public Procurement Act, 2008, Section 57, in order to avoid urgent procurements for tenders requiring maintenance service. Had ZRA appointed a Contracts Manager, the Manager would have ensured that contract provisions were being implemented by the parties. The Commission was appalled by the contradictions by the various senior officials form the ZRA who appeared before it on the appointment of the Contract Manager. In essence the Commission discovered that there was no designated Contract Manager.

9. The Commission established that the absence of a Contract Manager led to poor management of the Cargo Scan contract as evidenced by lack of clarity on who is responsible for the procurement of spare parts for the scanners. In addition, payments for operating the scanners are made even when the equipment was not operational. Further, there was no proper recording of down times of scanners

which posed a possibility of over-invoicing resulting in over payments to Cargo Scan Limited.

10. The Livingstone scanner caters for traffic directed from Victoria falls, Katima Mulilo and Kazungula border post. During the Commission's visit in Livingstone, it was observed that there is poor communication between satellite stations and their controlling station, Livingstone Customs house. In some instances, trucks could be directed to Livingstone when in actual fact the scanner in Livingstone was not operational.

11. It was observed that of the two scanners at Chirundu Border Post the mobile scanner operated and maintained by Cargo Scan, has specific operating hours as contained in the contract. The contract specifies that the operating hours are between 07:00 hours to 18:00 hours daily. The limited working hours could have an adverse impact on the operations of ZRA and revenue collection.

12. The Commission observed that the contractor was not meeting contractual obligations as evidenced by the down times that the scanners had remained non-operational. Efforts have not been made by the management of ZRA to review these stoppages despite having a clause in the contract for termination arising from this poor performance. Further, the Commission obtained evidence indicating that the operating schedule is not signed by the Station Manager who is in a position to verify the work done by Cargo Scan. In addition, the Commission noted that an Assistant Legal Officer, by the name of Mr. Tresford Chali had recommended for the termination of the contract in his legal opinion on Cargo Scan rendered on 10th March 2011. As at November 2011 ZRA had not terminated the Cargo Scan contract, (See Appendix XI).

Cargo Scan – Recommendations

13. Arising from the above observations, the Commission recommends as follows:

i. Further investigations be instituted by relevant Government security wings in order to ascertain the actions and/or inactions of Commissioner Generals and the ZPPA management and the Central Tender Committee;

ii. A detailed analysis of the down times and the payments to Cargo Scan be undertaken in order to avoid any over payments;

iii. There is need to limit direct bidding in the procurement of goods and services except in special circumstances that are strictly within the confines of the law;

iv. There is need for ZRA, to engage graduates from local institutions with expertise to operate and maintain the scanners in collaboration with suppliers of specialized equipment;

v. There is need for ZRA to institutionalize mechanisms for management of contracts by inter-alia appointment of Contract Manager to effectively manage contracts and avoid unnecessary disputes;

vi. There is need for ZRA to consider terminating Cargo Scan contract as it has adversely affected the operations of the institution. In this regard, ZRA should follow relevant legal procedures to engage a suitable service provider or utilize its own staff.

Bradwell International – Background

14. The contract for the Nuctech Scanners stipulated that Nuctech will operate and maintain the scanners for four years after the one year warranty period. However, before the expiry of the four year operation and maintenance period by Nuctech, a

company called Bradwell was introduced to ZRA by the Ministry of Finance and National Planning through the then Permanent Secretary - Budget and Economic Affairs, Mr. Emmanuel Ngulube. Bradwell was to undertake similar activities contained in the Nuctech contract as well as to look into, "security issues" related to the operations of the scanners.

15. In his submission, Mr. E. Ngulube stated that Bradwell International was introduced to him by two officers from the Office of the President whose identities he could not clearly state but only remembered one of them as Mr. Phiri. Mr. E. Ngulube further stated that the said officers advised that Bradwell International was essential in the operation and maintaining of the scanners as they would take care of 'national' security concerns. This view was further confirmed by Dr. Situmbeko Musokotwane who informed the Commission that Mr. E. Ngulube advised him to support the engagement of Bradwell International because of the said 'national' security issues that would be taken care of by Bradwell International.

16. Mr. Kelvin Orchard, the Chief Executive Officer of Bradwell International, in his submission informed the Commission that he met three Intelligence officers namely Mr. Chipulu, Mr. Luhamba Mooka and another officer only identified as Charles who introduced him to Mr. E. Ngulube. Mr. Orchard stated that he was introduced to the Zambian Intelligence officers by Mr. Friday Musiya based at the Zambian High Commission in London. Mr. K. Orchard informed the Commission that 'national' security issues were minor and used them as a riding factor to solicit the contract from the Zambian Government.

17. In August 2010, Bradwell International was introduced to ZRA by Mr. E. Ngulube, where Mr. K. Orchard made a presentation on services they could offer regarding the operation and maintenance of Nuctech scanners. ZRA declined to take up the services of Bradwell International as they had a contract with the supplier to operate and maintain the scanners for four years. However, the Commission was informed that there was continued and protracted communication among Bradwell

International, the named intelligence Officers and Mr. E. Ngulube. Bradwell International came back to Zambia in February 2011 following an invitation by Mr. E. Ngulube and subsequently the contract was awarded to Bradwell International in May 2011.

Bradwell International – Procurement Process

18. When Bradwell International came back in February 2011, a contract to engage them was negotiated between Bradwell International and ZRA with the support of the Ministry of Finance and National Planning, until an agreement was reached in May 2011. The procurement of Bradwell International was by direct bidding and in justifying the direct bidding, the then Commissioner General of ZRA, Mr. Wisdom Nhekairo alluded to security reasons as a basis for direct bidding Bradwell International.

19. ZRA sought authority from ZPPA on 14th February, 2011 to direct bid Bradwell International. ZPPA Director General, Mr. Samuel Chibuye granted authority to direct bid Bradwell International on 15th February, 2011.

20. Despite the fact that Bradwell International was awarded a contract, there was no budget, neither at Ministry of Finance nor ZRA, to pay for its services. Bradwell International proposed that a levy be surcharged on heavy goods vehicles that would or not be scanned at the borders be subjected to a fee of $88. In raising the money to pay Bradwell International, ZRA worked with Ministry of Finance and National Planning to introduce a service charge for operators via a Statutory Instrument (SI) No. 54. The initial SI signed by then Minister of Finance and National Planning Hon. Situmbeko Musokotwane provided for collection of fees on heavy goods vehicles. The SI No. 54 allowed for collection of fees from borders with scanners. This meant that only Chirundu border post would have enforced that provision because it was the only border point with Nuctech scanner. The other

limitation of the SI No. 54 was that it did not define the tonnage that qualified for the vehicle to be deemed to be a heavy goods vehicle.

21. The limitations of the SI No. 54 led the Government to replace it with another SI (No. 101). The SI No. 101 was promulgated in August 2011 when Parliament and Cabinet were dissolved. SI No. 101 was signed by His Honour the then Vice President, Mr. George Kunda, on 28th August, 2011 which required each transporter to pay an inspection fee of K360,000 per entry where an inspection had been conducted whether digital or physical. This inspection fee applied to all borders even where there were no scanners. When questioned on the ultimate goal of the SI, Mr. Kunda denied having any idea that the SI he had signed had anything to do with scanners or payment to Bradwell International but believed that the intention was to raise additional revenue for Government. The SI was later revoked by through SI 119 of 2011.

22. The fee was to be shared in a ratio of 85 percent and 15 percent for Bradwell and Government of Zambia, respectively. From the figures contained in the Bank statement a total of K12.3 billion had accumulated within a month of operation of Bradwell International. At the time of the Commission's sittings, these funds were still in an account at Access Bank.

Bradwell International – Observations

23. The Commission could not find satisfactory explanation as to why Bradwell International was engaged to operate and maintain Nuctech scanners. In fact ZRA had been trained to operate the Nuctech scanners while the maintenance aspect was to be done by Nuctech according to the contract. The Commission was surprised as to why ZRA even went on to direct bid Bradwell International given the aforementioned questions and circumstances.

24. It is worth noting that in the loan financing agreement there was a total of US$8 million set aside to cater for operations and maintenance of the scanners by

Nuctech. This meant that if there was any company that was to be introduced it would have been financed under the same provision and subcontracted or in agreement with Nuctech.

25. The Commission noted with concern the speed that characterized the engagement of Bradwell International to an extent where the Permanent Secretary – Budget and Economic Affairs, Mr. Emmanuel Ngulube was edging the ZRA to implement an observed faulty SI, (See Appendix XII). The Commission noted with great concern the manner, in which the contract was signed at unofficial location of Pamodzi Hotel on Sunday the 8th May, 2011. This gives an impression that there could have been some excessive pressure on the officers both at the Ministry of Finance and National Planning and ZRA regarding the Bradwell contract.

26. The Commission observed that at the time the SI No. 101 was put in place both Parliament and Cabinet had been dissolved. The Commission has failed to understand as to why Government could not wait for a month and half, after the general elections, to make legitimate decision involving a full compliment of the legislature and the executive.

27. The Commission was surprised at the pace at which Bradwell International was contracted to operate and maintain scanners even though only one Nuctech scanner had been installed at Chirundu.

28. The Commission found it extremely unfair to the Zambian Government to get 15 percent of the revenues from the scanners while Bradwell International who did not even own the scanners were to get 85 percent. This sharing ratio neither reflected the level of investment nor the effort on the part of Bradwell International. Further, it made the repayment of the loan by the Zambian Government difficult.

29. As a result of SI No. 101 the importers and exporters were made to pay K12.3 Billion Kwacha in 24 days out of which Bradwell International was to receive K10.4

billion while the Zambian Government through ZRA was to receive a paltry K1.9 billion as per sharing ratio.

30. The Commission observed that the actual intent of the SI was hidden in its formulation. For instance the SI did not give an inclination that the fees raised would be channeled to Bradwell International, a private company, for the operations and maintenance of scanners. The SI appeared like any other Government instrument for raising revenue for the development of the country.

31. The Commission failed to understand why the SI No. 101 allowed for collection of an inspection fee even at ports of entry where scanners were not deployed. If this contract was necessary, under normal circumstances, Bradwell International was to be paid for operation and maintenance of scanners based on fees collected from ports with scanners and Bradwell International had its presence.

32. In the Nuctech contract the supplier was obliged to provide training to ZRA officers. It was therefore surprising to the Commission that Bradwell International was to provide the same training to ZRA officers. In their submission to the Commission, Mr. K. Orchard purported that they would introduce software for training in the operation of scanners. However, the Commission observed that the contract that the ZRA had entered into with Nuctech had provided for training software.

33. The Commission was concerned that even after the revocation of the SI 101 of 2011 there were submissions made before it that examination fees as contained in the Bradwell International contract had been deducted from some operators arising from communication gap between the ZRA headquarters and the ports of entry as soon as SI 119 which revoked SI 101 was issued on 28th October 2011.

Bradwell International – Recommendations

34. Arising from the above observations, the Commission recommends as follows:

i. Further investigations be instituted by relevant Government security wings in order to ascertain the actions and/or inactions of immediate past Commissioner General – ZRA, former Permanent Secretary – Budget, former Minister of Finance and National Planning and Commissioner Corporate Services/Board Secretary – ZRA;

ii. That the contract with Bradwell International be terminated as the maintenance can be carried out by Nuctech and operations by ZRA;

iii. For future contracts direct bidding be discouraged as much as possible with more strict measures imbedded in law for its application;

iv. There is need to build local capacity in the operation and maintenance of scanners in collaboration with existing training institutions in the country such as technical Colleges and local Universities;

v. That in an instance where examination fees as contained in the Bradwell International contract had been collected after the revocation SI 101 by SI 119, such fees should be refunded to the operators; and

vi. ZRA should improve on its internal communication regarding dissemination of changes in legislation, procedures and instructions to their operational areas in order to avoid such lapses.

PUBLIC-PRIVATE PARTNERSHIPS (PPPs): CONCESSIONING OF BORDERS

Public-Private Partnership Framework

1. The Public Private-Partnership (PPP) framework involves a contract between a public sector authority and a private party, in which the private party provides a public service or project and assumes substantial financial, technical and operational risk in the project. In some types of PPPs, the cost of using the service is borne exclusively by the users of the service and not by the taxpayer. In other types (notably the private finance initiative), capital investment is made by the private sector on the strength of a contract with government to provide agreed services and the cost of providing the service is borne wholly or in part by the government. Government contributions to a PPP may also be in kind (notably the transfer of existing assets).

2. In projects that are aimed at creating public goods like in the infrastructure sector, the government may provide a capital subsidy in the form of a one-time grant, so as to make it more attractive to the private investors. In some other cases, the government may support the project by providing revenue subsidies, including tax breaks or by providing guaranteed annual revenues for a fixed period.

3. Under normal circumstances, one of the main reasons for the success of a PPP project is the creation of a separate commercial venture known as "Special Purpose Vehicle" (SPV). SPV provides a good framework for linking participants legally for example government and private sector to undertake business as equity partners to conduct business together.

4. PPP projects are required to use a Transaction Advisor (TA) appointed by government in order to safe guard Government interest. The TA is supposed to be conversant with the area in which the PPP is to be awarded. The TA is also expected to negotiate on behalf of the Government.

5. The PPP framework is supported by an Act of Parliament (Act No. 14 of 2009). The Act spells out how the Public-Private Partnership should be managed. The Act sets up a PPP Unit in the Ministry of Finance and National Planning, a PPP Council composed of Ministers and a Technical Committee composed of experts.

6. The role of the PPP Unit among other things is to promote participation of the private sector; co-ordinate with the contracting authorities; conceptualize, identify and categorize projects; and advise government on administrative procedures in relation to project development and on all matters of policy relating to PPPs.

7. The main role of the PPP Council is to approve projects, formulate policies relating to PPP, and ensure competitive, transparency, fairness and equity in the selection process. The Technical Committee is supposed to advise the Council and the Unit on all technical matters relating to PPPs.

8. Part IV of the PPP Act also addresses the issue of competitive selection process and awarding proceedings. The Act expressly states that the procurement procedure relating to PPP shall be fair, equitable, transparent, competitive and cost effective.

9. The PPP Act gives powers to a Committee of Ministers to approve applications for projects which the Zambia Public Procurement Authority (ZPPA) would normally perform. The Act also provides for request for expression of interest from prospective bidders.

Background to Border Concessioning

10. In view of the fact that the Commission of Inquiry was mandated to look into the operations of ZRA, matters connected with, or incidental to these were also investigated. Among these was the concessioning of borders as they had an impact on the operations of ZRA in terms of revenue collections and control of the borders in line with the Customs and Excise Act (Cap 332 of the Laws of Zambia). It came

to the attention of the Commission that Kasumbalesa Border had been concessioned for a period of 20 years while five other borders namely Nakonde, Jimbe, Kipushi, Chanida and Mwami were awarded to the same Kasumbalesa Concessionaire.

11. The concept of concessioning of borders begun with an advertisement by the Ministry of Transport and Communication requesting for expression of interest for establishment of dry ports in 2008. However, due to poor response the first expression of interest was cancelled and another advertisement was made in the print media in 2009. The firms that submitted proposals were evaluated and awarded to various companies. Kasumbalesa dry port was awarded to Baran Investments of United Kingdom. However, for some reason, the concept of dry ports was dropped and government decided to go for border Concessions.

Kasumbalesa Concession: Procurement Process

12. The Commission was informed that the Kasumbalesa Concessionaire submitted an unsolicited bid and a Memorandum of Understanding (MoU) was signed by the then Ministry of Works and Supply for the concession in 2009. On 1st July, 2009 a contract was awarded to Zambia Border Crossing Company (ZBCC) Limited to design, build and operate the Kasumbalesa border under the Public Private Partnership (PPP) framework for a period of 20 years.

13. When the PPP Act took effect in 2009, the Ministry of Finance and National Planning commenced the concessioning of the Kasumbalesa border. The Commission was informed that an evaluation of the unsolicited bid proposal by the concessionaire by the name of BARAN Trading Limited was conducted.

14. At the extraordinary meeting of the PPP Council of Ministers held on 28th September, 2010 the Ministers present Mr. M Mr. Mike Mulongoti, Dr. Eustachio, Kazonga, Prof G. Lungwangwa and Ms. Chileshe Kapwepwe approved the award of

the contract for the completion of Nakonde Border Post Nakonde, Mwami, Jimbe, Kipushi and Chanida following "the excellent work the client had demonstrated on Kasumbalesa Border Post." (See Annex)

15. On 1st July, 2009 Zambia Border Crossing Company (ZBCC) was awarded the concession to design, build, operate and transfer the Kasumbalesa Border Post Crossing under a PPP arrangement. The concessioning of the border was for 20 years and the Concessionaire was to invest $25 million of which $20 million was to be financed by the Development Bank of Southern Africa (DBSA) and US$5 million from the shareholders of ZBCC. The concessionaire was also expected to put in place Close Circuit TV (CCTV), and ensure that the place is well lit. The Commission was informed that a 14 year lease of 100 hectares of land at the border was given to the Concessionaire by the Zambia Government in order to assist him to access DBSA loan. According to the concessionaire (ZBCC) the facilities at Kasumbalesa include:

    i. 5,000 square meters of buildings and offices;

    ii. 100,000 square meters of access roads and parking space;

    iii. The main reception hall area of 400 square meters;

    iv. 54 offices for clearing agents

Kasumbalesa Concession: Operations

16. To recoup his investment, the Concessionaire charges a crossing fee agreed by the Government of $19 per axle. About $133 is charged for a truck with eight axles and abnormal loads are charged $262. The trucks are charged when exiting and entering Zambia through Kasumbalesa border regardless of whether they are loaded or empty. At the time when the Commission visited Kasumbalesa, the volume of traffic averaged 450 trucks per day for both entry and exit. When

questioned how the rates were arrived at, the concessionaire responded that the fees were determined by Mr. D. Ndopu. In addition the concessionaire is in charge of opening and closing of the booms at the border.

17. The concessionaire informed the Commission that following the opening of the new border, traffic efficiency had been enhanced. Prior to opening the expanded border, in-coming traffic from Congo DRC used to operate from 06:00 hours to 13:00 hours while traffic exiting Zambia used to operate from 13:00 hours to 18:00 hours. In addition, the Kasumbalesa Border project has improved the office accommodation for ZRA and other government agencies operating at the border.

18. However, the Commission was later informed by transporters and customs clearing agents who submitted that congestion still existed at the border, for instance the six additional lanes were not operating efficiently and contrary to the concessionaires assertion that trucks were cleared between 4 to 6 hours, there was evidence displayed before the Commission that in a number of instances it took more than 2 days to clear a truck, (See Appendix XIII).

19. The Commission observed that Kasumbalesa Border had a number of challenges which included but not limited to the expensive cost of office space for customs clearing agents (at least $450 per month), no shower facilities for transporters, and theft within the yard. The Clearing Agents, Transporters, ZRA, Chililabombwe Municipal Council and other stakeholders complained about the bad attitude and language of the concessionaire.

20. Despite the commencement of business at the facility, the Commission was informed that construction of facility commenced without approval by Chililabombwe Municipal Council. Requests for drawings for purposes of plan approvals by Chililabombwe Municipal Council were completely ignored by the concessionaire contrary to the Town and Country Planning Act Cap 283 of the Laws of Zambia. The concessionaire ignored the local authorities claiming that he was

dealing with the Ministry of Finance and National Planning and the then Ministry of Works and Supply at a higher level. According to Chililabombwe Municipal Council failure by the concessionaire to comply with Town and Country Planning Act has rendered the building illegal.

21. Contrary to the claims of concessionaire regarding the approval and supervision of the project the Commission was surprised to learn that even the then Ministry of Works and Supply Buildings Department was not involved Mr. Danny Mfune Acting Director Buildings Department, submitted to the Commission that the then Ministry of Works and Supply had not been availed the drawings of the facilities and the Bills of Quantity (BoQs). He also informed the Commission that the Ministry did not supervise the construction of the Kasumbalesa facility. As a result, he could not confirm to the Commission the cost of the facility.

22. The acting Director told the Commission that even though the Buildings Department did not supervise and value the Kasumbalesa property, he believed the building was sub-standard and that the money spent could have been less than the money claimed to have been spent. When he compared with the Chirundu facility he confirmed that the Chirundu was a more superior border infrastructure built at a cost lower than what was purported to have been spent on Kasumbalesa.

23. The Commission was informed that despite the Kasumbalesa being operational the Chililabombwe Municipal Council and the Buildings Department has not yet issued the certificate of completion of works as well as the fire certificate as required by the law.

24. The Commission also heard that the Developer of the border facility has encroached on some Church Plots on the road side where he caused damage to structures without concern and shows no indications for compensation. In addition a boom was constructed on no man’s land between Zambia and DRC.

25. The Commission was informed that the concessionaire was awarded a similar concession on the other side of the border in Congo DRC and that during the construction of the facility in Congo DRC, some building materials were taken from Zambia without declaring to customs. Materials were even moved beyond the operating hours of the border. Upon completion of the facility in Congo DRC, the Commission heard that electricity for the facility was being supplied from Zambia.

Kasumbalesa Border Concession: Observations

26. The Commission observed contrary to the claim by the concessionaire that his bid was unsolicited was not correct because Government had invited proposals from interested private companies to develop dry ports and inland ports in 2007, a year before the concessionaire approached Government.

27. The Commission was surprised that the concession for Kasumbalesa was awarded to Baran Trade and Investments Limited without any tender process thereby rendering the process uncompetitive, and not transparent.

28. The Commission observed that the Kasumbalesa Border concession was approved by the Council of Ministers.

29. The Commission observed that the initial bidders to the open call for proposals by the Government through the then Ministry of Communications and Transport were never given feedback on the results of their bids as per Section 53 (1) of the Public Procurement Act.

30. Border operations are about revenue collection and national security. The Commission observed the concessionaire at Kasumbalesa is responsible for opening and closing of the border. This is a risk to national security as this function is legally a responsibility of designated government officials (customs officers and immigration officers) under the Customs and Excise Act Cap 322 and the Immigration and Deportation Act No. 18 of 2010. Therefore, the Government

abrogated its responsibility by allowing the concessionaire to perform such a sensitive task without any legal basis.

31. The Commission observed that the Crossing fees were being collected by the Concessionaire and banked in his account without Government involvement.

32. The Commission observed that though there was clearly an improvement in the quality of office accommodation there was no significant improvement in the flow of traffic and reduction of congestion at Kasumbalesa. The General view of Stakeholders was that the Crossing fees were just an increase in their operational cost. Given that costs associated with transport are already high, additional border crossing fees should have been moderated.

33. The Commission noted that the crossing fee was introduced without corresponding improvement in service delivery to the appreciation of Stakeholders especially transporters. It should be noted that the crossing fees are contained in the concession agreement.

34. The lack of supervision by the council or indeed any other government wing during the construction process means that an independent valuation of the investment of US$25 million claimed by the concessionaire can not be ascertained. The Commission observed that the refusal by the concessionaire to submit building plans and drawings and not to agree to be supervised by relevant Government authorities was deliberate and designed to hide the real cost of the investment in order to justify the US$ 25 million investment claim.

35. The Commission observed that the structure at Kasumbalesa was incomplete, had poor workmanship, was leaking and had cracks a few months after construction. The materials used to construct the building were not durable and may not last the duration of the concession period.

36. The Commission observed that, the concessionaire would recoup his US$25 million investment within two years without considering operational costs. Assuming that 300 7-axle trucks and 150 6-axle trucks use the border facility per day, then Zambia Kasumbalesa Venture Company would collect about US$20.5 million per annum without consideration of their operational costs. Even when the operational costs are added at the most the investment would be recouped within four years. The Commission wondered why the council of Ministers approved a twenty year concession and not a far much shorter period.

37. The Commission also finds that the processes of awarding the concession through an unsolicited bid robbed the others of the opportunity to participate in the concession. To allow for competition, transparency and value for money there was need for an open tender as required the PPP Act.

38. Further, the Commission finds that the PPP Act gives legitimacy to the PPP Council of Ministers to award contracts. In this case, the PPP Act negates the role of the Zambia Public Procurement Authority (ZPPA) plays in all procurements by Government. For this reason, the Act should be revised to allow ZPPA play its rightful role in Government procurement process without being subordinate to the Council of Ministers under the PPP Act.

39. The Commission observed the Kasumbalesa concession under PPP had no active client ministry because the PPP Unit in the MoFNP acted as both coordinators and client. As a result the project was not supervised and coordinated.

40. The Commission observed that contrary to the requirement the Kasumbalesa project did not have a TA to independently cost the project, study the conditions and ensure value for money for the Government. The TA could have also been used to estimate the return on investment, the expected income streams given the investment and the recovery period of the investment with profit. Further the

Commission found that the Government did not take equity in the Special Purpose Vehicle (SPV) that was created for the Kasumbalesa border facility.

41. The Commission also found that the concession agreement between the Zambian Government and Zambia (I.P) Border Cross Company, contained a clause that expressly stated that required land for the project would be retained by the Government. However, the Commission was surprised that the concessionaire was given title deeds to the land at the border contrary to the agreement. The Commission feels that the land should have been used to acquire a stake or equity in the concession. The Commission is also of the view that Government should not have issued this title to the concessionaire in the first place. Title should have remained with Government.

42. The Commission also found that the relationship between the Concessionaire and other stakeholders such as customs clearing agents and council was not good.

43. The Commission found that the traffic circulation design at Kasumbalesa did not provide for other options of crossing the border. All trucks regardless of load are charged uniformly based on the number of axles. The fees at Kasumbalesa are effectively compulsory regardless of the time taken by the transport in the facility.

44. The Commission noted at the time of visiting the border, the concessionaire had not fulfilled his contractual obligations relating to upgrading the police post, health centre, construction of the new school, construction of restaurants, offices for clearing agents and a modern football field.

Kasumbalesa Border Concession: Recommendations

45. Arising from the above observations, the Commission recommends as follows:

i. Further investigations be instituted by relevant Government security wings in order to ascertain the actions and/or inactions of former Council of Ministers and the PPP Unit in the Ministry of Finance;

ii. The concession agreement be terminated immediately and Government takes over the DBSA loan and finance it through reduced crossing fees;

iii. The Kasumbalesa facility be managed by the Government through the (ZRA) immediately;

iv. Crossing fees be collected by ZRA and banked in an escrow account;

v. That the Kasumbalesa border facility be valuated in order to ascertain the actual cost of construction;

vi. The actual amount of crossing fees and the current cost of running the facility be established by instituting an audit through the Auditor General's office with support of a Management Accountant;

vii. Concessioning of borders must be discouraged at all cost. However, where concessioning of a border is absolutely necessary the PPP must be limited to infrastructure development only;

viii. In future, PPP should come from client Ministries and coordination should be done by the Unit as required by the Act;

ix. There is need to rebuild the beacons that were removed during the construction of border facility;

x. There is need to demolish all structures in the no man's land and ensure that there were no activities taking place therein;

xi. The 100 hectares land lease granted to the concessionaire at Kasumbalesa border be cancelled;

xii. That the PPP unit in the Ministry of Finance and National Planning be transformed into an agency to operate in a semi-autonomous manner;

xiii. The role of the council of ministers should be removed and the ZPPA in consultation with Attorney General's office be given authority to procure and approve all PPP agreements;

xiv. Review the current PPP Act and harmonize it with Public Procurement Act;

Nakonde Border Concession: Background

46. The Government decided to improve operations at Nakonde border by developing infrastructure at the border. The new border infrastructure was to cover an area of 16,101 square meters with 2,000 square meters of office floor space, and a parking area of sixty-nine cars, nine buses and nine trucks in inspection bays at any given time.

47. After an open tender was floated through ZPPA, the contract was awarded to Messrs. China Jiangxi Corporation. The Chinese company moved on site in March, 2009 but work commenced in August the same year.

48. The works progressed very well under the supervision of the Ministry of Works and Supply. However after the works had attained 75 percent completion (roof level), the Council of Ministers terminated the contract with China Jiangxi Corporation and converted the project to a PPP under a concession agreement. The then Ministry of Works and Supply advised the Ministry of Finance and National Planning not to terminate the contract because it had reached an advanced stage but this advice was ignominiously ignored, (Refer to Appendix XIV)

49. In view of the foregoing, the Ministry of Finance did not heed to the advice instead it awarded the contract to Messrs Five Boarder Group (FBG) Company for completion of works on 12th November 2010. The shareholders of the FBG are the same ones for the Kasumbalesa Concession operating under the name of Zambia Kasumbalesa Venture Company (ZKVC). The Commission was informed that the signed contract also included concessioning of four other borders namely; Mwami, Jimbe, Kipushi and Chanida.

50. This decision was made by the Council of Ministers despite the sub-standard work done by ZBCC (later called ZKVC) at Kasumbalesa. The Commission also learnt that ZKVC (later called FBG) was not recommended by the PPP Unit after tender evaluations.

51. The Commission was informed that the tender was floated for the five borders and bids received. The bids were evaluated and five companies were shortlisted, among them, Group Five Consortium, Zambia Border Crossing Company (ZBCC-the Kasumbalesa concessionaire), CONCOR Holdings, Transatlantic Public Affairs Consortium and Stefanutti Concessions. The Commission was informed that in the selection process, the Council of Ministers decided that the contract be awarded to ZBCC as a reward for the purported good performance, given the quality and the speed at which works were carried out in Kasumbalesa border.

52. Following the termination of the China Jiangxi Corporation contract, the Commission was informed that the Concessionaire would refund Government the cost that was incurred in constructing up to the level it had reached (roof level). It should be noted that at the time of the termination of the contract, a total of K23 billion had been certified and a further K770 million for engineering consultancy fees. However, the government had not been refunded the cost of the building by November 2011. The Concessionaire had promised to pay for the building once the new border starts to operate.

53. Another condition was that ZBCC was to engage China Jiangxi Corporation to complete the remaining works. It however came to the attention of the Commission that China Jiangxi Corporation was not engaged by ZBCC.

54. As was the case at Kasumbalesa, the then Ministry of Works and Supply Buildings Department is not involved in the supervision of construction works at Nakonde. The department however, deployed a clerk of works at Nakonde who was supposed to be supervising the works but was often chased from the site by the Concessionaire. The Clerk of works has since been withdrawn from Nakonde leaving the concessionaire unsupervised.

Nakonde Border Concession: Observations

55. The Commission finds it illogical for a border that was under construction to have been concessioned when works were proceeding well and a colossal amount of K23 billion in certified works had been done. The works done were at 75 percent completion level.

56. The Commission found that for the concessionaire to refund the Government after he had started operating is a gimmick to finance the refund by obtaining money from the crossing fees that will be charged by the company. This is, in the Commission's view tantamount to extortion of funds from the public.

57. The Commission also found that in bidding and operating for concessioning of borders, the company has been using different names. The company used the name Baran for the dry ports and Kasumbalesa bids, then Zambia (IP) Border Crossing Company limited at the time of signing the contract with Government for Kasumbalesa. During the commencement of operations at Kasumbalesa the company assumed another name of Zambia Kasumbalesa Venture Company. When bidding for the five boarders they were called, Zambia (IP) Border Crossing Company but at the time of signing the contract the name changed to Five Border

Post Company limited and after taking over Nakonde they changed to Five Border Group (FBG).

58. The Commission observed contradictions as to why the contract with China Jiangxi was terminated. Dr. Musokotwane stated before the Commission that China Jiangxi Corporation was slow in the construction process whereas the Acting Director of Buildings, Mr. Mfune as well as the Assistant Commissioner for Customs at Nakonde Mr. Msimuko both told the Commission that China Jiangxi Corporation worked diligently and were on schedule to complete the assignment. This was evidenced by the fact that between August, 2009 and December, 2010 the contractor had reached 75 percent completion, for a project of that magnitude. Further they told the Commission that the quality of work was of good standard and this was verified by the Commission during its tour of the border.

59. The Commission observed that the Council of Ministers' decision to "reward" one concessionaire with five other borders in addition to Kasumbalesa puts the country at great risk and in a vulnerable position in that in case of any dispute at one border this could potentially affect all other borders.

60. The Commission observed that government did not have the patience to learn lessons from the Kasumbalesa concession before it could embark on other concessions with the same people operating under different company names.

Nakonde Border Concession: Recommendations

61. Arising from the above observations, the Commission recommends as follows:

i. Further investigations be instituted by relevant Government security wings in order to ascertain the actions and/or inactions of former Council of Ministers and the PPP Unit in the Ministry of Finance;

ii. That the Nakonde and four other border Concessions be cancelled immediately;

iii. That the Government completes the project preferably with Messrs China Jiangxi Corporation who were the original contractors;

iv. That Government should take time to learn lessons and incrementally build on experiences and challenges emanating from the implementation of other similar projects;

v. There is need to undertake thorough ex-ante evaluation of projects and undertake evidence based decision making;

vi. Close monitoring of projects should be encouraged in order to ensure that quality is assured and investment costs is as pledged;

vii. The Local Authorities and other relevant institutions should be allowed to discharge their functions on PPP projects as per regulations without hindrance;

viii. There is need to discourage monopoly of PPP projects by allowing the participation of other players in the market;

ix. Special Purpose Vehicles be created and Government be encouraged to obtain a stake in some PPPs; and

x. Specialised Transaction Advisors be used on PPPs to safeguard Government interest.

TAX CONCESSIONS – VARUN BEVERAGES (ZAMBIA) LTD

1. One of the Terms of Reference of the Commission was to investigate whether there were any improper or illegal activities that occurred in the operations at Zambia Revenue Authority and matters connected with, or incidental to the forgoing. It came to the attention of the Commission that incentives were irregularly awarded to Varun Beverages (Zambia) Limited and this adversely affected revenue collection.

Tax Concessions: Background

2. Following the change in the political landscape in 1991, Zambia became a very attractive investment destination and government responded by putting in place legislation and structures to support investments. In that regard, the Investment Act was put in place in 1993 and the structure to support investments was vested in the Investment Centre.

3. Under the Investment Act the Government gave general and special incentives to investors. The special incentives related to tax concessions as provided under the Income Tax Act and the Customs and Excise Act, respectively.

4. In 2006, the Government consolidated all structures that related to the promotion of investment in the country and put in place the Zambia Development Agency Act No. 11 of 2006 of the laws of Zambia. This saw the birth of the Zambia Development Agency (ZDA) by integrating Export Board of Zambia, Zambia Privatization Agency and Investment Centre.

5. The provisions of the ZDA Act in relation to the incentives were not very different from the provisions under the repealed Investment Act, therefore not much changed in the implementation of tax incentives under the two pieces of legislation.

Tax Concession: Varun

6. Varun Beverages (Zambia) Limited, an Indian Company, invested in the beverages industry in 2009 and were accorded the tax incentives in accordance with the existing legislation. However in 2010, the investor applied for other incentives that were clearly outside the provision of the Zambia Development Agency Act.

7. The additional incentives the investor (Varun) applied for were concession of the Value Added Tax and Excise duty because of purported cash flow problems. These taxes are borne by the consumers, collected by companies and are remitted to the Government. The concession period was for five years, creating a scenario where the investor was to account for the tax deferred for year one, in year six. The tax liability for year six would then cover both for that year's tax liability and the tax deferred in year one.

8. The application for the concession of the two tax types, Value Added Tax and Excise duty was made to the Minister responsible for Finance. The Minister of Finance approved the deferment of Excise duty and Value Added Tax, which he communicated to the investor through his letter, dated 7th May, 2010, (See Appendix XV). The investor was advised to contact the Commissioner General of the Zambia Revenue Authority for implementation modalities of the approved concessions. In turn, the Commissioner General wrote to the investor and advised that the Commissioner Domestic Taxes would provide detailed modalities for the implementation of the Concession.

9. It is worth noting that; prior to the approval for the deferment of the taxes by the Minister of Finance and National planning, extensive consultations took place between the technical experts in the Ministry of Finance and the Minister. The then Minister of Finance and National Planning also engaged the Ministry of Justice on the matter. In fact, the then Minister of Finance, Dr. Situmbeko Musokotwane held

a view that deferring the Value Added Tax and Excise duty was inappropriate and that if any relief was to be granted, it could only be by way of exempting carbonated beverages from Excise duty and Value Added Tax, a course of action he believed would impact negatively on government revenue (See, Appendix XVI)

10. Dr. Musokotwane's position on the concession of Taxes changed after he attended a meeting at State House on 15th February,2010, where the then President of the Republic of Zambia Mr. Rupiah Banda had requested the Minister of Finance to find a solution to the investor's(Varun) problem. In the quest to find a solution to the problem presented by Varun, Dr. Musokotwane wrote to the Vice president, Mr. George Kunda seeking guidance on how to proceed with the matter.

11. The then Vice President's response to the then Minister of Finance introduced a totally new dimension to the discussions that had been going on the subject. In this regard, the Vice President acknowledged the illegality of retaining Excise Duty and Value Added Tax by Varun if their request was granted, the Vice President further agreed with the position that exempting carbonated beverages from Excise Duty and Value Added Tax for all players in the industry would lead to revenue loss, (See Appendix XVII).

12. The Vice President guided the Minister of Finance to discuss the matter with the Zambia Revenue Authority on the possibility of Varun being allowed a time to pay facility. At that time, the Vice President stated that he believed that there were Regulations that allowed for the Time to Pay facility. The Vice President further stated that he was aware that Tax payers were allowed to make arrangements to pay Value Added Tax and other taxes in installments provided that such Tax payers made written commitments to settle the outstanding Taxes.

13. Following the Vice President's letter, the Minister of Finance and National Planning subsequently approved incentives to Varun, and the Zambia Revenue Authority put in place modalities for concession of the two Tax types whereby Varun as a

manufacturer of Excisable products submitted Excise and VAT returns but did not make payment for these taxes for a period of five years (2010 to 2015).

14. The computation of the value added tax is based on the difference between VAT paid on inputs and VAT received on outputs; implying that depending on this difference the tax payer can either be in a refund or a payment situation. Under the Varun deferment ZRA was refunding Varun when in a refund position but Varun was not paying tax when in a payment position. This arrangement was to go on for five years as stated above.

15. Submitting to the Commission, the Commissioner of Domestic Taxes, Mrs. Priscilla Banda, confirmed that the Zambia Revenue Authority was applying the above special system of accounting for VAT and Excise duty by Varun.

16. At the time of the Commission's sitting, Government had foregone a total of K10.8 billion worth of revenue consisting of VAT (K6.5 billion) and Excise duty (K4.3 billion).

Tax Concessions: Observations

17. The Commission finds that the tax deferment or concession that was granted to Varun was illegal.

18. The Commission finds that the deferment was applied on locally produced goods and this action was in contradiction with the intent and content of Section 58 of the Zambia Development Agency Act. The special deferment that was awarded to Varun did not fall in the ambit of the VAT deferment scheme nor the Time to pay arrangement that exist under the Customs and Excise Act, (See, Appendix XVIII).

19. Further the deferment of taxes awarded to Varun was done in contradiction to the provisions of Section 114. (1) of the constitution which states that," Subject to the provisions of this Article, taxation shall not be imposed or altered except by or

under an Act of Parliament." The then Minister of Finance Dr. Situmbeko Musokotwane went ahead to grant the approval of the deferment of the taxes without Parliament approval contrary to the requirement of the Law.

20. Value Added Tax (VAT) deferment scheme has been in use in the Zambia Revenue Authority and goods qualifying for the VAT concessions are ordinarily capital in nature. A scheme to give relief is provided for under the Law. However, the scheme exists to allow importers of goods a time to pay for tax obligations that are very huge. The Time to pay scheme also applies in cases of tax assessments arising from Audits. The rational of applying the scheme is to avoid serious cash outflows that could injure businesses, a situation that could cause businesses to close thereby eroding the tax base. At no time has a concession been granted to any Investor where such an investor was allowed to retain government revenue after collecting the tax from the effective tax payer, in this case the consumer.

21. The Commission observed that because this deferment was unusual, ZRA had no existing procedures and processes to deal with it. This is confirmed by an instruction from the then Commissioner General to the Commissioner Domestic Taxes to design implementation modalities.

22. The deferment that was granted to Varun therefore implied that government was financing the company for the duration the concession was to be in force. The action was not justifiable especially that the two tax types, VAT and Excise had been under performing at the time the concession was granted.

23. The Commission further observed that the reason for the deferment was to cushion a cash flow problem that Varun was facing. The commission observed that basing a decision to defer taxes for a private company on the fact that the company was facing cash flow problems was not prudent. The Action just exposed government revenue to risk as there is no evidence provided to the commission that indicates that the company's cash flows were earmarked to improve in the foreseeable future

for the government to draw comfort that the accumulating taxes under the concession scheme would ever get liquidated.

24. Cash flow problems in a private entity could not have been government's concern to warrant delayed delivery of Government revenue to the Treasury. If the company could not project the required cash flows for its sustained operations in Zambia before the decision to invest, it follows then that such an investment would not add much value to the republic of Zambia but rather increased the government's burden to meet its various obligations to the citizenry by reducing the money in the Government coffers to the extent of the deferred taxes.

25. In essence, Government was exposed to possible revenue loss that could arise in the event that the company got liquidated within the five year period that the concession of VAT and Excise duty was in effect. Reliance on the equipment that the investor imported into the country could be taken as guarantee for the foregone taxes only to a limited extent for the reasons that; there could be a superior claim to the equipment over and above the Zambia Revenue Authority and also that the cumulative taxes by the end of five years could be more than the value of the equipment and plant invested by Varun.

26. Assuming the cash flows for the investor do not improve by the end of year 5, it would be very difficult for the investor to take care of their back taxes as well as the current tax obligation in that year.

27. In his letter to the Minister of Finance and National Planning, the Vice president made assertions that there existed some regulations that allowed for time to pay for outstanding taxes. The assertion was vague and it leads to questions on whether any technical experts advised the Vice President that such regulations existed and were actually applicable to the case at hand.

28. The Vice president also indicated in this letter to the Minister that he was aware of taxpayers that were allowed to pay their tax obligations in installments. The Commission observed that much as it could be true that tax payers were allowed to pay tax in installments, such was only applicable in case of back taxes arising from Audits and in case of failure by an importer to pay import taxes upfront. The maximum period that such taxes would be paid in installment would be a period of 1 year.

29. Further the Commission observed that the facility that Varun had applied for was a concession and was not an application to pay in installments.

Tax Concessions: Recommendations

30. Arising from the above observations, the Commission recommends as follows:

    i. There is need to probe possible criminality in the awarding of tax concession to Varun;

    ii. The deferment of tax that was awarded to Varun Beverages (Zambia) Limited be cancelled;

    iii. Varun be compelled to start paying all current taxes immediately;

    iv. Varun be allowed to sign a time to pay agreement for a period of twelve months in order to liquidate all deferred taxes as stipulated by the law;

    v. The Zambia Revenue Authority must take its rightful position of advising Government on Tax matters to avoid future misapplication of tax laws.

COMPUTERISED DIRECT TRADER INPUT: NECOR CONTRACT

NECOR Contract: Background

1. The Zambia Revenue Authority embarked on the modernization of customs processes and in that regard, in the year 1998, the Authority acquired its first Customs Automated Data Management Programme, the Automated System for Customs Data Management (ASYCUDA) Version 2.7. As years went by, Zambia Revenue Authority acquired different upgrades of the ASYCUDA.

2. During the two years that Customs was using the 2.7 Version of ASYCUDA, the customs declaration data inputting function was done by employees of the Zambia Revenue Authority. The situation changed after the Authority implemented the ASYCUDA ++ when it was decided to outsource the data inputting function to NECOR with a view of freeing the limited human resource and deploy them to other critical areas of Customs' operation.

3. From the time NECOR was first engaged, the company had been providing the Zambia Revenue Authority with the service of data entry in relation to imports and exports of goods.

4. Some witnesses who appeared before the Commission submitted that the contract awarded to NECOR by ZRA may not have been transparent. Therefore, the Commission reviewed the process of awarding the latest NECOR contract.

5. The Commission reviewed the Zambia Revenue Authority Management Tender Committee meeting, the evaluation report for the contract and the actual contract referenced **ZRA/ORD/011/10**. From the reviewed documents, it was apparent that the contract for data input was by open tender and the best evaluated company, in this case NECOR was awarded the contract. Other Companies that

participated in the tender included Baudwalk Technologies, TechNet Limited and Smart-net Limited.

6. The Commission therefore, took note of the other concerns raised by various clearing agents including the Customs Clearing and Freight Forwarding Agents Association represented by their Secretary General, Mr. Jonathan Moono and a trade consultant namely, Mr. Gilbert Nkamba regarding the NECOR contract. The main concerns raised from their submissions were:

    i. That NECOR had consistently been awarded the contract for Data capturing since 2002;

    ii. Arising from the fact some users had their own computer terminals (remote access) where they input data there might be a possibility that such custom clearing agents may be paying NECOR even when they do not use their services;

    iii. The legality of access rights granted to NECOR by the Zambia Revenue Authority was questionable;

    iv. The inefficiencies introduced in the goods declaration system because of connectivity problems that NECOR experienced at times. The witnesses felt that connectivity problems led to unnecessary delays in the processing time; and

    v. That the revenue sharing ratio of 65 percent and 35 percent for NECOR and ZRA, respectively was skewed in favor of the contractor. In this regard, out of the K50,040 NECOR got K32,598.32 while ZRA received K17, 271.68.

7. The Commission solicited for views on the NECOR contract and one of the witnesses, Mr. Nase Lungu, Senior Collector, Livingstone submitted that the ZRA had utilized the Services of the contractor for a long time. Mr. Lungu submitted that from a logical view point, it was necessary that the NECOR contract got reviewed.

NECOR Contract: Observations

8. The Commission noted that though NECOR had consistently been awarded the contracts for Direct Trader from the year 2002, the awarding of the contracts was through a competitive process.

9. On the possibility of ZRA over paying the NECOR for services of Data Capture that are done at remote sites, the Commission established that ZRA had put in place a mechanism to counter the possibility of overpayment. The countering has been achieved by use of Declarant Numbers, where the ZRA isolates declarations by declarants who have remote accessibility to the ZRA's ASYCUDA system.

10. The commission noted that the ZRA takes into consideration its communication policy on connecting third party networks or equipment in its dealing with NECOR.

11. The commission noted that the contractor justified the revenue sharing ratio with the reason that the contractor was expanding communication infrastructure. It is worth noting that such expansion projects are better embarked on by the ZRA to avoid a situation where ZRA will over rely on Infrastructure developed by NECOR.

NECOR Contract: Recommendations

12. Arising from the above observations, the Commission recommends as follows:

   i. ZRA to consider acquiring its own software that will enable traders to have remote access to ASYCUDA and eliminate the monopoly that NECOR was enjoying. This would reduce the ASYCUDA fees that were being paid by traders and ZRA would have funds to further invest in trade data capturing technologies;

ii. Development of communication infrastructure for use under the ASYCUDA should be a preserve of the Zambia Revenue Authority; and

iii. ZRA to review the need for outsourcing the data capturing service and consider allowing for competition by outsourcing more than one company.

CHIRUNDU BORDER: HALLMARK CONTRACT

Background

1. Following the development of the state of the art infrastructure for the One Stop Border Post (OSBP) at Chirundu, Government recognized the need to put in place a mechanism to manage the infrastructure with a view to keep it in a durable condition. In view of that, Government on 17th November, 2009 gave authority to the Buildings Department to award a contract for the provision of property management services to the passenger control and freight terminal buildings at the Border Post.

2. On 25th November 2009, the then Ministry of Works and Supply through the then Permanent Secretary Lt Col Bizwayo Nkunika (Rtd) signed a contract with Hallmark Property Services after an open tender for a period of one year to:

    i. Manage the premises and collect rentals, service charges and any other payments from the tenants and have the same paid directly to the Ministry of Works and Supply;

    ii. To determine appropriate market rentals and liaise with the landlord;

    iii. To arrange adequate security for the premises and organize the tenants to pay for the same;

    iv. To clean premises and common areas like drive ways, lawns, toilets, passages, lifts and to arrange for the collection of refuse and sewerage disposal, settle electricity, water, refuse collection and sanitation bills through service charge collected from tenants and ;

    v. To enforce tenants or sub-tenants legal obligations and covenants and liaising with the landlord to ensure that all breaches are remedied;

3. In view of the above, Hallmark was authorized to collect management agency fees of five percent (5%) of the gross rent collected and deposited in the Ministry of Works and Supply account. In addition to that, Hallmark is paid K20 million standard maintenance fee per month. The Ministry of Works and Supply permitted Hallmark to receive and accept cheques drawn in its name unless where a waiver is given. In an event that cash is given, Hallmark was required to deposit the full amount with the Ministry within 48 hours from the time of receiving the monies.

4. The Commission was informed by the Property Manager, Mr. Christopher Banda that ZRA which occupied the largest part of the complex had resisted the engagement of Hallmark and did not comply with the provisions of the contract with the Ministry. Despite that development, the company had been operating and obtained about 30 percent of income generated from the smaller section of the complex, which had been rented out. He submitted that the company had a reasonable workforce of over 30 people and had been working diligently to keep the premises in its good condition despite the refusal by ZRA to pay. He complained that the company felt mistreated by ZRA and that the infrastructure was likely to deteriorate if ZRA continued with the same attitude. He stated that ZRA owed the company about K600 million in unpaid rentals for the last two years.

5. Mr. Banda informed the Commission that ZRA Headquarters in Lusaka was expected to pay rentals and service charges to Hallmark and that the Ministry of Works and Supply was responsible for the management of the property. Mr. Banda further informed the Commission that ZRA had expressed reservations on the agreed mode of management of the border facility between the Ministry of Works and Supply and Hallmark and had its own preferred mode. On the other hand, ZRA Chirundu Station Management were of the view that the amount could not be met through their budgetary allocation.

6. During the tour of the premises, the Commission found the surroundings dirty, littered with paper all over, plants as well as lawns were dry and paving tiles falling

out. The Commission questioned whether one needed much money to do such simple things. This raised concerns as to whether such a company could win the support of its clients. A number of witnesses who came to submit before the Commission also complained why Government entered into a contract with Hallmark when according to them the Company did not even have a meaningful workforce on the ground to do the work.

7. One of the witnesses submitted that the Hallmark only cleaned the surroundings when some dignitaries were visiting the border premises. Another witness stated that Hallmark was merely getting free money from the Government. These views were also echoed by the ZRA Station Manager Mr. Arnold Nkoma who contended that there was nothing to show for that would warrant Government or indeed ZRA to pay for Hallmark services.

8. Witnesses further submitted that they felt uncomfortable for Government to entrust collection of rentals and service charges to a private company when ZRA could have been charged with this responsibility. Other witnesses complained that the rentals were exorbitant considering that the K3 million they paid per month was for a small office of two square meters only. Witnesses also complained that for any repairs that had to be carried out, Hallmark requested the tenant to buy the replacement parts and hand them over for fitting and yet the responsibility to buy and replace the parts rests with Hallmark.

Observations

9. The Commission observed that in as much as Hallmark might have had a legitimate contract with the Ministry of Works and Supply, the contract was entered into without stakeholder consultation vis-à-vis, ZRA and other border operators. If it was indeed necessary to engage a private company to run the border, the contents and terms of the contract should have been discussed openly and agreed upon by all stakeholders.

10. The Commission observed that Hallmark had reneged on its contractual obligations.

11. The Commission further observed that there was a legitimate concern regarding the high rental charges which are prohibitive for small operators at the border.

Recommendations

12. Arising from the above observations, the Commission recommends as follows:

    i. There is need to revisit the property management contract relating to Chirundu Border;

    ii. There is need for ZRA to assume management of the Chirundu Border property; and

    iii. There is need to revisit rental charges to affordable levels that would not be prohibitive to local players.

CUSTOMS CLEARING AGENTS

1. During the Commission's sittings, a number of customs clearing agents and importers came forward and made submissions on the issues that affect them.

Value for Duty Purposes

2. Customs clearing agents and importers, expressed concern at how ZRA arrived at Value for Duty Purposes (VDP). They complained that in clearing similar vehicles, the duty charged by ZRA would vary from border to border and from officer to officer. They cited an example of where Toyota Corollas of the same year of manufacture would have different values depending on the border of entry and customs officer.

3. The Commission was informed that Zambia used valuation methods that were prescribed by the World Trade Organisation (WTO), which use the valuation principle of customs value being determined by the price paid or payable.

Presence of Many Security Companies

4. Customs clearing agents in Chirundu complained about the presence of too many security agents at the border. The Commission heard that Amcor, Premier, ZRA paramilitary and Zimbabwe security were all operating in the common control zone. The agents accused the security officers, particularly from private companies, for failing to perform their core duties but performed the duties of customs officers.

5. During the submissions, it was brought to the attention of the Commission that security officers from private companies receive manifest for imported consignments parked in the customs' yard they operate from. Using the contact details of the manifest, the security personnel would contact the consignee and recommend the agents that could clear their consignment on their behalf and that

caused acrimony from customs clearing agents at Chirundu One Stop Border Post (OSBP).

6. The Commission took note that the ZRA at Chirundu OSBP was not operating at full capacity due to low staffing levels. As a result, security officers were assigned other duties such as searching of vehicles and stamping documents after counter checking the goods. This practice negatively affects the flow of trade.

Multiplicity of Government Agents at the Border

7. Customs clearing agents also complained of multiplicity of government agents at the border such as Ministry of Agriculture and Cooperatives, the Ministry of Health, Zambia Bureau of Standards (ZABS), Environmental Council of Zambia, etc. They complained that this high level of bureaucracy leads to unnecessary delays in the flow of trade.

8. Agents also complained about the fees paid to ZABS. They claimed that there was double payment as an importer is made to pay an inspection fee in Japan and again charged when the vehicle is entering the country. It came to light that payment made at the point of entry was carbon tax rather than inspection fee. Importers also complained that in countries like South Africa, it was difficult to locate the agents appointed by ZABS whenever they wanted to have their vehicles inspected.

High Transaction Costs

9. Customs Clearing Agents complained about the high costs of transactions at the border. They complained about the ZRA payment system which requires them to raise a manager's cheque for payment of duties levied. In preparing a Manager's Cheque, Banks would normally charge as high as K80,000 per cheque as a fee. This same Manager's cheque would be deposited into the same Bank and Agents wondered why they could not make direct deposit into the ZRA account. In addition

to the fee paid at the bank, Clearing Agents also had to pay K50,040 as ASYCUDA processing fee.

Tax Payer Identification Number and Tax Returns

10. The Zambia Revenue Authority introduced a system for identifying and tracking tax payers. This was introduced through the Tax Payer Identification Number (TPIN). During sittings in Nakonde the Commission was informed that the TPIN could only be obtained from limited places and not in Nakonde. Customs clearing agents wondered why the TPIN could not be obtained in Nakonde and that it had inconvenienced importers and the smooth flow of clearing imported merchandise. In addition the filing of tax returns was only done from either Kasama or Lusaka and business people were inconvenienced.

Examination Fee Charged after revocation of SI

11. When the Minister of Finance, Hon. Alexander B. Chikwanda, MP revoked Statutory Instrument (SI) 101 of 2011 that allowed for payment of the examination fees, some of the ZRA port offices continued charging the fee because they had not received official communication. Arising from that, a number of Customs Clearing Agents demanded to be refunded.

Observations

12. The commission observed that Chirundu OSBP had low staffing levels which compelled management to assign non customs officers to help perform customs functions.

13. The Commission observed that some Customs Clearing Agents seemed to have misunderstood the difference between carbon tax and inspection fee for vehicles. That could be attributed to lack of tax payer education on the part of ZRA.

14. The Commission found merit in the complaints by the Customs Clearing Agents in as far as the fee paid to Banks at border posts. It was unfair for Agents to be charged for Manager's Cheques when cash could be deposited into ZRA account in the same bank.

15. The Commission noted that there was genuine complaint by Stakeholders against the practice of obtaining TPINs from Lusaka and filing tax returns in Kasama, away from Nakonde. This was said to be contributing to border delays and congestion.

16. The Commission observed that despite commercial banks operating within ZRA premises in most ports, clients are required by ZRA to buy bank certified cheques at a cost of K80,000 per cheque from the banks in order to pay taxes. This inevitably increases transaction costs.

Recommendations

17. Arising from the above observations, the Commission recommends as follows:

   i. ZRA fills all vacant positions at all the borders according to the establishment in order to address the current understaffing and improve border efficiency;

   ii. ZRA further decentralizes the issuance of TPINs and filing in of tax returns;

   iii. ZRA takes a deliberate policy to disseminate information on its operations, fees, carbon tax and refunds etc;

   iv. ZRA considers encouraging more use of electronic payments even for amounts less than K100 million at border posts;

   v. ZRA considers stationing their cashiers in the commercial banks at the borders (especially those banks that operate within ZRA premises) to enable clients pay cash directly to ZRA without having to purchase bank certified cheques.

alternative ways of receiving payments at the Border areas without increasing the cost of doing business such as use of direct electronic payments.

OTHER ZAMBIA REVENUE AUTHORITY OPERATIONAL ISSUES

1. The Commission paid a courtesy call on the Minister of Finance, who requested that the scope of work be broadened and to delve into institutional and operational areas of the ZRA in order to help Government come up with a lasting solution to matters that constrain the operations of ZRA.

2. Since the establishment of ZRA in 1994 the GDP of the Zambian economy has consistently been growing at an average rate of 5.4 percent per annum the last ten years. In addition the economy has consistently attracted foreign direct investment especially in the mining and manufacturing sectors. In the medium to long term, growth is expected to accelerate and this calls for new strategies in revenue collection and tax administration. The Commission has observed that the current ZRA administration, revenue collection strategy and deficiencies in the structure has inhibited ZRA from sufficiently responding to the new challenges in the economy.

3. Given the limited time that the Commission had to conclude its work, it was not possible to have a detailed discussion with ZRA management on matters pertaining to organisation structure and corporate strategy. Therefore, the views expressed by the Commission on the ZRA strategy and structure are based on submissions from witnesses and observations of the Commission only.

Organizational Structure and corporate strategy

4. The organizational structure proposed by the Commissioner-General and approved by the Governing Board is expected to respond to the overall strategy. In order for the Zambia Revenue Authority to achieve its objectives, there must be a match between the corporate strategy and the supporting instruments that will be

employed for the attainment of the corporate strategy such as staff, skills, structure, shared values and systems.

5. The current structure of the Zambia Revenue Authority is such that the institution is headed by the Commissioner General and supported by two Commissioners Namely Commissioner Customs Services, Commissioner Domestic Taxes and a Board Secretary. The Commissioner Customs is supported by two Deputy Commissioners, these being, the Deputy Commissioner- Headquarters and the Deputy Commissioner-operations. Under the Domestic Taxes Division, the Commissioner is supported by three Directors, namely; Director Design and Monitoring, Director Large Tax Payers Office and Director Small and Medium Tax Payer office. The commissioner in charge of administration and legal is supported by the, Director Administration, Director Information Technology and the Legal counsel. Other ranks within the ZRA reporting directly to the Commissioner General include, Direct Research and planning, Director internal Audit, Director Human Resource, Chief Internal Affairs Officer and Director Finance.

6. Though the ZRA has an established organisational structure there exist unfilled vacancies especially at operational level across the organisation. This has had a negative impact on the attainment of the ZRA set objectives particularly service delivery and revenue collection. In terms of customs operations, understaffing has greatly contributed to border congestion and clearance delays.

7. For the ZRA to achieve its objectives it must have an appropriate organizational structure with suitably skilled staff and the shared values among the staff should promote the ideals of the ZRA as stated in its vision statement. Corporate planning therefore becomes a key activity for the ZRA.

8. The Zambia revenue authority employs a three year planning cycle implying that a three year corporate plan is drawn based on the objectives set. The planning

process is elaborate taking into account the external and internal analysis of the organisation. The devised plan is then subjected to annual reviews and during these reviews, annual corporate plans are devised. Operating units then draw their strategic plans from the corporate plan and the same scrutiny is applied at Business unit level.

Modernization Project

9. In its quest for improvement, Zambia Revenue Authority invited the Fiscal Affairs Department (FAD) of the International Monetary Fund to review the governance arrangements, management and the organizational structure of the Authority in July 2006. This was in the wake of declining revenues by the ZRA and reduced funding to the institution by Government. The review of the ZRA operations undertaken by the FAD revealed that ZRA had performed well from the time of its inception but needed to improve in some noted areas. The key area that the study recommended for improvement was the reduction of the fragmentation of tax administration that existed.

10. A number of recommendations were made by the IMF, among others :

    i. The strengthening of the organization structure that saw realignments in the structure such as retaining of one Commissioner in charge of all support functions;

    ii. The strengthening of the Tax Administration through integration and segmentation that saw the integrating of the VAT Division and the Direct Taxes Division into the Domestic Taxes Division. The above recommendation also led to the segmentation of Tax administration by size of Tax payers. When the recommendation was implemented, it saw the creation of the Large Tax Payer Office and the Medium Tax payer Office in the integrated Domestic Taxes Division;

iii. Other recommendations that were made in the study included but were not limited to , Increasing capacity in post importation controls in the Customs Division and acquisition of robust IT systems to support the changes made in the tax administration;

11. The Zambia Revenue Authority has been implementing the modernization reform programme and so far some strides have been made in the Implementation of the recommendation of the FAD (IMF) study.

ZRA Strategy and Structure: Observations

12. The Commission observed that the ZRA strategy and structure required urgent review in order to respond to the new challenges arising from the development in the economy;

13. The Commission established that the current ZRA structure is not consistent with provisions of the ZRA Act especially as it relates to Commissioner positions;

14. The Commission noted that Zambia Revenue Authority was not operating at the optimum required staff levels, therefore, Risk management concepts are applied even at planning level to ensure that only key activities are taken on board for purposes of achieving the set objectives.

15. The Commission was disappointed that at least three witnesses that came to make submission thought that after retirement, ZRA is supposed to refund them the Pay As You Earn (PAYE). The commission notes that there is lack tax payer education on the part ZRA. One witnesses called on ZRA to embark on public awareness campaigns and public education on the importance of paying taxes as this would assist in increasing compliance.

16. Related to contracts of employment, the Commission observed that there was lack of an objective appraisal mechanism for management to apply at the time of contract renewals at various levels within the organisational structure. Some of the items in the appraisal include subjective things like attitude towards clients that was assessed by the supervisor as opposed to an assessment by the clients.

17. The Commission notes that the current financing mechanism does not take into account the performance of the Authority. A budgetary allocation is made to ZRA without any reward for good performance.

18. The Commission noted that the ZRA owned its own training school which was under utilised. The Commission also notes that the training offered in Customs was inadequate.

19. The Commission notes that the IMF had undertaken a study on the operations of the ZRA and recommended some reforms. These reforms have since been implemented and other aspects of the recommendations that were made are still being implemented.

20. The Commission received submissions that hinged on the operations of the Zambia Revenue Authority. The submissions were categorized in broad terms as those relating to Employment Contracts, financing the Authority and aspects of its management. Further other submissions were made on training, staff motivation, broadening of tax base and tax decentralisation, board composition and public awareness campaigns.

21. A submission was received on the modalities of financing ZRA. A witness stated that it was important for ZRA to be allocated adequate resources in the budget for them to effectively discharge their function of collecting revenue on behalf of the government. Witnesses proposed that a combination of a budgetary allocation

coupled with a bonus or performance based financing would be ideal in financing the operations of ZRA. This system would motivate the Authority to work hard if it needed more resources for its operation.

22. Witnesses also felt that ZRA staff needed continuous capacity building for the organisation to improve its operations. A witness called the Authority to maintain a vigorous training programme for its personnel and that acquisition of technology alone was not sufficient for an institution such as the ZRA to be effective, but rather a situation where technology was coupled with sufficient capacity was ideal.

23. ZRA Assistant Commissioner Nakonde, Mr. Kwegyer Msimuko submitted that Assistant Customs Officer (ACO), the lowest entry position in Customs only underwent an orientation course at the ZRA training school while Examiners attended a Customs Basic Course. The Customs Basic Course was the highest training programme offered. This was confirmed by the Director, Human Resources, Mrs. Roslyne Raelly. The witness suggested that ZRA designs an advanced training course for customs officers.

24. A witness also stated that lack of motivation for staff undermines the effectiveness of the institution. The witness called on management of the ZRA to regularly review the conditions of service for its employees in order to remunerate employees very well and according to international standards.

25. Noting that an effective board is key in improving the operations at ZRA, a witness called for the enhancement of the ZRA board by adding more stakeholders with a view of broadening the Knowledge base on the Board.

26. Three witnesses submitted before the commission that ZRA had not paid them monies they had been remitting whilst in employment through Pay As You Earn

(PAYE). The Commission observed that this wrong perception was as a result of poor public outreach programmes of the ZRA.

27. Some witnesses called on the Government to consider decentralization of collection of some taxes and the Zambia Revenue Authority to take up the role of collecting other taxes such as Road Tax.

28. One witness called for the research on how the tax base can be broadened by putting the informal sector in the tax net. He however, cautioned that care must be taken to ensure that the cost of collecting tax from the informal sector does not exceed the revenue that would be realized from the informal sector.

29. Management Development Division (MDD) of Cabinet Office submitted to the commission that an appropriate structure of the ZRA was vital for the Authority to deliver its mandate. MDD further recommended that before any attempts are made to design a new organisation structure, there was need to undertake a thorough diagnosis of the challenges associated with the implementation of the structure that existed.

ZRA strategy and Structure: Recommendations

30. Arising from the above observations, the Commission recommends as follows:

    i. The ZRA must rigorously enforce the taxation laws to ensure that the revenue base of the economy is sufficiently widened to enable the tax burden to be spread more equitably than is currently the case. This will entail employing a strategy that includes:
        - Proactively and vigorously educating the public on their responsibility to pay tax and taking all possible steps to work with

stakeholders to ensure this responsibility is understood, and all potential taxpayers are identified;

- Assisting those who want to comply with their tax obligations to understand existing procedures and facilitate their compliance;
- Providing an enabling environment and for existing and compliant taxpayers to meet their obligations in the most efficient manner;
- Identifying gaps and inefficiencies that may undermine revenue collection and taking steps to address them; and
- Detecting and disrupting activities and individuals that are engaged in undermining the revenue collection effort willingly or unwillingly in collaboration with other agencies of Government;

ii. The ZRA must judiciously use the resources allocated to it. This will entail having a structure and procedures that are focused on the core tasks of the institution, and provide the maximum efficiency required to discharge the revenue collection effort;

iii. The ZRA must deploy its operations in a manner that clearly allocates responsibilities and provides oversight and accountability for the manner in which revenue collection is carried out. This requires the structure to incorporate relevant elements that provide assurance that revenue collection is carried out in accordance with the highest possible standards of integrity and accountability;

iv. ZRA must continue to keep abreast with developments in the Zambian economy and modern precepts of revenue collection. Structures within the operating divisions must incorporate and be oriented towards keeping abreast with developments. Additionally, appropriate support structures should be reinforced at corporate level to ensure that operating divisions are equipped with latest techniques and knowledge in executing the core function of the institution.

v. Under the ZRA Act, the ZRA Governing Board is charged with superintending the operations of the ZRA. This arrangement has generally worked well, and it is proposed that this continues. However, selection of private sector representatives and appointment of the Chairman needs careful scrutiny, as does making sure that the Board properly performs its oversight role by avoiding ad hoc and informal decisions on operational policies.

vi. The interaction between the MoFNP and the ZRA must be limited to policy issues. ZRA operational issues such as strategic planning, procurement, revenue collection, staff matters etc must be left to ZRA senior management and the governing board.

vii. It must be emphasized that the MoFNP management must not involve themselves too much into ZRA operational activities in order to avoid the lapses that occurred during the procurement of scanners and awarding of service contracts.

viii. In the original structure of the ZRA, senior management was designated according to the enabling legislation of the institution, which was based on four principal Acts, namely, the Zambia Revenue Authority Act, the Income Tax Act, the Customs and Excise Act, and the Value Added Tax Act. The primary responsibility of each of these Acts were reposed in the Commissioner General, the Commissioner Direct Taxes, The Commissioner of Customs & Excise, and the Commissioner Value Added Tax respectively. The management and support functions of the ZRA were then molded around these core functional areas and allocated appropriate seniority.

Support functions such as audit, finance, internal affairs and research and planning were organized as departments reporting to the Commissioner General.

ix. Over the years, there have been a number of changes to the structure of ZRA. While some of these changes have been aimed at achieving efficiency, it is worrying that they have resulted in the loss of headline responsibility for key taxation legislation. The merger of the Direct Tax and Value Added Tax divisions has in effect meant the responsibility for both taxes are assigned to one Commissioner. Given that Value Added Tax is an important source of domestic revenue it is important that this tax type is overseen by a separate Commissioner. This is especially so because there are key challenges that must be addressed with this tax type. It is also vital to recognize that at a time when tax compliance is relatively low and the economy faces a challenge with a big informal sector, accountability for each respective tax type must be clear and unambiguous.

x. Taxation of the mining sector has emerged as a key challenge for the ZRA. It is proposed that a specialized unit delegated with sufficient seniority, preferably at Deputy Commissioner level, is immediately established and stationed on the Copperbelt and North Western Provinces. This strategy must be adopted flexibly to respond to any province where mining activities justifies such a response.

xi. Another key issue that has arisen is the need to intensify collection of domestic revenue as collections from customs tariffs declines due to the various trade protocols the country has acceded to. There is need to intensify collection of domestic excise revenue, and it is proposed that this function is given appropriate focus in the ZRA structure. It is recommended that a Commissioner position be created specifically to deal with domestic VAT and domestic excise.

xii. It is also important to point out that while support functions in the ZRA are critical to the strategic direction of the institution, the ZRA must keep a streamlined management structure. The rank of Commissioner must therefore be assigned only to those senior management members who are charged with the primary responsibility of overseeing tax legislation.

xiii. Another submission was on how management can understand issues affecting the Authority. A witness stated that effective management was vital in improving the operations of ZRA. He stated that it was important for management to be going to tax incidence points to get ideas how revenue can be enhanced. This would give an opportunity to management to fully appreciate issue about revenue collection on the ground.

BROADENING THE TAX BASE AND ENHANCING REVENUE COLLECTION

Background

1. Tax efficiency is largely influenced by the political, economic, social, technological, environmental and legal framework of a country. Zambia's macro and micro economic indicators are favorable in comparative terms and conducive for implementation of a stable and efficient tax system. The taxation policy however, needs urgent review and re-orientation especially as it relates to Value Added Tax (VAT), tax incentives and taxing of the informal sector. Poor enforcement strategies by ZRA resulting in low tax compliance levels have adversely affected revenue growth in Zambia.

2. ZRA must be targeting revenue collections of over 20 percent of GDP given the growth of the economy. The current tax revenue as a percentage of GDP is projected at 17.6 percent without mining arrears while the actual last year was 16.9 percent and 17.4 percent average for the last five years. The geographical spread of ZRA is very limited and is only physically present in major towns and provincial centers leaving districts effectively "tax free."

3. Even though the cost of collecting tax is an essential component of tax efficiency, it is not prudent to have economic activities in Districts go untaxed. It is a fact that the collective contribution of untaxed economic activities in nearly all Districts can make very significant contributions to the tax base and consequently to the tax yield.

4. Further, with declining revenue contribution from trade taxes, Zambia urgently needs to broaden and deepen its capacity to collect domestic taxes especially consumption taxes.

5. The Mining sector, being the major economic requires specialized focus and management in order to maximize the sector's contribution to the national treasury. Finally, the ever-growing debt stock in form of uncollected tax arrears, interest and penalties is a reflection of serious lapses by ZRA explains the stagnation in revenue output as a percentage of GDP.

Observations

6. The Commission observed that the ZRA effort to broaden the tax base has not been successful. Specifically, the informal sector, districts and rural areas have remained largely outside the tax net. The limited geographical spread of the ZRA in the country contributed significantly to poor revenue uptake from various economic activities.

7. The Commission noted that the GDP has consistently registered an average growth of 5.4 percent over the last ten years and the structure of the economy in terms of the sectors that are driving the growth have been evolving. Despite the economic transformation, average revenue contribution to GDP in the last five years has remained at 17.4 percent.

8. The Commission observed that the tax policy as it related to VAT, tax incentives and taxing the informal sector needed urgent review in order to expand the tax base and plug the revenue hemorrhage through VAT refunds.

9. The Commission established that the ZRA had limited knowledge and understanding of the mining sector thereby failing to effectively tax mining companies leading to a perception by stakeholders that the sector was under

taxed. The Commission further observed that there was poor tax compliance by the mining companies and weak enforcement by the ZRA as evidenced by under declarations made public relating to some mining companies.

10. The Commission expressed serious concern over the inability by ZRA to deal with tax arrears, interest and penalties that have accumulated to over ZMK3 trillion.

Recommendations

11. Arising from the above observations, the Commission recommends as follows:

    (i) The Commission recommends that ZRA appoints tax agents to collect taxes in all places where they are not present preferably with District Councils who should collect on a commission basis. Further depending on assessed economic activities and possible revenue potential, the Commission recommends establishment of ZRA offices in some of the districts. To a good extent, this will positively assist in expanding the tax base;

    (ii) As a way of expanding the tax base the Commission recommends introduction of more consumption taxes on various goods and services while reducing on direct taxes (increasing disposable income). Variable rates of VAT are recommended with sensitivity to the essential nature of such goods and services. Further, the Commission recommends review of zero rated goods and services, exempted goods and refundable transactions in order to minimize VAT refunds and enhance yield of the final tax. For this reason, the Commission recommends creation of a Division at Commissioner level to champion the development of consumption domestic taxes (VAT and Excise);

(iii) The Commission noted the failure by ZRA to effectively tax the mining sector which is the major economic activity in Zambia. The Commission recommends establishment ZRA mining units manned by specially trained staff in mining operations and taxation to be stationed on the Copperbelt and North Western provinces.

(iv) The Commission noted the failure by ZRA to effectively deal with the growing debt stock of uncollected tax assessments, interest and penalties. The Commission recommends a detailed analysis of the debt stock and consideration of waving interest and penalties according to the Law and entering into strictly enforced Time To Pay Agreements (TPA) in order to liquidate the stock and avoid more arrears.

THE ZAMBIA REVENUE AUTHORITY TRAINING SCHOOL AND NUCTECH

Background to the Zambia Revenue Authority Training School

1. The Zambia Revenue Authority Training School was inherited by the Authority from the Department of Customs and Excise in 1994, when the Zambia Revenue Authority was formed. The transfer of Assets from the defunct departments of Taxes and the Customs and Excise was in line with the provisions of the Zambia Revenue Act that saw the coming into being of the Zambia Revenue Authority.

2. Over the years, the Training School has been used by the Zambia Revenue Authority for training of both in- service personnel and direct entrants in all the divisions of the Authority.

Nuctech and ZRA

3. Government procured eight re-locatable scanners from China and the contract that was consequently executed between ZRA and Nuctech, the supplier contained a provision for training in operation and maintenance on the scanners. The contract set aside the sum of US$1.68 million for training software, training programme and simulation platform.

4. The breakdown of training expenses as extracted from the Nuctech bid evaluation document is as tabulated in the table below:

ITEM NUMBER	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL PRICE
V	TRAINING PROGRAMME	1	100,000	100,000
VI	TRAINING SOFTWARE	1	30,000	30,000
VII	SIMULATION OPERATION PLATFORM	1	80,000	80,000
XI	TRAINING PROGRAMME	7	100,000	700,000
XII	TRAINING SOFTWARE	7	30,000	210,000
XIII	SIMULATION OPERATION PLATFORM	7	80,000	560,000
TOTAL AMOUNT IN USD				**1,680,000**

5. The Zambia Revenue Authority opted to construct the Simulation platforms at its Training centre. The centre was built by Nuctech as part of its contractual obligations.

6. During the visit to the Training Centre on 30th November, 2011, the Commission met the Director of Human Resources, Mrs. Roselyn Raelly and the Assistant Director Projects Mr. Nsunka who guided the tour of the training facility.

7. The Commission received and reviewed the following documents that were submitted by the Human resources Division:

    xv. Responses to questions raised by Commissioners during the visit to the training school
    xvi. Course outlines for Bradwell International and Nuctech Company Limited.

Observations

8. The Commission observed that in furnishing the training platforms Nuctech Company Limited, provided computers and other office equipment. The Commission further observed that the schedule of the office equipment provided by the Zambia Revenue Authority did not have values attached to them by the ZRA

9. The Commission further observed that the schedule of equipment does not provide details of the number of each type of equipment that was purchased neither does it give a breakdown of the cost of purchase for each piece of equipment. The Director HR in her response to the query on how much was spent on the simulation centre provided a block figure of US$1.68 million for the building and furnishing of the scanner simulation centre.

10. The Commission observed that in the absence of a valuation report, it is difficult to ascertain that US$ 0.680 million was spent on the facility. The Commission

observed that a total of US$1.68 million was provided for under the contract for purposes of developing simulation workstations and supply of software but only a fraction of the provided for money having been utilised.

11. It is worth noting that three training sessions have taken place at the Training School since the commissioning of the Simulation Centre, one session by Nuctech while two were conducted by Bradwell International. The Commission further observed that the document outlining the course content by Nuctech is detailed while Bradwell's course content was not provided to the Commission by the Director of Human Resources.

12. The Commission observed that Nuctech trained 11 Customs personnel while Bradwell trained 14. The Commission further observed that Bradwell trained 25 of its own personnel at the Training Centre.

13. The Commission observed that the staff who were trained by Bradwell for two days, were to operate and maintain the expensive scanners that the Republic of Zambia had procured. The Commission was of the view that the two day training period was not adequate to equip the trained staff with the skills necessary to enable them operate and maintain the scanners. The Commission observed that Bradwell did not pay for the use of the training facility and a bill of K28.6 million has remained outstanding.

14. The Commission observed that in contracting scanner training services, ZRA did not make any attempt to ascertain whether the local colleges and universities had the capacity to provide the requisite training.

Recommendations

15. Arising from the above observations, the Commission recommends the following:

i. Valuation of the Simulation Centre be done to ascertain the value of the Centre and the equipment;

ii. The outstanding bill by Bradwell be settled immediately;

iii. ZRA continues training its staff in operating and maintaining the scanners;

iv. Nuctech fulfills its training obligations as per contract;

v. An audit must be instituted to ascertain whether any funds were misappropriated from the training float

PART 3: KEY FINDINGS AND RECOMMENDATIONS

SUMMARY OF KEY FINDINGS

1. Having received and analyzed submissions from all witnesses and having reviewed documentation in form of contracts, Acts of parliament, minutes of meetings, evaluation reports, corporate plans, bid documents and other documentation, the Commission finds that there were some serious concerns pertaining to awarding of contracts, tax concessions and operations of the ZRA.

Awarding of Contracts

2. The Commission finds that in the awarding of contracts for the procurement of ten scanners, only two out of ten were procured using the open tender criterion. The remaining eight scanners were procured using direct bidding method (single sourcing). The Commission observed that the procurement of the additional eight scanners was unwarranted in that it was not driven by demand from the end users, the ZRA. The idea of procuring of scanners was initiated by the Chinese Government but the onus was on the Zambian Government to evaluate the need for scanners and determine an appropriate number actually required. Instead this was not the case as the Zambian Government proceeded to procure more scanners than what was actually needed despite professional advise from technocrats.

3. The Commission also questioned the interest from the then Vice President and subsequently President, Mr. Rupiah B. Banda in procuring more scanners even when it was evident that the country was not ready and the study tour indicated a need to be cautious in procurement of scanners given the challenges that were observed in countries that had procured and were using scanners. The Commission wondered what the motivating factor was for insisting on buying the additional scanners amidst resistance from technocrats. This could have led to the then Commissioner General, Mr. Chriticles Mwansa to give baseless justification for using limited bidding and reducing the flotation period from eight weeks to a week. This was further demonstrated by the speed at which the then ZPPA Director General,

Mr. David Kapitolo, gave the authority to direct bid and reduce the flotation period within a day.

4. Even after justifications for the procurement of scanners were put forward and the scanners subsequently purchased, the Commission found that scanners remained lying unused and unsecured except for one that has been installed at Chirundu. This in the Commission's view is tantamount to gross negligence given the colossal amount of money, borrowed to the tune of US$50 million to procure the scanners.

5. In the operations and maintenance of scanners, the Commission found that in the contract awarded to Smith Detection there was a deliberate clause that required the supplier (Smith Detection) to select and partner with a local company for purposes of knowledge transfer in the operations and maintenance of scanners. This clause essentially gave undue advantage to the company that Smith detection selected to operate and maintain its scanners. The local partner chosen was Cargo Scan a company registered five days after the signing of the contract with Smith Detection. This raises the question as to why ZRA did not choose the partner for Smith Detection through an open tender at the time Smith Detection was being contracted. Further questions were raised regarding the coming into existence of the company barely five days after the awarding of the contract to Smith Detection when in fact this should have happened before the bid process as it was a condition of the tender.

6. In the management of the Cargo Scan contract, the Commission finds that ZRA does not have a designated contracts' manager. This has led to failure by the ZRA to monitor the contractor's performance resulting in payments being made even when the scanners are not operating.

7. The Commission finds gross irregularities in the awarding of the contract to Bradwell International. Firstly, Bradwell was awarded a contract to maintain and operate scanners when ZRA staff had already been trained to operate the scanners

and Nuctech was responsible for maintaining the scanners. Secondly, in direct biding Bradwell it was purported that there was security concerns that Government needed to take care of using Bradwell. However, this was refuted by the Managing Director of Bradwell. Thirdly, in paying Bradwell government issued an SI that required trucks which were over 3.5 tones to pay an examination fee of K360 000 at all borders regardless of whether scanners had been deployed there or not. Fourthly, in sharing the examination fee Bradwell was to get a Lion's share of 85 percent while government, the owners of the scanners, was to get a meager 15 percent. Finally, the urgency that characterized the awarding of the contract and putting in place an SI was extraordinary.

Irregular activities

8. The Commission found a number of activities that were improper on part of the government which potentially undermined the effectiveness of ZRA. The Commission found that the signing of the Memorandum of Understanding between Ministry of Works and Supply and Kasumbalesa concessionaire in the absence of legal framework in governing PPPs was improper. The PPP Act gave powers to a handful of selected ministers the monopoly of power to determine which private individuals and/or companies would be awarded PPP agreements as they deemed fit. This might be a recipe for behind the scene fraudulent activities.

9. To demonstrate the excessive powers of the council of ministers, the Commission found that the decision to concession the Nakonde border to the same concessionaire at Kasumbalesa was taken disregarding the fact that the border infrastructure construction through government own resources was near completion. As if that was not enough the council of ministers further rewarded the same concessionaire with 4 other borders (Jimbe, Kipushi, Mwami and Chanida). The puts the country in a vulnerable position in case of a dispute at one border can affect other borders.

10. In the Kasumbalesa concession the Commission found that there was no clear indication in the agreement on who was to supervise the construction phase of the Kasumbalesa border facility, monitor and evaluate its performance. It was established that the concessionaire carried out the construction work without any supervision by Chililabombwe Municipal Council or the Building Department under the Ministry of Works and Supply hence it compromised on timeliness, quality, and adherence to set specifications in the contract. The lack of supervision at the border facility entails that the value of the concessionaire's investment can not be ascertained. In that regard the government could have been defrauded by the concessionaire by either overstating the value of the building or putting up infrastructure that my not last beyond the period of the concession.

11. The Commission found that the council of Ministers approved a twenty year concession even when the Concessionaire would recoup his investment in less than fours years of operation. Further, Ministers decided that government would only get a return from the investment from year twelve as dividend and did not even consider acquiring equity using the land. Instead the Council of Ministers decided to give land to the investor for free. The Commission found the Council of Ministers decisions to have been grossly negligent. In addition, the introduction of border crossing fees has made border crossing expensive there by increasing the cost of doing business and adversely affecting trade.

12. The Commission also finds that the powers of ZRA given under Customs and Excise Act, Cap 322 of the Laws of Zambia, to be the only authority to control movement of goods at the border had been taken over by the concessionaire who had taken over the role of opening and closing the customs barrier (booms). Even though the concessionaire argued that this was always done at the instruction of customs officials, the fact that the electronic booms are only operated by the concessionaire posed a risk to national security. Evidence of this risk was given by witnesses who stated that the concessionaire used to ferry materials to Congo DRC at the time he

was constructing the border facility on the Congolese side after border operation hours.

13. The Commission found that the tax concession given to Varum was done without any legal backing. The Commission found that government continues to lose consumption tax to a tune of about K13 billion per annum, which is none concessionable, depriving it of much needed revenue for national development. The Commission further found that the authority given by the then Minister of Finance and National Planning, Dr. Situmbeko Musokotwane was unlawful and therefore abused his authority.

SUMMARY OF KEY RECOMMENDATIONS

Overall Recommendations

1. The Commission observed that there were serious irregularities in the awarding of contracts to Cargo Scan and Bradwell International as well as concessioning of borders and provision of tax deferment to Varun. Arising from this observation the Commission recommends that the contracts be terminated, the tax deferment of Varun be revoked and criminal investigations be instituted.

2. The Commission recommends that Nuctech be compelled to perform their contractual obligations before effecting payment. Specifically Government should ensure that Nuctech completes installation of all the remaining seven scanners, provide infrastructure at Chanida and train ZRA officers in operating and maintaining scanners.

3. The Commission found some flaws in the Hallmark contract and gross negligence in its execution. The Commission therefore, recommends cancellation of the Hallmark contract. The Commission further recommends that Government through the Ministry of Transport, Works, Supply and Communication hands over the Chirundu Border infrastructure to ZRA who should be responsible for its management.

4. There is need to revise all policies and pieces of legislation that deal with awarding of public contracts. In particular the Commission found the PPP policy and its Act defective as it at variance with the Public Procurement Act. The Council of Ministers and its role should be reviewed immediately in view of the observed regularities.

5. As the recommended transformation of the PPP unit into a semi-autonomous agency is being done, the Commission recommends that the unit be re-organized and made responsive to client Ministries/Institutions in an advisory role. This is

necessary to avoid the PPP Unit operating as initiator, coordinator, implementer and monitor of PPP projects as is the case in Kasumbalesa and Nakonde.

6. The Commission observed that the concessioning of Kasumbalesa Border Post and five other border posts including Nakonde was not transparent and compliant to the Public Procurement Act. The Commission recommends cancellation of these concessions. Government should also immediately take over the Nakonde project which was handed over to the concessionaire at 75 percent completion stage using public resources.

7. The Commission observed that the Kasumbalesa project was not done according to various pieces of legislation such as Public Procurement Act, Town and Country Planning Act and it was not supervised by the Buildings Department. Further, the Commission observed that the concession period of twenty years for a project likely to recover its clearly over stated investment within four years was not justifiable. The Commission therefore, recommends that Government takes over the Kasumbalesa project and compensate the concessionaire based on mutually agreed valuation report.

8. The Commission observed that even though Nuctech scanners were procured for ZRA by Government, the scanners are not part of the ZRA balance sheet and therefore, ZRA does not legally own the scanners. The Commission recommends that ZRA assumes ownership of the scanners.

9. In order to meet loan obligations on the scanners, operate and maintain the scanners, the Commission recommends an increase in the Asycuda processing fee by K100,000.00.

10. The Commission observed that ZRA in its current form has not responded to the demands of the changing economic environment particularly the growth and impact

of the mining sector. The Commission therefore, recommends an urgent review of the ZRA revenue collection strategy and organisational structure.

The commission recommends appropriate action/investigations based on its findings with regards to the role played by the following individuals**:**

NAME	**TITLE**	**REASON**
Mr. Rupiah B. Banda	Former Vice President	❖ Procurement of four extra scanners. ❖ The increase in the loan from US $100 – US $ 125 million.
Dr. Situmbeko Musonkotwane	Former Minister of Finance and National Planning	❖ Involved in the Bradwell contract ❖ Giving an illegal Tax Deferment on consumption Taxes to Varun Beverages (Z) Limited (PEPSI)
Mr. Mike Mulongoti Dr. Situmbeko Musokotwane Prof G. Lungwangwa	Former Minister of Works and Supply Former Minister of Finance and National Planning Former Minister of Communications and Transport	❖ Award of Kasumbalesa Border Post concession
Mr. Mike Mulongoti Dr. Eustachio Kazonga	Former Minister of Works and Supply Former Minister of Local Government	❖ Award of the five Border Concession namely: Nakonde, Mwami, Jimbe, Kipushi and Chanida.

  Prof G. Lungwangwa Ms. Chileshe Kapwepwe	and Housing Former Minister of Communications and Transport Former Deputy Minister of Finance and National Planning	
Mr. Likolo Ndalamei	Former Secretary to the Treasury	❖ Cancellation of the Nakonde Construction project
Mr. Emmanuel Ngulube	Former Permanent Secretary – Ministry of Finance and National Planning, Budget Office	❖ Involvement in the awarding of the Bradwell contract
Ms. Nana Mudenda Mr. Tenthani Banda	Board Secretary - ZRA Current – ZRA Director Administration	❖ Payment to Cargo Scan with no regard to service delivery and contract terms
Mr. Wisdom Nhekairo	Former ZRA Commissioner General	❖ Involved in the awarding of the Bradwell contract. ❖ Justification of direct bidding based on flimsy grounds. ❖ Payments to Cargo Scan Limited with no

		regard to service delivery and contract terms
Mr. Chriticles Mwansa	Former Commissioner General ZRA	❖ Justifying for direct bidding of Nuctech company. ❖ Justifying direct bidding of Cargo Scan Limited. ❖ Justifying procurement of four additional scanners and reduction of floatation period. ❖ The additional were clearly not needed
Mr. David Kapitolo Mr. Sam Chibuye	Former Director General ZPPA Director General ZPPA	❖ Failure to verify information availed to ZPPA by ZRA in relation to direct bidding.

APPENDICES

Appendix I : Statutory Instrument No. 117 of 2011

Appendix II: Programme of Work

Appendix III: List of witnesses

Appendix IV: List of Contracts

Appendix V: Minute from Secretary to Treasury to Minister of Finance on Scanners (18^{th} August, 2008)

Appendix VI: Letter from ST to His Honour Vice President (18th April, 2008)

Appendix VII: Minister of Finance to Principal Private Secretary to the President (6^{th} January, 2009)

Appendix VIII: Letter from Commissioner General ZRA to Director General ZPPA (4^{th} March, 2009)

Appendix IX: Letter from Director General ZPPA to Commissioner General ZRA (5^{th} March, 2009)

Appendix X: PACRA Registration details for Cargo Scan

Appendix XI: Legal Opinion on Cargo Scan by Assistant Legal Council

Appendix XII: Letter from PS Budget and Economic Affairs to ZRA Board Secretary (27^{th} July, 2011)

Appendix XIII: Traffic Delay Periods

Appendix XIV: Minute from Director Buildings to PS Works advising not to terminate the contract with Jiangxi Contractor (19^{th} November, 2010)

Appendix XV: Letter from Minister of Finance to Varun Beverages (Zambia) Limited giving deferment of Tax (7^{th} May, 2010)

Appendix XVI: Letter from Minister of Finance to His Honour the Vice President (19^{th} February, 2010)

Appendix XVII: Letter from His Honour the Vice President to Minister of Finance (15th March, 2010)

Appendix XVIII: Minute from Chief Budget Analyst Revenue to Secretary to Treasury (30th March, 2010)