



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS

ON THE

NATIONAL FORENSIC BILL, N.A.B. NO. 1 OF 2020

FOR THE

FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

Printed by the National Assembly of Zambia

REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS

ON THE

NATIONAL FORENSIC BILL, N.A.B. NO. 1 OF 2020

FOR THE

FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

TABLE OF CONTENTS

Item	Page No
1.0 Membership of the Committee	1
2.0 Functions of the Committee	1
3.0 Meetings of the Committee	1
4.0 Procedure adopted by the Committee	1
5.0 Background	1
6.0 Objects of the Bill	2
7.0 Salient Provisions of the Bill	2
8.0 Summary of Submissions by Stakeholders	6
9.0 Committee's Observations and Recommendations	14
10.0 Conclusion	16

Appendices

Appendix I: List of Witnesses

Appendix II: List of National Assembly Officials

REPORT OF THE COMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS ON THE NATIONAL FORENSIC BILL, N.A.B NO. 1 OF 2020, FOR THE FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY.

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of: Dr M Malama, MP (Chairperson); Ms A M Chisangano, MP (Vice-Chairperson); Mr E J Muchima, MP; Brig Gen M Sitwala, (Rtd) MP; Mr K Mbangweta, MP; Mr L Nyirenda, MP; Ms M Miti, MP; Mr F Ngambi, MP; Mr A B Malama, MP; and Mr E K Belemu, MP.

The membership of the Committee changed when Ms M Lubezhi, MP, replaced Mr E K Belemu, MP, who was appointed to serve on another Committee.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir

The Committee has the honour to present its Report on the National Forensic Bill, N.A.B No. 1 of 2020, for the Fourth Session of the Twelfth National Assembly, referred to it on 20th February, 2020.

2.0 FUNCTIONS OF THE COMMITTEE

The functions of the Committee are as set out under Standing Order No. 157(2). Among the functions is the mandate to consider Bills referred to it by the House.

3.0 MEETINGS OF THE COMMITTEE

The Committee held nine meetings to consider the National Forensic Bill, N.A.B No. 1 of 2020.

4.0 PROCEDURE ADOPTED BY THE COMMITTEE

In order to acquaint itself with the provisions and ramifications of the National Forensic Bill, N.A.B No. 1 of 2020, the Committee sought both written and oral submissions from the stakeholders listed at Appendix I.

5.0 BACKGROUND

One of the most important developments in the delivery of justice in recent decades is the increased use of scientific and forensic evidence. Regrettably, although forensic services are an essential element of any effective and professional law enforcement and justice system, in

Zambia, these services are not provided professionally and adequately due to the absence of a legal framework.

Previous efforts to mitigate this inadequacy, such as the creation of a Forensic Department in the Ministry of Home Affairs in 2012, have been relatively narrow in scope and depth. The Forensic Department, under the Zambia Police Service, only offers a limited scope of services. As a result, the use of forensic services in Zambia has remained rudimentary and fragmented, thereby failing to contribute to the resolution of criminal and civil cases. This has further resulted in the miscarriage of justice and loss of public confidence in the judicial system. The enactment of this piece of legislation would, therefore, compel forensic service providers to use validated methods and techniques in the identification, collection, transportation, preservation, storage, custody and interpretation of evidential material and provide for a reliable, accountable and credible crime scene management and death investigation system for legal purposes.

6.0 OBJECTS OF THE NATIONAL FORENSIC BILL

The Objects of the Bill are to:

- (a) regulate the practice of forensic science and forensic pathology and provide for the licensing of forensic service providers;
- (b) establish the National Forensic Authority and provide for its functions;
- (c) establish the Board of the Authority and provide for its functions;
- (d) establish the Office of the State Forensic Pathologist;
- (e) establish the National Forensic Science and Biometrics Department; and
- (f) provide for matters connected with, or incidental to, the foregoing.

7.0 SUMMARY OF THE SALIENT PROVISIONS OF THE BILL

The salient provisions of the National Forensic Bill, N.A.B. No. 1 of 2020 are set out hereunder.

Part I

Preliminary Provisions

Clauses 1 – Short title and commencement

This clause provides for the short title and the date of commencement of the Bill.

Clauses 2 – Interpretation

This clause provides for the definition section which defines various words and phrases used in the Bill.

Part II

Clause 3 – Establishment of National Forensic Authority

This clause establishes the National Forensic Authority as a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and with power to do acts and things that a body corporate may do or perform.

Clause 4 – Functions of Authority

This clause defines the functions of the Authority which includes regulating forensic service providers and facilitating the carrying out of forensic research.

Clause 5 – Board of Authority

This clause establishes the Board of the Authority and provides for the membership and qualifications of members of the Board.

Clause 6 – Functions of Board

This clause provides for the functions of the Board which includes formulating policies of the Authority, approving the annual work plan and activity of the Authority and approving annual budget estimates and financial statements of the Authority.

Clause 7 – Executive Director, Secretary and other Staff

This clause gives the Board the power to appoint the Executive Director of the Authority, Secretary of the Authority and other staff that the Board considers necessary for the performance of the functions of the Authority. This clause further gives the Emoluments Commission the mandate to determine the emoluments of the Executive Director, Secretary and other staff of the Authority on the recommendation of the Board.

Clause 8 – Delegation of Functions

This clause gives the Board the discretion to delegate any of its functions to the Executive Director.

Clause 9 – Oath on Appointment

This clause requires that a member, the Executive Director, Secretary and other staff of the Authority on appointment to take oath in accordance with the *Official Oaths Act, Chapter 5 of the Laws of Zambia*.

Part III

Clause 10 – Inspectors

This clause gives the Authority the power to appoint inspectors for purposes of ensuring compliance with the provisions of the Bill.

Clause 11 – Powers of Inspector

This clause provides for the powers of the inspector which includes the power to examine a document or article found on the premises that has a bearing on the inspection, enter and search any premises and require information to be given about a document or an article.

Part IV

Clause 12 – Single Licensing System

This clause gives the Authority the power to operate a single licensing system for activities in the forensic science sector in accordance with the *Business Regulatory Act, No. 3 of 2014*.

Clause 13 – Prohibition from Providing Forensic Service without Licence

This clause prohibits and makes it an offence for a person to provide forensic services without a licence issued under this Bill.

Clause 14 – Provisional Licence

This clause provides for the application of a provisional licence to the Authority by a person who intends to provide a forensic service.

Clause 15 – Licence

This clause provides for the issuance of a licence to a holder of a provisional licence.

Clause 16 – Transfer of Licence

This clause prohibits the transfer of a licence issued under the Bill without the prior approval of the Authority.

Clause 17 – Display of Licence

This clause places an obligation on the licensee to display a copy of a licence in a conspicuous place at the place of practice.

Clause 18 – Variation of Conditions of a Licence

This clause provides for the licensee to make an application to the Authority to vary the terms and conditions of the licence.

Clause 19 – Surrender of Licence

This clause provides for the licensee to surrender a licence to the Authority where the licensee decides not to continue the provision of forensic services.

Clause 20 – Suspension or Cancellation of Licence

This clause lists the instances that the Authority may cancel or suspend a licence and these include:

- (a) if the licence was obtained by fraud, misrepresentation or concealment of facts; and
- (b) where the licensee fails to comply with a term or condition of the licence.

Clause 21 – Renewal of Licence

This clause provides for the renewal of the licence within ninety days prior to the expiration of the period of the validity of the licence.

Clause 22 – Register of Licences

This clause provides for the register of licenses which shall be kept by the Authority. The clause further provides that the register shall be open for inspection by members of the public.

Clause 23 – Publication of Licensed Forensic Service Providers

This clause provides for the annual publication by the Authority of a register of licences in the *Gazette* or daily newspaper of general circulation in the Republic.

Part V

Clause 24 – Establishment of Office of State Forensic Pathologist

This clause establishes the Office of the State Forensic Pathologist and the appointment of the State Forensic Pathologist by the Civil Service Commission.

Clause 25–Appointment of Deputy State Forensic Pathologist and other Staff

This clause provides for the appointment, by the Civil Service Commission, as public officers the Deputy State Forensic Pathologist and other officers as may be necessary for the performance of the functions of the Office of the State Forensic Pathologist. The clause also provides for the qualifications for appointment of the Deputy State Forensic Pathologist.

Clause 26 – Functions of Office of State Forensic Pathologist

This clause provides for the functions of the Office of State Forensic Pathologist, which include:

- (a) providing facilities and staff for the conduct of post-mortem examinations in relation to deaths investigated under the *Inquests Act, Chapter 36 of the Laws of Zambia*;
- (b) conducting other appropriate investigations or examinations in relation to the cause of death of any person; and
- (c) providing post-mortem examination reports to coroners and the Zambia Police Service.

Part VI

Clause 27 – Establishment of National Forensic Science and Biometrics Department

This clause establishes in them ministry responsible for home affairs the Department of National Forensic Science and Biometrics.

Clause 28 – Functions of Department

This clause provides for the functions of the Department, which include:

- (a) analysing forensic samples for a State institution;
- (b) providing forensic science and biometric services to law enforcement agencies; and
- (c) managing crime scenes in collaboration with the responsible law enforcement agency.

Clause 29 – State Forensic Analyst and other officers

This clause provides for the appointment, by the Civil Service Commission, of the State Forensic Analyst, Deputy State Forensic Analyst and other officers that may be necessary for the provision of forensic science and biometric services to State institutions.

Part VII

Clause 30 – Appeals

This clause accords a person aggrieved by the decision of the Authority the right to appeal to the Minister and if not satisfied with the decision of the Minister such a person may appeal to the High Court.

Clause 31 – Offences

This clause outlines the offences recognised under this Bill and provides for the penalty for those offences.

Clause 32 – Offences by a Principal Officer or Shareholder of Body Corporate or Unincorporated Body

This clause provides for offences by a body corporate or unincorporated body with the consent or knowledge of a director, manager, shareholder or partner of that body corporate or incorporate body.

Clause 33 – Authority to issue guidelines

This clause gives the Authority the power to issue guidelines necessary for the better carrying out of the provisions of the Bill.

Clause 34 – Regulations

This clause gives the Minister power, in consultation with the Authority, to make regulations by statutory instrument for the better carrying out of the provisions of this Bill.

8.0 SUMMARY OF SUBMISSIONS AND CONCERNS BY STAKEHOLDERS

8.1 General Concerns

Most of the stakeholders who appeared before the Committee were in support of the Bill, contending that for a long time there had been no legal framework to guide the practice of forensic science in Zambia. Other stakeholders were opposed to the Bill in its current form. However, the Committee was privileged to interact with the Minister of Home Affairs who appeared before it to respond to some pertinent concerns raised by the stakeholders.

- a) The stakeholders who had reservations about the Bill, argued that whereas forensic science encompassed other disciplines, the Bill had focused largely on forensic pathology at the exclusion of the disciplines listed below.
 - i. *Forensic Ballistics*: Deals with the examination, identification and analysis of firearms, ammunition, fired bullets and cartridge cases. It also establishes the possible link between the fired bullet and cartridge cases to a particular firearm. It also identifies tools used to commit a crime.
 - ii. *Questioned Document-Handwriting*: Deals with the examination and identification of disputed documents such as hand written scripts, forgeries and counterfeits, among others.

The purpose of examination and identification is to identify the author of a given disputed writing through scientific examination.

- iii. *Photograph/Scenes of Crime*: This is a recording of events at scenes of crime and other relevant activities that require legal attention.
- iv. *Forensic Biology*: Responsible for investigating crimes related to Deoxyribonucleic Acid (DNA). This helps to identify traces which might have been left at a scene of crime.
- v. *Forensic Chemistry*: Deals with matters related to identification of toxic substances.
- vi. *Computer Forensics/Cybercrime*: Deals with matters that relate to electronic data.

Minister's Response

The Minister of Home Affairs explained that contrary to the assertion that the Bill had focused more on pathology at the expense of other branches of forensic science, it had provided a framework for the other spheres of forensic science. It was for this reason that the Bill defined 'forensic information' as 'information used in a forensic investigation, including a Deoxyribonucleic Acid (DNA) profile, finger print, impression evidence, serological results, or other related pieces of evidential information obtained by forensic analyses.' The Minister added that it was neither possible nor desirable to go into the details of all disciplines of forensic science.

- a) The stakeholders expressed concern that it was not clear what would become of the National Forensic Unit, of the Police Service, which was currently providing forensic services. In particular, they wanted to know how the proposed National Forensic Science and Biometrics Department would affect the Forensic Department in the Zambia Police Service and what specific role(s) the Zambia Police Forensic Section would play in the new Authority.

Minister's Response

In responding to these concerns raised by the stakeholders, the Minister of Home Affairs, indicated that the object of the Bill was to regulate the practice of forensic science. In this regard, the Forensic Section of the Police Service would be merged with the National Forensic Science and Biometrics Department which would be regulated by the National Forensic Authority. He added that currently, there was no legal framework to enhance adherence to world standards in the practice of forensic science. This had resulted in the provision of rudimentary and fragmented forensic services and the miscarriage of justice, thereby eroding public confidence in the country's criminal justice system.

8.2 Specific Concerns and Recommendations

Stakeholders highlighted the concerns set out below.

Clause 2: Interpretation

- 2.1 Some of the stakeholders were of view that the term "*authorised officer*" needed to be defined further because in its current form, the definition did not give any standard or qualifications with relevance to forensic science. They contended that an authorised

officer should have capacity to identify latent, apparent and various DNA samples which may be connected to the crime committed.

- 2.2 Insert the words “or dental material” after the words “cellular material” in the interpretation of “buccal sample”.
- 2.3 Add “Coroner” has the meaning assigned to the word in the *Inquests Act*.
- 2.4 Add “forensic database” means a computerised reservoir of information relating to a specific type of physical evidence.
- 2.5 The phrase “intimate sample” as used in the definition of “bodily sample” had not been defined. The definition of “intimate sample” should, therefore, be provided.
- 2.6 Some stakeholders observed that whereas a Radiation Safety Officer might be required to undertake certain forensic research, Radiation Safety Officer was not included in the definition of “authorised officer”. In this regard, they recommended that a Radiation Safety Officer be included in the definition of authorised officer.
- 2.7 Some stakeholders observed that although “forensic pathologist” and “forensic analyst” were registerable under the specialist register and were regulated by Health Professions Council of Zambia (HPCZ), the Bill did not refer to their registration status with HPCZ.

In this regard, the stakeholders proposed that reference to the registration status with the HPCZ, be added to the definition of “Forensic Pathologist” and “Forensic Analyst”, as was the case with the definition of “Medical Doctor”.

- 2.9 Some stakeholders were of the view that the inclusion of the qualification of a post graduate degree in any field of forensic science in the definition of “forensic Analyst” was too restrictive, particularly in the wake of the scarcity of this cadre of staff in this field.

Stakeholders, therefore, proposed that a first degree, augmented with experience, be the minimum qualification.

- 2.10 Some stakeholders observed that defining ‘mass disaster’ as “casualties numbering more than ten individuals at a given time and place”, was too narrow. In this regard, the stakeholders proposed that the definition of “mass disaster” be expanded to read, “Mass disaster” means an event, natural or man-made, sudden or progressive, resulting in casualties numbering more than ten individuals, the remains of which have to be identified and subjected to medico legal investigation’.

Clause 4: Functions of the Authority

- 4.1 The stakeholders observed that the first object of the Bill which read “regulate the practice of forensic science and forensic pathology and provide the licensing of forensic service providers” and the first functions of the National Forensic Authority under clause 4(2) (a) were overlapping with the functions of the Health Professions Council of Zambia (HPCZ). They

noted that according to the Section 49(1) (a) of the *Health Professions Act, No. 24 of 2009*, the Council was expected to regulate members of the health profession and regulate the professional conduct of health practitioners. In this regard, it was recommended that this function should be amended so that it was performed in consultation with HPCZ.

Minister's Response

The Minister clarified that there was no conflict or overlap in the functions of the Health Professions Council of Zambia (HPCZ) and the proposed functions of the National Forensic Authority. He noted that whereas the HPCZ regulated the conduct of health professionals, including pathologists, it could not regulate the chain of custody of evidence as it related to the techniques of identification, collection, transportation, preservation, storage, custody and interpretation of evidential materials before the courts of law, which the Bill intended to regulate. He added that whereas the HPCZ could inspect a clinical laboratory, for instance, it would not have the capacity to inspect a reference pathological laboratory.

4.2 The stakeholders observed that since there could be other standards for either quality and safety applicable to forensic science, the functions of the Authority provided at clause 4(e) should be expanded to read 'propose the development and/or adoption/adaptation of internationally recognised minimum quality and safety forensic related standards, in collaboration with the Zambia Bureau of Standards and in accordance with the *Standards Act No. 4 of 2017*'.

4.3 The stakeholders recommended the addition of another function at clause 4(i) which should read, "develop and/or adopt internationally recognised protocols of testing and examination methods" and another function as (k), to read "maintain a forensic database".

The stakeholders contended further, that the administration and maintenance of a National Forensic Database would provide DNA profiles in the investigation of crime. They went further to recommend that DNA samples should be collected from suspects at the time of arrest. At clause 4 (j), the stakeholders proposed the replacement of "and forensic pathology" with 'in general'.

Clause 5: Board of Authority

Some stakeholders noted that clause 5 (1) (f) made reference to the representative of the "Human Rights Commissioner," instead of the "Human Rights Commission." In this regard the stakeholders proposed that this be corrected accordingly.

Other stakeholders contended that the composition of the Board of the Authority should have more persons with knowledge and experience in matters relating to forensics, other than mere representation of institutions. Others were of the view that the composition of the Board of the Authority should include representation from the defence forces, particularly considering that the definition of authorised officer at (g) had included an officer from the defence force.

Minster’s Response

The Minister responded that the Bill was intended to enhance the gathering of evidence in the administration of justice and that was why it was domiciled in the Ministry of Home Affairs under which the law enforcement agencies operated. In this regard, it would not be desirable to have the defence forces sit on the Board which was essentially meant to provide policy direction. With regard to the desire for the defence forces to be exempted from licenses and other provisions of the Bill, the Minister stated that just as medical doctors in the defence forces were regulated first and foremost by the Health Professions Council of Zambia and secondly by their military practice, a pathologist in the military would be required to be licensed and the establishment of a pathology laboratory in the defence forces would need to be regulated by the National Forensic Authority.

Clause 6: Functions of the Board

Some stakeholders expressed concern that in despite the current pressure on the Treasury, the Board had not been mandated to raise resources. In this regard, stakeholders recommended that this function be included at clause 6(1). In the same vein, they recommended the inclusion of (d) “provide oversight on the execution of the functions of the Authority” at clause 6 (2).

Clause 7: Executive Director, Secretary and other Staff

7.1 Stakeholders observed that whereas the work of the Executive Director was unique and demanding, clause 7(1) did not include requisite qualifications. In this regard the stakeholders recommended that for the avoidance of doubt, qualifications of the Executive Director should be included, as was the case with the State Forensic Pathologist at clause 24 (3).

Minister’s Response

The Minister responded that the qualifications of the Executive Director could not be spelt out in the Bill as these would be attended to in the regulations. He went further to explain that the only reason the qualifications of the State Forensic Pathologist were provided for, was the scientific nature of the Office.

7.2 Stakeholders were concerned that there was some inconsistency between clause 7(5) and clause 10(1). They noted that whereas clause 7(5) provided that the Authority would determine conditions of service for the Executive Director, Secretary and other staff of the Authority, clause 10(1) provided that the terms and conditions for the inspectors shall be determined by Board. In this regard, stakeholders recommended that the determination of the conditions and terms of service for the Executive Director, Secretary and other staff of the Authority be vested in the Board rather than the Authority.

7.3 Stakeholders noted that clause 7(3) provided for the appointment of the Secretary of the Authority by the Board. They observed that in many jurisdictions, the Executive Director served as the Secretary to the Board and wondered whether it would not be desirable to maintain the best practice in this regard.

Clause 9: Oath on Appointment

Stakeholders observed that the phrase “of the Board” had been omitted between “A member” and “the Executive”. Stakeholders recommended that this phrase be included just after the word “member.”

Clause 10: Inspectors

Stakeholders noted that under clause 10 (3) (a) and (b) an inspector was required to, in the performance of their functions, be in possession of an identification card or a certificate of appointment and show an identification card or a certificate of appointment to a person who requested to see them. However, it was not clear whether any actions of an inspector, in the course of carrying out their duties, were negated by the mere fact that they were not in actual physical possession of an identification card or a certificate of appointment. Stakeholders, therefore, recommended that this should be made clear.

Clause 11: Powers of Inspectors

11.1 Stakeholders expressed concern that clause 11(b) had not addressed the need for the inspectors to obtain a search warrant. In this regard, stakeholders recommended the inclusion of a requirement for a search warrant, for the protection of human rights.

11.2 Stakeholders noted that clause 11(2) made reference to “a reasonable place and time” which was not defined in the Bill. They proposed, therefore, that a timeframe within which the service provider was supposed to produce a document or article after discontinuing the service should be prescribed.

11.3 Stakeholders noted that clause 11 did not include powers of an inspector to seize and detain any material relevant to an investigation. They, therefore, recommended that this provision be included.

11.4 Stakeholders noted that the immunity provided for in the Bill had not been extended to inspectors. Stakeholders, therefore, recommended that immunity should accordingly be extended to inspectors in order for them to perform their duties without fear but within the confines of the law.

11.5 Some stakeholders wondered whether or not the powers of inspectors would extend to the inspection of military establishments. They, therefore, proposed that this matter be made clear in the Bill.

Minister’s Response.

In addressing this matter, the Minister stated that the intention of the Bill was to assist in the administration of criminal justice. In this regard, the work of inspectors would be confined to those purposes. If, however, a criminal act was committed in a military cantonment, there would be need for the inspectors to collaborate with military authorities in the performance of their duty.

11.6 Stakeholders noted that clause 11(4) (b), provided that a person committed an offence if that person “refuses to give an inspector reasonable assistance that the inspector may require in the exercise of the inspector’s powers” and put a punishment of a fine not exceeding two

hundred thousand penalty units or imprisonment for a term not exceeding two years or both. Stakeholders contended that the provision would be problematic in determining what would constitute reasonable assistance and whose burden it was to determine the reasonableness of the assistance. Stakeholders, therefore, recommended that clause 11(4) (b) should be struck off in its entirety.

Clauses 13 (2) and Clause 31

Some stakeholders contended that the penalties of five hundred thousand penalty units or imprisonment for a term not exceeding five years or both and one million five hundred thousand penalty units or to imprisonment for a term not exceeding fifteen years or both, proposed at clause 13(2) and Clause 31 respectively, were excessive. They contended the aim of the Bill was not to punish but rather to regulate and ensure compliance in forensic service provision. Those with a contrary view argued that the offences to which these penalties applied were very serious and, therefore, deserving of such punishment.

Clause 14: Provisional Licence

Some stakeholders noted that this provision did not include the validity of the provisional licence. They, therefore, recommended that this be provided for in the Bill.

Clause 15: Licence

Some stakeholders were concerned that clause 15 did not include the period within which the Authority must consider an application. In this regard, stakeholders recommended that this provision should include the period within which the license shall be considered. Further, stakeholders submitted that clause 15 (2) should read ‘the Authority shall, on receipt of the application referred to in sub clause (1), grant or reject the application based on established criteria.’

Clause 20: Suspension or Cancellation of Licence

Some stakeholders observed that this Clause generally provided for instances when the Authority may suspend or cancel a licence. Under clause 20 (1) (a), a licence could be suspended or cancelled in instances of obtaining a licence by fraud, misrepresentation or concealment of a material fact. clause 20 (3) went further to state that a licence would not be suspended if the licensee took remedial measures to the satisfaction of the Authority within a stipulated period. The stakeholders were concerned that instances of fraud and misrepresentation or any measures to obtain a licence with dishonest means should be criminalised and not provided with an option of being restored if remedial action was taken.

Stakeholders, therefore, recommended, that clause 20(3) must be re-drafted to clearly stipulate that a cancellation of a licence under clause (1) (a) invalidated the licence and no remedial measure could be taken by the licensee to remedy it. The provision should, therefore, be deleted completely.

Minister’s Response

In agreeing with the stakeholders, the Minister conceded that fraud, which was cited at clause 20 (1) (a) as a ground for the suspension or cancellation of a licence was a criminal offence. As

such, no remedial measures would be taken for one to have their licence reinstated. The Minister in this regard, undertook to reexamine this provision.

Clause 24: Establishment of the Office State Forensic Pathologist

Some stakeholders recommended the deletion of clause 24(3) (a) and (b) and the substitution, thereof with (a) which should read, ‘*is registered as such under the Health Professions Act No. 24 of 2009.*’

They contended that in terms of qualifications, with an exception of those who had already studied it, one needed not to be an anatomical/general pathologist first and then obtain a postgraduate qualification in forensic pathology to become a Forensic Pathologist. One may, while pursuing their anatomical/general pathology, specialise or major in Forensic Pathology thereby obtaining only one qualification as a Forensic Pathologist, without necessarily having been an anatomical pathologist.

Consequently, they recommended that the recognition of the specialty of such officers be the preserve of the Health Professions Council of Zambia. Further, stakeholders proposed the addition of the phrase ‘any other law’ at clause 24(4).

Stakeholders were concerned that clause 24 (4) and 29 (1) subjected the State Forensic Pathologist and the State Forensic Analyst to ‘special directions and instructions’ from the Minister and the Permanent Secretary, which had the potential to undermine autonomy. Stakeholders, therefore, recommended that these provisions should be deleted and that sub clause 24(5) should be applicable to the State Forensic Pathologist and the State Forensic Analyst.

Minister’s Response

The Minister responded that the State Forensic Pathologist and the State Forensic Analyst would be domiciled in the Ministry of Home Affairs. In this regard, they would be subject to the supervision of the Ministry, through the Minister and the Permanent Secretary. However, the Minister and the Permanent Secretary would not instruct these officers in the actual practice of their job.

Clause 25: Appointment of Deputy State Forensic Pathologist and other Staff

Some stakeholders proposed that an anatomical pathologist should be included at Sub clause 25(4), among officers who could act in the office of the State Forensic Pathologist in an event that no other forensic pathologist was available.

Clause 26: Functions of the Office of State Forensic Pathologist

Many stakeholders welcomed the devolution of the Office of the State Forensic Pathologist to provinces and districts as provided for at sub clause 26 (6). They noted that the non-availability of a pathologist to conduct exhumations and examination of bodies in murder cases, had resulted in delays in the issuance of committal orders and accused persons have had to stay in detention too long. Stakeholders, however, expressed worry at the feasibility of this provision considering that currently, there were only six pathologists countrywide.

Clause 30: Appeals

Stakeholders observed that clause 30(2) did not provide for a timeframe within which a person aggrieved with the decision of the Minister may appeal to the High Court. In this regard, it was proposed that thirty days be provided as the appeal period.

Clause 31: Offences

Stakeholders noted that clause 31(4) erroneously referred to sub-clause (1) instead of sub clause (3). They, therefore, recommended that this be corrected.

Schedule

Some stakeholders expressed concern that clause 4 (2) would allow members whose tenure had expired to continue serving for three (3) months even when the nominating institution and/or the Authority did not wish for them to continue serving. Stakeholders, therefore, proposed that there should be no extension of the tenure once it expired.

Stakeholders observed, further, that clause 4 (3) of the schedule did not have a provision for a vacancy arising from a member being recalled by the institution that nominated them. They, accordingly, recommended the addition of (h) to read... 'is recalled by the institution that nominated that member.'

9.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

The Committee is in full support of the Bill. However, the Committee shares some of the concerns that were raised by stakeholders and highlights its observations and recommendations on the specific provisions below.

i. Clause 2: Interpretation

a) The Committee observes that although 'forensic pathologist' and 'forensic analyst' are supposed to be registered with and regulated by the Health Professions Council of Zambia (HPCZ), under the specialist register, the Bill does not refer to their registration status with HPCZ.

In this regard, the Committee recommends that reference to the registration status with the HPCZ, be added to the definition of 'forensic pathologist' and 'forensic analyst', as is the case with the definition of 'medical doctor'.

b) The Committee observes that the definition of 'mass disaster' as 'casualties numbering more than ten individuals at a given time and place,' is too narrow.

In this regard, the Committee recommends that the definition of 'mass disaster' should be expanded to read, 'mass disaster' means 'an event, natural or man-made, sudden or progressive, resulting in casualties numbering more than ten individuals, the remains of which have to be identified and subjected to medico legal investigation.'

ii. *Clause 4: Functions of the Authority*

4.1 The Committee notes that the first object of the Bill which reads “regulate the practice of forensic science and forensic pathology and provide the licensing of forensic service providers” and the first function of the National Forensic Authority under clause 4(2) (a) are overlapping with the functions of the Health Professions Council of Zambia (HPCZ). According to section 49(1) (a) of the *Health Professions Act, No. 24 of 2009*, the Council is expected to regulate members of the health profession and regulate the professional conduct of health practitioners.

While noting the Minister’s intervention that whereas the HPCZ regulated the conduct of health professionals, including pathologists, it could not regulate the chain of custody of evidence as it relates to the techniques of identification, collection, transportation, preservation, storage, custody and interpretation of evidential materials before the courts of law, the Committee recommends that the two pieces of legislation should be harmonised for avoidance of conflict of interest.

iii. *Clause 6: Functions of the Board*

The Committee notes that in order for the Authority to be in tandem with best practices, one of its functions should be to develop and/or adopt internationally recognised protocols of testing and examination methods and to maintain a forensic database. The administration and maintenance of a National Forensic Database will provide DNA profiles in the investigation of crime.

The Committee, therefore, recommends that this function be provided for at clause 4. Further, the Committee recommends that DNA samples should be collected from suspects at the time of arrest.

iv. *Clause 11: Powers of Inspectors*

(a) The Committee observes, with concern, which clause 11(b) does not provide for the need for the inspectors to obtain a search warrant before conducting any search. In this regard, the Committee recommends that the requirement for a search warrant by the inspector be provided for. Further, the Committee is concerned that although clause 11(2) makes reference to ‘a reasonable place and time’, ‘reasonable place and time’ have not been defined in the Bill.

The Committee, therefore, recommends that the timeframe within which the service provider is supposed to produce a document or article after discontinuing the service should be prescribed. The Committee recommends also that an inspector should be empowered to seize and detain any material relevant to an investigation

(b) The Committee notes that clause 11(4) (b), provides that a person commits an offence if that person ‘refuses to give an inspector reasonable assistance that the inspector may require in the exercise of the inspector’s powers,’ and puts a punishment of a fine not exceeding two hundred thousand penalty units or imprisonment for a term not exceeding two years or both. The Committee observes that if left in its current form, this provision has the potential to create a

problem as to what constitutes reasonable assistance and whose burden it is to determine the reasonableness.

The Committee, therefore, strongly recommends that clause 11(4) (b) should be struck off in its entirety.

v. *Clause 30: General Provisions*

The Committee observes that clause 30(2) does not provide a timeframe within which a person aggrieved with decision of the Minister may appeal to the High Court.

In this regard, the Committee recommends that thirty days be provided as the appeal period.

11.0 CONCLUSION

The Committee wishes to express its gratitude to the Minister of Home Affairs and all the stakeholders who appeared before it and tendered both oral and written submissions. The Committee wishes to thank you Mr Speaker, for affording it an opportunity to scrutinise the National Forensic Bill N.A.B No. 1 of 2020 for the Fourth Session of the Twelfth National Assembly, referred to it on 20th February, 2020.

The Committee also appreciates the services rendered by the Office of the Clerk of the National Assembly.

We have the Honour to be, Sir, the Committee on National Security and Foreign Affairs, tasked to scrutinise the National Forensic Bill N.A.B No.1 of 2020 for the Fourth Session of the Twelfth National Assembly,

Dr M Malama, MP;
(Chairperson)

Ms A M Chisangano, MP;
(Vice-Chairperson)

Mr E J Muchima, MP;
(Member)

Brig Gen M Sitwala, (Rtd) MP;
(Member)

Mr K Mbangweta, MP;
(Member)

Mr L Nyirenda, MP;
(Member)

Ms M Miti, MP;
(Member)

Mr F N'gambi, MP;
(Member)

Mr A B Malama, MP; and
(Member)

Ms M Lubezhi, MP.
(Member)

March 2020
LUSAKA

Dr M Malama, MP
CHAIRPERSON

APPENDIX I

List of Witnesses

MINISTRY OF HOME AFFAIRS

Hon Stephen Kampyongo, Minister
Dr C L Mulenga, Permanent Secretary
Eng L Chibesakunda, Executive Director, National Forensic Authority
Ms F Sichundu, Director, Human Resource and Administration
Mr M Masiye, Director, Research and Planning
Mr I Makasa, Chief Biomedical Scientist
Dr L Mucheleng'anga, Forensic Pathologist
Mr A Mukisi, Acting Principal Planner

MINISTRY OF JUSTICE

Ms M Sitali Chibambo, Principal Parliamentary Counsel
Ms C Kaisala, Parliamentary Counsel

MINISTRY OF HEALTH

Dr K Malama, Permanent Secretary
Mr A Shibemba, National Coordinator, Lab Services
Mr E Malikana, Assistant Director, Health Policy
Dr A Silumesi, Director Public Health
Mr S Kowa, Director of Food and Drugs Laboratory
Mrs N Mayowe, Principal State Advocate
Mr A Mukupe, Director, Clinical Care

MINISTRY OF DEFENCE

Mr S Mwale, Permanent Secretary
Mr E L Zimba, Director Research
Mr F Mwansa, Principal Planner
Col N Hambote, Zambia Air Force Legal Counsel
Lt Col N Mulenga, Legal Officer, Zambia National Service
Captain J Mulimine, Legal Officer, Zambia Air Force
Captain M I Lifunana, Legal Officer, Zambia Army

ANTI – TERRORISM CENTER

Mr C Simwanza, Executive Director
LtCol J Kajila, Chief Operations Officer
Lt Col J Katandika, Anti –Terrorism Officer

ZAMBIA POLICE, FORENSIC SECTION

Mr E M Sibote, Deputy Inspector General of Police
Mr S Zulu, Forensic Expert
Mr L Chinene, Forensic Expert
Mr S E Sindandumuna, Assistant Director, Legal Services

Mr H Kapika, Senior Superintendent, Senior Researcher
Mr T Imasiku, Researcher
Mr W N Mphande, Researcher

HUMAN RIGHTS COMMISSION

Ms F Chibwasha, Director
Ms K Banda, Chief Legal and Investigations Officer

ZAMBIA ENVIRONMENTAL MANAGEMENT AGENCY

Mr J Msimuko, Director-General
Mr G Sikaundi, Director of Operations
Ms K Banda, Director, Legal Services
Mr I L Chipili, Manager, Corporate Affairs

HEALTH PROFESSIONS COUNCIL OF ZAMBIA

Mr B B Bwalya, Chief Executive Officer
Mr I M Kolala, Director Corporate Services
Mr C Mafumo, Director Finance and Planning
Dr M Chibasa, Director Inspectorate
Dr K Mmembe, Director Registration

ZAMBIA COMPULSORY STANDARED AGENCY

Ms P K Chituta, Executive Director
Mr B N Malangisha, Finance Manager
Ms M Mwape, Legal Counsel
Ms C Mfula, Internal Audit Manager
Ms C Kalombe, Communications Officer

ZAMBIA BUREAU OF STANDARDS

Ms M Lungu, Acting Executive Director
Mr A Chipoya Laboratory Manager

RADIATION PROTECTION AUTHORITY

Mr K Mushaukwa, Director, Protection Services
Ms M Kapeya, Legal Counsel

LAW ASSOCIATION OF ZAMBIA

Mr M Mwape, Council Member

ZAMBIA INTELLIGENCE SECURITY SERVICES

Mr D Mainga, Director
Mr C Chilufya, Assistant Director

WOMEN AND LAW IN SOUTHERN AFRICA

Ms M Treshia, National Director
Ms B S Mwansa, Programme Manager

ZAMBIA NATIONAL BIO – SAFETY AUTHORITY

Ms M L Lumpa, Director

Mr A Chipoya, Laboratory Manager

DRUG ENFORCEMENT COMMISSION

Ms A Mbahwe, Commissioner

Mr C Kaliba, Head, Chemical Division

Mr R Chulu, Parliamentary Liaison Officer

APPENDIX II

List of National Assembly Officials

Ms C Musonda, Principal Clerk of Committees

Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)

Mr S Chiwota, Senior Committee Clerk (SC)

Mr C Chishimba, Committee Clerk

Mrs G Chikwenya, Typist

Mr M Kantumoya, Parliamentary Messenger