



REPUBLIC OF ZAMBIA

REPORT

OF THE

**COMMITTEE ON HEALTH, COMMUNITY DEVELOPMENT AND SOCIAL
SERVICES ON THE NATIONAL HIV/AIDS/TB COUNCIL
(AMENDMENT) BILL, N.A.B. NO. 8 OF 2021**

FOR THE

FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON HEALTH, COMMUNITY DEVELOPMENT AND SOCIAL SERVICES ON THE NATIONAL HIV/AIDS/TB COUNCIL (AMENDMENT) BILL, N.A.B. NO. 8 OF 2021 FOR THE FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of Dr C K Kalila, MP (Chairperson); Ms P Kasune, MP (Vice Chairperson); Mr D Mabumba, MP; Mr J Kabamba, MP; Mr L Kintu, MP; Mr L Tembo, MP; Mr M Ndalamei, MP; Mr A Mandumbwa, MP; Mr C M Chalwe, MP; and Mr A B Kapalasa, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

The Committee has the honour to present its Report on the National HIV/AIDS/TB Council (Amendment) Bill, N.A.B. No. 8 of 2021 referred to it by the House on Tuesday, 16th February 2021.

2.0 FUNCTIONS OF THE COMMITTEE

The functions of the Committee are spelt out in Standing Order No. 157 (2) of the National Assembly of Zambia Standing Orders, 2016. One of the Committee's functions is to consider any Bills referred to it by the House.

3.0 MEETINGS OF THE COMMITTEE

The Committee held six meetings to consider the National HIV/AIDS/TB Council (Amendment) Bill, N.A.B. No. 8 of 2021.

4.0 PROCEDURE ADOPTED BY THE COMMITTEE

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from various relevant stakeholders. The stakeholders who virtually appeared before the Committee are listed at Appendix II.

5.0 BACKGROUND

The Committee was informed that the functions of the National HIV/AIDS/STI /TB Council were to coordinate and support the development, monitoring and evaluation of the multi-sectoral national response for the

prevention and combating of the spread of HIV, AIDS, STI and TB in order to reduce the personal, social and economic impacts of HIV, AIDS, STI and TB.

Further, the Committee was informed that the Bill sought to amend the *National HIV/AIDS/STI/TB Council Act, No. 10 of 2002* so as to revise the composition of the Council. It had been noted that the appointment of Permanent Secretaries on some Councils or Technical Committees compromised good governance principles as Permanent Secretaries who participated in and made decisions at council or committee level also provided policy direction to the Councils on behalf of the Government. That, in essence, posed a conflict of interest in the execution of the Permanent Secretary's role. Therefore, the need had arisen to amend the provision on the appointment of a Permanent Secretary on the Council of the National HIV/AIDS/STI/TB Council.

6.0 OBJECTS OF THE BILL

The Committee heard that the objects of the Bill were to:

- (i) provide for the Minister to give the Council general or specific directions relating to the performance of its functions to the extent that the directions were not inconsistent with the Act;
- (ii) provide for council members to enter into performance contracts with the Minister for a specified period, which shall be consistent with the provisions of the Act; and
- (iii) to have a representatives of the ministry responsible for community development and social welfare, education, sport, youth and child development and health, other than the Permanent Secretaries, be members of the Council.

7.0 SALIENT PROVISIONS OF THE BILL

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

Clause 1 – Short title

The clause sought to provide for the short title of the Bill.

Clause 2 – Amendment of section 4

This clause sought to amend section 4 of the principal Act so as to allow the Minister to –

- (a) give directions to the Council relating to performance of the functions of the Council; and

- (b) enter into performance contracts with the Council for a specified period and in accordance with the provisions of the Act.

Clause 3 – Amendment of section 5

This clause sought to amend section 5 (1)(d) of the principal Act so as to revise the composition of the Council by replacing the Permanent Secretaries with representatives of their respective ministries.

8.0 CONCERNS RAISED BY STAKEHOLDERS

While supporting the Bill, stakeholders expressed concern on the proposed amendments as highlighted below.

- (i) **In Clause 2** - Stakeholders observed that the insertion of subsection (3) of section 4 appeared to be giving wider discretionary powers to the Minister as it provided that the Minister could give general or specific directions to the Council. Stakeholders further submitted that even though the proposed provision indicated that the Council would give effect to the directions of the Minister to the extent that the directions were not inconsistent with the Act, the proposed provision could interfere with the independence of the Council as the Minister would have power to give directives to the Council, which power could potentially be abused.

In addition, the Committee was informed that it was not clear from the proposed subsection (3) whether the general or specific instructions by the Minister would be in writing or not, meaning that instructions could even be given informally, which could violate the principle of accountability. Thus, it would be ideal if the proposed amendment could indicate that such general or specific instructions must be in writing so as to avoid abuse through over usage of discretionary powers.

- (ii) With regard to the new subsection (4), which would provide that the Minister would enter into performance contracts for a specific period with the Council, the Committee was informed that it seemed to suggest that the Minister would be appraising the Council. While the Minister was the appointing authority and could remove the Council or any council member, it was unnecessary to provide for performance contracts. Under Part IV of the *National HIV/AIDS/STI/TB Council Act*, section 18 provided, among other things, that the Council would be giving reports to the Minister in respect of its activities. Thus, the Council could still be accountable to the Minister even if the Minister was not given power to enter into contracts with the Council. In that regard, stakeholders were of the view that the proposed amendment could create unintended challenges in the management of the Council. In addition, the Council

could be constrained in making certain critical decisions related to the performance and functions of the Council because of their limited powers to make decisions.

Further, stakeholders were of the view that both subsections (3) and (4) should clearly stipulate which minister would give general and specific directions to the council. Equally, it should also specify which minister would enter into performance contracts with council members from the highlighted ministries.

(iv) **In Clause 3** – Most stakeholders welcomed the amendment of section 5(1) (a), as it would give latitude to the Minister to appoint other persons who could be suitable to represent the highlighted ministries on the Council other than the Permanent Secretaries. Further, stakeholders submitted that the absence of Permanent Secretaries from the Council could enhance independence in decision making and good corporate governance.

However, stakeholders with opposing views felt that having a representative other than the Permanent Secretary from the highlighted ministries would dilute the importance of the Council as ministerial representation would be relegated to an officer of lower rank. In that regard, they felt that representation by someone lower than the Permanent Secretary would cause delays in making critical decisions, especially those involving civil society organisation stakeholders who depended on the Council for guidance on coordination of national HIV and AIDS response, including funding for projects supported through the Council.

Further, other stakeholders were of the view that section 5 (1) should be more inclusive by adding representation from the ministries responsible for religious affairs, gender and chiefs' affairs as the social issues that surrounded HIV/AIDS/STI/TB also had a direct bearing on those ministries.

9.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

The Committee welcomes the National HIV/AIDS/TB Council (Amendment) Bill, N.A.B. No. 8 of 2021. In supporting the Bill, the Committee makes the observations and recommendations set out hereunder.

(i) **In Clause 2, in Subsection 3** - The Committee, in agreeing with stakeholders, notes that the Bill does not indicate if those general or specific directions will be issued using formal channels, meaning that they could be informal and verbal. As such, it may be difficult to verify or account for such directives when the need arise to do so.

The Committee in this regard, recommends that the insertion in subsection 3 be amended so as to specify that the Minister will issue written directives through formal channels.

- (ii) The Committee notes that reducing the Council's decision making powers by limiting them through the Minister's directives could negatively affect the performance of the Council as it may not make certain critical decisions. This will mean that the Council can only perform as far as the Minister allows. For example, it was highlighted that the Council might be inactive at certain instances before directives were yet issued by the Minister even when critical decisions would have to be made, such as in the event of a pandemic.

The Committee, in this regard, recommends that the evaluation of performance of the Council by the Minister should also consider the Council's limitations in decision making.

- (iii) **In clause 3** - The Committee notes that section 5 (1) in its current form, has the potential to lengthen the reporting channel starting with the representatives of the ministries to Permanent Secretaries before eventually reporting to the Ministers on critical and urgent matters that might need the Council's action.

In view of this, the Committee recommends that the Council should have a dual reporting line on critical and urgent decisions which might need quick intervention by the Minister by allowing the Council to report to both the Permanent Secretary and the Minister at the same time on critical matters.

In addition, the Committee recommends that the Bill spells out that the representative from the respective ministries should be at least at director level in order to accelerate the decision making and reporting process when need arise.

Further, in agreeing with stakeholders regarding section 5 (1) under Clause 3, the Committee recommends that representation on the Council be extended to the ministries responsible for religious affairs, gender and chiefs' affairs as the social issues that surround HIV/AIDS/STI/TB also has a direct bearing on these ministries.

10.0 CONCLUSION

The Committee fully supports the Bill. It is the Committee's hope that its recommendations will be taken into consideration by the Executive in order to enhance the operations of the National HIV/AIDS/TB Council so as to make it more responsive in the prevention and combating of communicable

diseases such as HIV and tuberculosis in line with recent developments in the medical profession legislation and regulations.

The Committee wishes to express its gratitude to all stakeholders who appeared before it and tendered both oral and written submissions; and to thank you, Mr Speaker and the Office of the Clerk of the National Assembly, for the guidance and services rendered to it throughout its deliberations.

We have the Honour to be, Sir, the Committee on Health, Community Development and Social Services mandated to consider the National HIV/AIDS/TB Council (Amendment) Bill, N.A.B. No. 8 of 2021 for the Fifth Session of the Twelfth National Assembly.

Dr C K Kalila, MP
CHAIRPERSON

Ms P Kasune MP
(Vice Chairperson)

Mr M Ndalamei, MP
(Member)

Mr A Mandumbwa, MP
(Member)

Mr D Mabumba, MP
(Member)

Mr L Kintu, MP
(Member)

Mr A B Kapalasa, MP
(Member)

Mr J Kabamba, MP
(Member)

Mr L N Tembo, MP
(Member)

Mr C M Chalwe, MP
(Member)

March, 2021
LUSAKA

APPENDIX I – NATIONAL ASSEMBLY OFFICIALS

Ms C Musonda, Principal Clerk of Committees
Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)
Mrs C K Mumba, Senior Committee Clerk (SC)
Mr D Kunda, Committee Clerk
Ms C T Malowa, Committee Clerk
Mrs D H Manjoni, Personal Secretary II
Mr D Lupiya Committee Assistant

APPENDIX II – THE WITNESSES

Ministry of Justice
Ministry of Health
Ministry of Youth, Sport and Child Development
University Teaching Hospital
Zambia Union of Nurses Organisation
University of Zambia – School of Health Sciences
Churches Health Association of Zambia
Zambia Medicines Regulatory Authority
Zambia Medicines and Medical Suppliers Agency (ZAMMSA)
Zambia Medical Association
National HIV/AIDS/STI/TB Council (NAC)
Network of Zambian People Living with HIV
Zambia Health Education and Communications Trust (ZHECT)