



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON CABINET AFFAIRS

ON THE

SERVICE COMMISSIONS (AMENDMENT) BILL, N.A.B NO. 12 OF 2021

FOR THE

FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON CABINET AFFAIRS ON THE SERVICE COMMISSIONS (AMENDMENT) BILL, N.A.B NO. 12 OF 2021 FOR THE FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of Dr M Imakando, MP (Chairperson); Mrs M C Chonya, MP (Vice Chairperson); Mr C M Zulu, MP; Dr M Malama, MP; Mr S Chungu, MP; Mr S Tembo, MP; Mr L Kintu, MP; Dr C K Kalila, MP; Ms G Katuta, MP; and Mr K Kampampi, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir

The Committee has the honour to present its Report on the Service Commissions (Amendment) Bill, N.A.B No. 12 of 2021, referred to it by the House on 11th February, 2021.

2.0 MEETINGS OF THE COMMITTEE

The Committee held six meetings to consider the Service Commissions (Amendment) Bill, N.A.B No. 12 of 2021.

3.0 PROCEDURE ADOPTED BY THE COMMITTEE

In order to gain insight into the ramifications of the Bill, the Committee sought both written and oral submissions from various stakeholders. The list of stakeholders who made submissions before the Committee is at Appendix II.

4.0 BACKGROUND

The Bill sought to amend the *Service Commissions Act, No. 10 of 2016*, so as to revise the composition of the Judicial Service Commission. It had been noted that the appointment of Permanent Secretaries on some commissions or technical committees compromised good governance principles as Permanent Secretaries who participated and made decisions at Board or Committee level also provided policy direction to the Commission on behalf of Government. This posed a conflict of interest in the execution of the Permanent Secretaries' role. Hence, there was need to amend the provision on the appointment of a Permanent Secretary on the Judicial Service Commission.

5.0 OBJECTS OF THE BILL

The object of this Bill was to amend the *Service Commissions Act, No. 10 of 2016*, so as to revise the composition of the Commission.

6.0 SALIENT PROVISIONS OF THE BILL

Clause 1 – Short title

The clause provided for the short title of the Bill.

Clause 2 – Amendment of section 5

This clause sought to amend section 5(1) of the principal Act so as to revise the composition of the Commission by replacing the Permanent Secretary, Public Service Management Division with a representative of the Public Service Management Division, Cabinet Office.

7.0 SUMMARY OF SUBMISSIONS AND CONCERNS BY STAKEHOLDERS

7.1 General Concerns

Some of the stakeholders who virtually appeared before the Committee were in support of the Bill. However, other stakeholders did not support the amendment.

7.2 Specific Concerns and Recommendations

The specific concerns of stakeholders are set out hereunder.

Clause 2 – Amendment of section 5

Some stakeholders expressed satisfaction with the amendment of section 5(1) of the principal Act by deletion of paragraph (d) and substitution with a representative of the Public Service Management Division, Cabinet office and contended that it was a progressive amendment.

They argued that this amendment would promote efficiency and flexibility in terms of the appointment of persons with suitable talent and skill as opposed to a situation where an officer assumed the position by virtue of the position they held.

However, other stakeholders were of the view that this amendment was retrogressive and fervently objected to the proposed amendment of section 5(1) (d) of the *Service Commissions Act, No. 10 of 2016*. They contended that this amendment lacked any rational basis, given the history and mandate of the Judicial Service Commission. They contended that the Judicial Service Commission was different from the other Service Commissions in that it regulated and represented an arm of Government, the Judiciary. This was the reason why its composition was high-level.

The stakeholders contended that, previously, the Commission was chaired by a sitting Chief Justice until the amendments to the law in 2016 were effected, whereby it was

now headed by a person who had held high judicial office. The rest of the membership, as could be observed from section 5 of the *Service Commissions Act*, was also high-level. The sitting Chief Justices had since been nominating the Deputy Chief Justice to represent the highest management of the Institution. The Attorney General and the alternate, the Solicitor General, was the Chief Legal Advisor to the Government and an Ex-officio member of the Zambian Cabinet. The rest of the membership also comprised persons who were holding or had held very senior positions.

The stakeholders stated that the peculiar composition of the Judicial Service Commission spoke to the gravity of the mandate of the Commission. It should also be noted that in the past, the Judicial Service Commission used to have the Secretary to the Cabinet as its member who represented and posited Government policy as it related to all the three arms of Government. Further, in trying to assert the autonomy of the Commission and the Judiciary, and in order not to dilute the composition of the Commission unnecessarily, a representative of Parliament had since been removed from the membership of the Judicial Service Commission.

The stakeholders further contended that in its current composition, the Judicial Service Commission had so far ably executed its mandate, with the Permanent Secretary, Public Service Management Division (PSMD) proving to be essential to the membership of the Commission by ably guiding on Government policy and guidelines with authority and affirmation. Being very senior and well-informed, the Permanent Secretary, PSMD had been very useful in ensuring that the Judicial Service Commission moved in tandem with the general public service.

The stakeholders contended that, should the proposed change be deemed inevitable, then the Permanent Secretary, Public Service Management Division could be replaced only with the Deputy Secretary to the Cabinet responsible for Administration. Alternatively, the amendment should provide for an alternate member to the Permanent Secretary, PSMD, of equivalent or higher ranking who was well versed with the operations of the civil service.

The stakeholders contended that in its current form, the amendment suggested that anyone from Cabinet Office, whatever their designation, would be allowed to be a member of the Judicial Service Commission. This would go against good corporate practice and would dilute the good intentions of the Government to have a high-ranking Government official representing the Executive arm of Government, with an expectation that such a member would be useful to the Commission with regard to public service considerations.

Some stakeholders proposed a further amendment which should read as follows:

(d) *a representative of the Public Service Management Division*, without necessarily mentioning Cabinet Office because Public Service Management Division could be hosted under any building or any other unit of the Government.

8.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

The Committee shares the concerns raised by the stakeholders and highlights its observations and recommendations on the specific provisions as set out hereunder.

The Committee welcomes the proposal to remove the Permanent Secretary, Public Service Management Division, from the Judicial Service Commission as it agrees that the appointment of Permanent Secretaries on commissions could compromise good governance principles. This was because Permanent Secretaries participated and made decisions at Board or Committee level were also required to provide policy direction to the Commission on behalf of the Government.

However, the Committee concurs that the peculiar composition of the Judicial Service Commission speaks to the gravity of the mandate of the Commission and hence the need to find a suitable replacement for the Permanent Secretary.

In this regard, the Committee recommends that the replacement to the Permanent Secretary should be a very high-ranking Government official, representing the Executive arm of Government, such as the Deputy Secretary to Cabinet responsible for administration, to avoid compromising the position.

9.0 CONCLUSION

The Committee urges the Government to take note of the various concerns that were raised by stakeholders and the Committee's recommendations which need to be addressed in order to ensure that the Judicial Service Commission carries out its mandate efficiently.

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

We have the honour to be, Sir, the Committee on Cabinet Affairs, tasked to scrutinise the Service Commissions (Amendment) Bill, N.A.B No. 12 of 2021 for the Fifth Session of the Twelfth National Assembly,

Dr M Imakando, MP;
(Chairperson)

Mrs M C Chonya, MP
(Vice-Chairperson)

Mr S Chungu, MP
(Member)

Dr C K Kalila, MP
(Member)

Mr S Tembo, MP
(Member)

Ms G Katuta, MP
(Member)

Mr L Kintu, MP
(Member)

Mr, Kampampi, MP
(Member)

Dr, M Malama, MP
(Member)

Mr C M Zulu, MP
(Member)

Appendix I: List of National Assembly Officials

Ms C Musonda, Principal Clerk of Committees
Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)
Mr H Mulenga, Deputy Principal Clerk of Committees (FC)
Mrs C K Mumba, Senior Committee Clerk (FC)
Mrs M K Siwo, Committee Clerk
Ms L Chilala, Personal Secretary II
Ms I Mwiya, Typist
Mr D Lupiya, Committee Assistant
Mr M Chikome, Committee Assistant
Mr M Kantumoya, Parliamentary Messenger

Appendix II:List of Witnesses

Ministry of Justice

Ms M Siwiwaliondo, Senior Parliamentary Counsel

Ms N Nchito, Legal Officer

Zambia Congress of Trade Unions

Mr C Mukuka, General Secretary

Mr B Phiri, Director – Research

Mr L Makinishi, Director – Workers’ Education

Public Service Management Division – Cabinet Office

Mr B Chimbwali, Permanent Secretary

Zambia Institute of Human Resources Management

Mr M Silumbu, President

Mr O C Sikatumba, Registrar

Judicial Service Commission

Hon R K Kaoma, Deputy Secretary

Hon C Kafunda, Secretary

Law Association of Zambia

Ms M Mudenda, Member