

REPORT OF THE COMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS ON THE IMMIGRATION AND DEPORTATION (AMENDMENT) BILL, N.A.B NO.13 OF 2016 FOR THE FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY, APPOINTED ON 24TH SEPTEMBER 2015.

Consisting of:

Bishop Lt Gen R Shikapwasha, MP (Chairperson); Mr E T Chenda, MP; Prof. G Lungwangwa, MP; Mr S Katuka, MP; Mr E J Muchima, MP; Mrs I Mphande, MP; Mr P Kosamu, MP; and Mr S Sianga, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA.

Sir,

Your Committee has the honour to present its Report on the Immigration and Deportation (Amendment) Bill, N.A.B No.13 of 2016 referred to it by the House on Friday, 22nd April, 2016.

Functions of the Committee

2. In addition to any other duties conferred upon it by the Honourable Mr Speaker, on any Order of the House, your Committee may consider any Bills referred to it by the House.

Meetings of the Committee

3. Your Committee held four (4) meetings to consider the Immigration and Deportation (Amendment) Bill, N.A.B No.13 of 2016.

Procedure adopted by your Committee

4. Your Committee, in considering the Bill, requested for written submissions from various stakeholders who also appeared before it and made oral submissions.

Objects of the Immigration and Deportation (Amendment) Bill, N.A.B No.13 Of 2016

5. The object of the Bill is to amend the Immigration and Deportation (Amendment) Bill, N.A.B No.13 of 2016 is to –

- (a) provide for the Zambia Police Service Commission as the appointing Authority for immigration officers;
- (b) align the definition of “child” with that of the Constitution; and

- (c) provide for matters connected with, or incidental to, the foregoing.

Consideration of the Immigration and Deportation (Amendment) Bill, N.A.B No.13 Of 2016

Background

6. In 2010, the *1965 Immigration and Deportation Act* was repealed and replaced with Act No. 18 of 2010. Since the 2010, the Act has remained unchanged until now. The amendment to the Republican Constitution has necessitated the amendment of the 2010 Act in order not only to make it user-friendly but also to make it consonant with the amended Constitution.

Specifically, the Bill seeks to provide for the Zambia Police Service Commission as the appointing authority for immigration officers. The Bill further seeks to align the definition of “child” in the Immigration and Deportation Act, 2010 with that of the Constitution.

Salient features of the Bill and ramifications

7. Your Committee wishes to highlight the following salient features of the Bill:

Specific Provisions of the Bill

Clause 2: Amendment of section 2

The clause deletes the definition of “child” in section two of the *Immigration and Deportation Act, No. 18 of 2010*, and adopts the definition in the Constitution.

Clause 3: Amendment of section 3

The clause seeks to amend section three of the *Immigration and Deportation Act* so as to limit the non-application of parts IV (on immigration permits) and V (on prohibited immigrants and human trafficking) to citizens and established residents only, making parts IV and V of the Act applicable to the immediate family of a citizen or established resident.

Clause 4: Amendment of section 4

The clause deletes the words “Public Service Commission” from section four of the Act and replaces them with the words “Zambia Police Service Commission”. This provision makes the Zambia Police Service Commission now responsible for the appointment of staff of the Immigration Department.

Clause: 5 Amendment of section 10

The clause deletes the words “or removal” from section ten of the Act. It also seeks to ensure consistency by the deletion of the word “Director’s” and the substitution therefore of the words “Director-General’s”.

Clause 6: Amendment of section 18

The clause seeks to delete the words “or deportation” in subsection (1) (a), immediately after the word “removal”

Clause 7: Amendment of section 20

The clause seeks to amend subsection (2) of section twenty by the insertion of the words “or has been in Zambia on employment permit for a continuous period of ten years” under paragraph (c); and by the deletion of paragraph (g). The clause further expunges subsection (7).

Clause 8: Amendment of section 23

The clause seeks to extend the issuance of a spouse permit to a spouse of a resident permit holder.

Clause 9: Amendment of section 24

The clause repeals section twenty-four of the Act.

Clause 10: Amendment of section 28

The clause seeks to amend section twenty-eight of the Act by permitting the extension of the period for which an employment permit may be valid to ten years. It further deletes subsection (2) of section twenty-eight which gives power to the Director-General, in consultation with the Minister responsible for Labour, to issue an employment permit to a person within Zambia.

Clause 11: Amendment of section 40

The clause seeks to amend subsection (2) by the deletion of the word “deportation” and the substitution therefore of the word “repatriation”.

Clause 12: Amendment of section 52

The clause amends section fifty-two by the deletion of subsection (5) and substitutes it with a new subsection (5) and subsection (6). The proposed subsections make it an offence for a person to attempt to use or use a passport, diplomatic passport or travel document other than the one upon which that person’s entry was cleared. Further the proposed subsections exclude the applicability of subsection (5) to certain classes of people.

Clause 13: Amendment of section 56A

The clause introduces a new section in the *Immigration and Deportation Act* which allows a person who has committed an offence under the *Immigration and Deportation Act*, and has admitted the offence, to pay a fine without the need for the person to appear in Court.

Clause 14: Amendment of the first schedule

The clause adds “spouse” to the classes of persons who may be issued with a residence permit.

Concerns raised by stakeholders

8. All the stakeholders that submitted before your Committee were in full support of the Bill. They however, expressed concern on the provisions presented hereunder.

i. **Clause 6: Amendment of section 18**

Section 18 (1) (a) of the principle Act is being amended by the deletion of the words “or deportation”. However, there is no correlative deletion of the same phrase in subsection (1). Stakeholders reasoned that since the phrase in paragraph (a) emanates from subsection (1), there was need to delete it there as well.

ii. **Clause 13: Amendment of section 56**

Stakeholders observed that section 56A (6) is intended to deal with an Immigration Officer who fails to issue a receipt to an illegal immigrant after a payment has been made. They observed that this was an entirely new subject that could not fall under the marginal note ‘payment of fine without appearing in court.’ They therefore recommended that section 56A (6) should be a stand-alone section under the marginal note, “Immigration Officer failing to provide a receipt for payment made.”

Some stakeholders expressed concern about this provision being a recipe for corruption, considering that illegal immigrants are associated with white collar crimes.

Committee’s Observations and Recommendations

9. Your Committee observes that the amendment to the 2010, *Immigration and Deportation Act* is long overdue and could not have come at a better time than now when the Republican Constitution has been amended. However, your Committees makes observations and recommendations as presented hereunder.

(a) Mr Speaker, Your Committee notes that whereas Section 18 (1) (a) of the principle Act is being amended by the deletion of the words “or deportation”, the same does not apply to subsection (1) from which section 18(1) (a) emanates.

Your Committee, therefore, recommends that this amendment be extended to section 18(1) and wherever applicable.

(b) In agreeing with stakeholders, your Committee notes that Section 56A (6), which is intended to deal with an Immigration Officer who fails to issue a receipt to an illegal Immigrant after a payment has been made, appears under the marginal note, “payment of fine without appearing in court.” Your Committee notes that this is an entirely new subject that should not fall under the current marginal note.

Your Committee, therefore, recommends that Section 56A (6) should be a stand-alone section possibly under the marginal note, “Immigration Officer failing to provide a receipt for payment made.”

(c) Your Committee observes that whereas the provision to allow a person who has committed an offence under the *Immigration and Deportation Act* and has admitted the offence, to pay a fine without the need for such a person to appear in Court might help to

decongest the prisons, it might just be a recipe for corruption. This is particularly so considering the fact that persons committing this sort of offence have a propensity for white collar crimes.

Your Committee, in this respect, recommends that care be taken to ensure that the provision does not exacerbate another form of crime in the process.

- (d) Your Committee notes that the Police Service Commission, which the Bill seeks to make the appointing authority for immigration officers, does not reflect immigration in its nomenclature. Further, the Commission encompasses other security units, which however, are equally not reflected in its name.

Your Committee, therefore, is of the view that this is a possible source of conflict that needs to be addressed.

Conclusion

10. In conclusion, your Committee wishes to express its gratitude to you, Mr Speaker for granting it the opportunity to scrutinise the Immigration and Deportation (Amendment) Bill, N.A.B No.13 of 2016.

Your Committee also wishes to thank the Office of the Clerk of the National Assembly for the support rendered to it throughout its deliberations. It is indebted to all the witnesses who appeared before it for their co-operation in providing the necessary briefs despite the short notice. Your Committee is hopeful that the observations and recommendations contained in this report will enable the House make an informed decision on the Bill.

We have the honour to be, Sir, your Committee mandated to scrutinise the Immigration and Deportation (Amendment) Bill, N.A.B No.13 of 2016 for the Fifth Session of the Eleventh National Assembly.

Bishop Lt Gen R Shikapwasha, MP

(Chairperson);

Prof. G Lungwangwa, MP;

(Member)

Mr E T Chenda, MP

(Member)

Mr S Sianga, MP;

(Member)

Mr S Katuka, MP;

(Member)

Mr E J Muchima, MP;

(Member)

Mrs I Mphande, MP;

(Member)

Mr P Kosamu, MP; and

(Member)

APPENDIX I

LIST OF OFFICIALS

National Assembly

Mr S C Kawimbe, Principal Clerk of Committees
Ms M K Sampa, Deputy Principal Clerk of Committees
Mr F Nabulyato, Committee Clerk (SC)
Ms C Musonda, Committee Clerk (FC)
Mr C Chishimba, Assistant Committee Clerk
Mrs L Chirwa, Personal Secretary II
Mr C Bulaya, Committee Assistant
Mr M Chikome, Parliamentary Messenger

APPENDIX II

WITNESSES

Ministry of Justice (Permanent Witness)

Mrs D Kafunya, Senior Parliamentary Consul

Mr K Mweemba, Acting Senior Parliamentary Counsel

Ministry of Home Affairs

Dr C Mulenga, Permanent Secretary

Mr M Milomo, Director General of Immigration

Mr R Chilala, Director, Legal Services Department

Law Association of Zambia

Mrs F Kateka, Honorary Secretary

Mr J Mataliro, Council Member

Mr M Mando, Council Member

Bishop Lt Gen R Shikapwasha, MP

CHAIRPERSON

April, 2016

LUSAKA