



REPUBLIC OF ZAMBIA

REPORT

OF THE

**COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS AND GOVERNANCE ON
THE NATIONAL PROSECUTION AUTHORITY (AMENDMENT) BILL, N.A.B. NO. 7
OF 2023**

FOR THE

SECOND SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

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FOREWORD

Honourable Madam Speaker, the Committee on Legal Affairs, Human Rights and Governance, has the honour to present its Report on the consideration of the National Prosecution Authority (Amendment) Bill, N.A.B No. 7 of 2023, for the Second Session of the Thirteenth National Assembly. The Committee is mandated to consider any Bills that may be referred to it by the House, as per Standing Order No. 198(J) of the National Assembly Standing Orders, 2021.

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from different stakeholders, the list of which is at Appendix II. The Report highlights a summary of submissions from stakeholders and the observations and recommendations made by the Committee.

Madam Speaker, the Committee is grateful to the stakeholders who tendered both written and oral submissions. The Committee also wishes to thank you, for affording it the opportunity to scrutinise the National Prosecution Authority (Amendment) Bill, N.A.B No. 7 of 2023. Further, appreciation is extended to the Clerk of the National Assembly for the support and guidance rendered throughout the Committee's deliberations.



Mr Clement Andeleki, MP
CHAIRPERSON

June, 2023
LUSAKA

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1.0 COMPOSITION OF THE COMMITTEE

The Committee consisted of Mr Clement Andeleki, MP (Chairperson); Ms Tasila E Lungu, MP (Vice Chairperson); Mr Chinga Miyutu, MP; Mr Edgar Sing'ombe, MP; Mr Anthony Kasandwe, MP; Mr Monty Chinkuli, MP; Mr George K Chisanga, MP; Mr Lameck Hamwaata, MP; Mr Mulenga F. Fube, MP; and Mr Emmanuel J. Banda, MP.

2.0 BACKGROUND

The *National Prosecutions Authority Act, No. 34 of 2010* (NPA Act) was enacted to, among others, provide a framework for the State to institute and conduct prosecutions against persons accused of having committed criminal offences. The Act established the National Prosecutions Authority (NPA) as a statutory body charged with the responsibility for the implementation of the NPA Act. The establishment of the Authority was undertaken pursuant to Article 180(9) of the *Constitution of Zambia, Chapter 1 of the Laws of Zambia*. The Constitution also provided for the appointment of the Director of Public Prosecutions (DPP) as the chief prosecutor for the Government and head of the NPA.

3.0 OBJECT OF THE BILL

The object of the Bill was to amend the National Prosecution authority *Act, 2010* so as to:

- (a) revise the composition of the Board and provide for its functions; and
- (b) provide for matters connected with, or incidental to, the foregoing.

4.0 SALIENT PROVISIONS OF THE BILL

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

Clause 1 – Short Title

The clause provided for the citation of the Act, once enacted.

Clause 2 – Amendment of Section 2

The clause sought to amend section 2 of the principal Act by deleting the word “Secretary” and by inserting new definitions in appropriate places. The amendment to the interpretation section would provide definitions for key phrases in the Act, once amended, that would make the law easier to understand by the citizens and those mandated to implement it.

Clause 3 – Repeal and Replacement of Section 7

The clause sought to amend section 7 of the principal Act by revising the composition of the Board of the NPA in order to streamline the number of civil servants on the Board and include more members from the private sector such as the Zambia Institute of Human Resource Management, Zambia Institute of Chartered Accountants and a civil society organisation that provided legal aid services. The clause further set out the qualifications for one to be appointed as Chairperson of the Board, the manner in which the Vice-Chairperson is to be elected, and the nomination of the Board members by their respective ministries, organisations and institutions for appointment by the Minister.

Lastly, the clause set out the disqualifications for nomination or appointment of the members of the Board.

Clause 4 – Insertion of Section 7A

The clause sought to insert a new section immediately after section 7 that sets out the functions of the Board of the Authority. The functions of the Board were, among others; to approve the policies, programmes and strategies of the Authority, and promote effective corporate governance of the NPA.

Additionally, the clause sought to empower the Board with authority to delegate any of its functions under the Act to the DPP.

Clause 5 – Amendment of the First Schedule

The clause sought to amend the First Schedule of the principal Act by deleting Part I and substituting it with a new Part, in order to revise the provisions relating to the administration of the Authority, which included, among other provisions; tenure of office and vacancy of members of the Board, proceedings of the Board and committees of the Board.

5.0. STAKEHOLDERS' SUBMISSIONS AND CONCERNS

General Concerns

Stakeholders submitted that section 2 of the principal Act provided for the existence of the office of the Board Secretary. However, clause 2 of the Bill proposed to delete the definition of "Secretary." It was submitted that this was not a progressive amendment as it deprived the Board of a Board Secretary.

Stakeholders submitted that under the provisions of the principal Act, the Chairperson of the Board was the Director of Public Prosecutions. However, the Bill under clause 3 was proposing that:

- (a) the Chairperson should be a person who had held or is qualified to hold the office of a judge of the superior court and would be appointed by the Minister of Justice;
- (b) the DPP continues to be a member of the Board but in an ex-officio capacity; and
- (c) the Board may, by direction in writing and on conditions that the Board considers necessary, delegate any of the Board's functions to the DPP.

Most of the stakeholders were of the view that the ramifications of the proposed amendment was that it would water down the authority and independence of the DPP as a constitutional office. They submitted that clause 3 should have been analysed against the provisions of Article 180(3) of the Constitution, which designates the DPP as the head of the NPA and Article 180(7) which stated that

“The Director of Public Prosecutions shall not be subject to the direction or control of a person or an authority in the performance of the functions of the office, except that the Director of Public Prosecutions shall have regard to the public interest, administration of justice, the integrity of the judicial system and the need to prevent and avoid abuse of the legal process.”

Stakeholders submitted that in defining the term “head under Article 180(3) recourse had to be taken from the Collins Dictionary which stated that *“the head of a company or organisation is the person in charge of it and in charge of the people in it.”* In this regard, the headship of the DPP could be seen in the NPA Act through the appointment of the DPP as the Chairperson of the Board. This could be contrasted with the ordinary sense of the meaning of the word, where boards consisted of part-time members who were responsible for an institution's governance and did not take part in its day-to-day administration.

Based on the foregoing, stakeholders argued that the functions of the Director Public Prosecution were a conglomerate of functions normally performed by a Chairperson of a Board with those performed by the CEO.

It was the stakeholders' submission that this amendment attempted to reconcile the position and responsibilities of the Director Public Prosecution with that of CEOs by removing the Director Public Prosecution as the Chairperson of the Board and making the Director Public Prosecution an ex-officio member of the Board.

However, in rejecting this proposed amendment, stakeholders reiterated that the difference between the Director Public Prosecution and CEOs in other statutory bodies was that the office

of the Director Public Prosecution was established under the Constitution as an independent office, which was not subject to any authority in the discharge of the functions of that office. The proposed removal of the Director Public Prosecution as Chairperson of the National Prosecution Authority Board and limiting other functions to the discretion of the Board was in effect a relegation of the authority of the Director Public Prosecution as the head of the National Prosecution Authority and an affront on the independence of the Director Public Prosecution as enshrined in Article 180 of the Constitution. In effect, clause 3 of the Bill if made part of the principal Act could be challenged as being unconstitutional.

Composition of the Board

The stakeholders submitted that the proposed amendment under clause 3 sought to change the composition of the NPA board by introducing a representative of the Legal Aid Board, Zambia Institute of Human Resource Management, Zambia Institute of Chartered Accountants, civil society organisation that provided legal aid services, and two persons with relevant knowledge and experience in prosecutorial matters.

It was submitted that in view of the professional nature of the proposed entrants on the Board, the Board be renamed as an advisory board because the proposed members of the board were professional, and their usefulness would not be optimised if they were given administrative functions such as “to approve the annual work plan, action plans and activity reports of the Authority”. These administrative functions could continue to be carried out by the Director Public Prosecution.

Further, stakeholders submitted that the representation of the Legal Aid Board on the NPA Board should be reconsidered as the Legal Aid Board was charged with the responsibility of providing free or affordable legal services to indigent citizens, which included legal representation in the form of criminal defence. It was argued that its representation on the Board was a conflict of interest based on its functions of defending criminal suspects juxtaposed with those of the NPA, which had the mandate to prosecute all criminal cases. This may raise public suspicion of collusion regardless of factuality as justice must not only be done but must also be seen to be done.

On private sector participation, stakeholders observed that the inclusion of private sector players in the form of civil society providing legal aid services should also be reconsidered, firstly, because of the conflict of interest already alluded to, as legal aid services could be in the form of criminal defence. Secondly, considering the sensitive nature of the matters handled by the NPA, which bordered on public safety and public order, the inclusiveness, may compromise its operations. It was further noted that the composition of the Board did not include other key stakeholders such as:

- (i) Human Rights Commission - its relevance on the Board was based on the need to ensure that the human rights of victims, witnesses and accused persons were respected during the prosecution of offences. Stakeholders stated that there was no rule of law, even in the context of prosecution, if human rights were not protected.
- (ii) The Zambia Police Service - its relevance was based on the fact that the majority of matters that were prosecuted emanated from the Police. This called for a robust liaison between the Zambia Police Service and the NPA to ensure the successful conclusion of court cases. This was especially in relation to investigations, collection of evidence, and officers of the Zambia Police Service appearing as witnesses for the State.

Stakeholders noted that the representative from the Ministry of Home Affairs and Internal Security did not adequately represent the Police Service as the Ministry was concerned with different portfolios. Stakeholders proposed that representative from the Ministry could be retained on the Board to represent the Ministry generally and other departments that had an interest such as the Department of Immigration, Zambia Correctional Service, the Drug Enforcement Commission and the National Anti-Terrorism Centre.

- (iii) The Chief Registrar of the Judiciary - the relevance of this office was as a result of one of the key interests of prosecution, which was that criminal matters were concluded in a timely manner. Therefore, this representation would provide a platform for the Judiciary and the NPA to reconcile administrative challenges.
- (iv) A person representing the School of Law of a University - the relevance of this representative was that they would give research-based legal input relating to prosecution in Zambia and its effectiveness; propose continuous professional development for prosecutors; and development of university curriculums in order to improve the quality of advocates.

Stakeholders submitted that clause 7 (1) of the Bill provided that the members of the Board would include a representative of a civil society organisation that provided legal aid services. Further, clause 7(3) provided that the members under subsection (1) should be nominated by their respective ministries, organisations or institutions for appointment by the Minister. However, it was unclear which institution would be responsible for the nomination of the representative of the civil society organisations.

It was observed that the *Non-Governmental Organisations Act, No. 16 of 2009* provided for the establishment of the Council of Non-Governmental Organisations, which was in essence a membership body for Non-Governmental Organisations. It was noted that there were controversies relating to the Act and that the Act was under review. It was however, suggested

that for consistency with the legal framework that was in place and to remove ambiguity, it should be stated that the representatives would be nominated by the Council of Non-Governmental Organisations as was the case with other membership bodies listed in the provision.

Stakeholders further observed that the functions of the Board of the NPA did not have a dedicated section in the principal Act providing for the functions of the Board. Clause 7A of the Bill provided that the functions of the Board should be to approve the policies, programmes and strategies of the Authority; approve the annual work plan, action plans and activity reports of the Authority; approve the annual budget estimates and financial statements of the Authority; and promote effective corporate governance of the Authority. Comparison could be made with the functions of the Board under the *Legal Aid Act, No. 1 of 2021*, which included promoting effective corporate governance of the Legal Aid Board; approving the annual budget estimates and financial statements of the Legal Aid Board; advising the Minister on policies relating to the provision of legal aid and implementing Government policies relating to the same; approving the annual work plan and activity reports of the Legal Aid Board; and to formulate the policies, programmes and strategies of the Legal Aid Board.

The stakeholders observed that these functions were administrative and had been aligned with those performed by Boards of other statutory bodies. However, for institutions that had a bearing on human rights, public safety and public order, standardisation may not be advisable. The members that had been proposed to sit on the Board were professionals whose input would not be optimised if it was limited to administrative functions. The functions of the Board should include those relating to substantive issues related to how the NPA carries out its mandate. These functions should be informed by the functions of the NPA as outlined under section 5 of the principal Act and could include prosecution, policy and determining its transboundary relations. The Advisory Board would operate as a sounding board for the DPP.

6.0. COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

- (a) The Committee observes that most of the stakeholders including the main users of the law did not support clause 3 of the Bill which seeks to amend the composition of the NPA Board, particularly as it relates to the removal of the DPP as the Board Chairperson. While the Committee appreciates the corporate governance ramifications highlighted by other stakeholders, the Committee is constrained by the provisions of Article 180 of the Constitution, which reposes in the DPP absolute authority and independence in the discharge of the duties of that office.

The Committee is of the view that the entire Bill hinges around the provisions of clause 3 of the Bill, which has some serious ramifications on the independence of the DPP as head of the NPA. To this end, the Committee does not support the Bill, but recommends that it should be deferred to allow for further consultation and research so as to properly align it to the Constitution and to best practice.

7.0. CONCLUSION

The Committee recognises that the Government seeks to streamline good corporate governance in institutions of governance so as to enhance transparency and accountability. With regard to the National Prosecution Authority, the Committee agrees with the stakeholders that the institution is peculiar in that the head of the NPA who is the DPP, is conferred with constitutional authority not only to be the head of NPA but also, not to be subject to the direction or control of a person or an authority in the performance of the functions of that office. It is for this reason that the Committee has recommended that the proposed amendments be subjected to further consultations to avert the possibility of the amendment being challenged on its constitutionality.

We have the Honour to be, Madam, the Committee on Legal Affairs, Human Rights and Governance mandated to consider the National Prosecution Authority (Amendment) Bill, N.A.B No. 7 of 2023.



Mr Clement Andeleki, MP
CHAIRPERSON

June, 2023
LUSAKA

APPENDIX I - NATIONAL ASSEMBLY OFFICIALS

Mr Francis Nabulyato, Principal Clerk of Committees (SC)
Mrs Chitalu K Mumba, Deputy Principal Clerk of Committees (SC)
Mrs Angela Banda, Senior Committee Clerk (SC1)
Mr Geoffrey Zulu, Acting Senior Committee Clerk (SC2)
Mr Sanford Mwiinde, Committee Clerk
Ms Grace Mbewe, Administrative Assistant
Ms Eneless Njobvu, Typist
Mr Daniel Lupiya, Committee Assistant
Mr Muyembe Kantumoya, Parliamentary Messenger

APPENDIX II–LIST OF WITNESSES

Ministry of Justice
The National Prosecution Authority
Human Rights Commission
Zambia Correctional Service
The Judiciary
Legal Aid Board
Zambia Police Service
Office of the Public Protector
University of Zambia, School of Law
University of Lusaka, Law School
Action – Aid
Law Association of Zambia
Anti – Corruption Commission
Chapter One Foundation
Drug Enforcement Commission
Transparency International Zambia
Zambia Law Development Commission
Prison Care and Counselling Association (PRISCCA)