

REPORT OF THE COMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS ON THE IMMIGRATION AND DEPORTATION BILL, N.A.B. NO 9 OF 2010 FOR THE FOURTH SESSION OF THE TENTH NATIONAL ASSEMBLY APPOINTED ON 25TH SEPTEMBER 2009

Consisting of:

Dr P D Machungwa, MP; (Chairperson); Ms E K Chitika-Molobeka, MP; Mr C W Kakoma, MP; Mr A Sejani, MP; Mr O C Chisala, MP; Mr B Sikazwe, MP; and Mr F R Tembo, MP.

The membership of your Committee was reduced to seven following the death of Mr R C Banda, MP, on 5th February 2010.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

Your Committee have the honour to present their Report on the Immigration and Deportation Bill, N.A.B. No 9 of 2010 referred to them by the House on 25th February 2010.

Functions of the Committee

2. In addition to any other duties conferred upon them by the Honourable Mr Speaker, or any other order of the House, your Committee do consider any Bills that are referred to them by the House.

Meetings of the Committee

3. Your Committee held seven (7) meetings to consider the Immigration and Deportation Bill, N.A.B. No 9 of 2010.

Procedure adopted by your Committee

4. Your Committee, in order to ensure that there were adequate views from the stakeholders, requested both written and oral submissions on the Immigration and Deportation Bill, N.A.B. No 9 of 2010.

Objects of the Immigration and Deportation Bill, N.A.B. No 9 of 2010

5. The objects of the Bill are to:

- (a) consolidate the law relating to immigration;
- (b) provide for the appointment of a Director of Immigration and other immigration officers and provide for their powers and functions;
- (c) promote a human rights based approach and culture in respect of immigration controls;
- (d) regulate the entry, exit and remaining within Zambia of immigrants and visitors;
- (e) provide for prohibited immigrants and other specified persons and deportation from Zambia;
- (f) provide for, and regulate immigration consultants;

- (g) create an environment of cooperation with other public institutions and promote an integration of functions and harmonisation of operations among public institutions controlling borders and activities at ports of entry;
- (h) repeal and replace the *Immigration and Deportation Act, 1965*; and
- (i) provide for matters connected with, or incidental to, the foregoing.

CONSIDERATION OF THE IMMIGRATION AND DEPORTATION BILL N.A.B. No. 9 of 2010

Background

6. It was noted that the *Immigration and Deportation Act, 1965*, its regulations and procedures had become, in certain circumstances, a hindrance to the efficient delivery of immigration services and were not in conformity with current global trends. Further, it was noted that other Acts, particularly, those that had been recently enacted, had some contradictory provisions or impinged on the provisions of the *Immigration and Deportation Act*, thus making the operations of the Act difficult.

It, therefore, became imperative to streamline the *Immigration and Deportation Act, 1965* and bring all the other Acts that impinge on it, or vice versa, in line. The Bill has been necessitated by the need to consolidate all existing immigration laws and create an environment of co-operation with other public institutions. In addition, the Bill is intended to promote an integration of functions and harmonisation of operations of public institutions controlling borders and activities at ports of entry. It is also intended to reduce the cost of doing business by facilitating efficient implementation of immigration controls, especially for highly skilled transnational labour, thereby facilitating economic growth. As such, the immigration law is intended to respond to issues of globalisation in relation to migration management, enhanced internal security and effective response to the current operational and administrative challenges that would promote trade, investment and tourism in the country.

Furthermore, since the Immigration Department was moving from a manual system to an Information Technology (IT) based system, this is being legally covered under the Act.

The Bill

7. Your Committee note that the Immigration and Deportation Bill, N.A.B. No 9 of 2010, seeks to consolidate all existing immigration laws, create an environment of co-operation with other public institutions, be in line with other legislation, reduce the cost of doing business and ultimately facilitate economic growth. Your Committee agree with the principles of the Bill.

Part I of the Bill deals with commencement, interpretations, definitions of key terms and the application of the Bill.

Part II deals with administrative matters of the Immigration Department. These are:

- a) the appointment of Director of Immigration and other immigration staff;
- b) the functions of the Department;
- c) powers of the Department;
- d) delegation of powers of the Department;
- e) powers of search of aircraft, train, vehicle or vessel;
- f) powers of arrest of suspects entering Zambia; and
- g) the appeals procedure.

Part III makes provision for persons entering into, and departing from, Zambia.

Part IV deals with immigration permits, namely, residence permit; temporary residence permit; diplomatic permit; spouse permit; business permit; visiting visa and visiting permit; study permit; temporary permit; employment permit and temporary employment permit; investor permit; cross-border permit; asylum seeker's permit in accordance with the *Refugees (Control) Act, Cap.120 of the Laws of Zambia*; border pass and transit permit; variation of conditions of permit and revocation; and cancellation of permit.

Part V deals with prohibited immigrants and human trafficking by stipulating who a prohibited immigrant is; prohibited immigrant required to leave Zambia as directed by the Minister; representation against requirement to leave Zambia which gives an opportunity to a person served with a notice to leave Zambia to appeal to the Minister; suspected prohibited immigrant where an immigration officer has power to detain such a person for a reasonable period not exceeding 14 days in order to make inquiries relating to that person; deportation from Zambia in accordance with the *Penal Code Act, Cap 87 of the Laws of Zambia*; and trafficking in persons in accordance with the *Anti-Human Trafficking Act No. 11 of 2008*.

Part VI makes general provision on border controls; national monitoring and information system; obligations of employers; educational institutions; accommodation establishment; aiding and abetting illegal immigrants; immigration consultants; immigration ethics; illegal immigrants not exempt or allowed to sojourn in Zambia; evidence; burden of proof; general offences; obstructing or assaulting an immigration officer; engaging in employment without permit; possession of more than one passport without authority; general penalty; bail; forfeiture of vehicle, aircraft, boat or house; regulations; notice of service; repeal of Cap 123; savings; and First and Second Schedules.

Concerns of Stakeholders

8. In welcoming the Immigration and Deportation Bill, N.A.B. No. 9 of 2010, the stakeholders raised the concerns set out below.

- a) The Bill does not only deal with migration into Zambia of non-nationals but dealt with general management of migrants such as entry, stay and exit management related activities. Stakeholders, therefore, felt that the title of the Bill was narrow in its current form. They, therefore, suggested that the name of the Bill be changed to **“Migration Management Bill”**, which would capture most aspects the Bill intends to address.
- b) Clause 6(k) gives discretionary powers to the Director of Immigration to issue a search warrant on bank accounts without the involvement of courts of law. This practice would be prone to abuse in that the Director is an interested party as he/she would be both an investigating and implementing agent.
- c) The Bill was not in line with the 1951 Convention Relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.
- d) The Bill does not address the issue of minors or children of arrested or detained illegal immigrants.
- e) The Bill does not provide for the *concept of non-refoulement*. This concept was a core principle of refugee law that prohibits states from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened.
- f) Clause 23 does not provide how long the spouse permit would be valid.
- g) There was no explicit reference in Clause 28(2) of refugees being eligible to apply for employment permits as was the case with study permits.

Observations and Recommendations

9. While noting the background information and the concerns of stakeholders, your Committee observe that the title of the Bill, *Immigration and Deportation Bill*, does not address some issues of migration since the title of the Bill seems to only address persons coming into Zambia and their deportation. They are of the view that there is need to have a more encompassing title to deal with issues of entry, stay and exit of non-nationals and the various activities involved in managing the process. They, therefore, urge the Government to consider changing the title to “*Migration Management Bill*.” They are of the view that this will capture most aspects the Bill intends to address.

Your Committee observe that the Bill, under Clause 4(1), provides that the Head of the Immigration Department will be a Director. They view this as not being in conformity with the prevailing situation for immigration authorities in the Region and Africa in general. In addition, they are aware that the Immigration Department is being restructured which will entail changes in the structures of the Department and job titles therein. They, therefore, recommend that the Head of the restructured Department be designated as *Principal Director*. Furthermore, they urge the Government to seriously consider upgrading the Department to a Service.

With regard to Clause 6(k), your Committee are of the view that the Clause gives too much discretionary powers to the Director of Immigration to issue a search warrant on bank accounts without the involvement of courts of law. They view this power to be prone to abuse in that the Director is an interested party as he/she is an investigating and implementing agent. They, therefore, recommend that the power to issue search warrants under Clause 6(k) be vested in the courts of law in order to provide checks and balances.

Your Committee observe that the marginal note for Clause 32 has been misplaced in the Bill. They, therefore, recommend that the marginal note short title for Clause 32 should read *Border Pass and Transit Permit* and not *Offences and Penalties* as indicated in the Bill.

Conclusion

10. In conclusion, your Committee are aware that Zambia, like any other sovereign state, needs to adapt to new changes in the world. Therefore, the immigration law has to respond, not only to migration management, but the country’s economic policies and circumstances, notably promotion of foreign direct investment, tourism and international trade and also address issues of irregular migration such as human trafficking and smuggling, among others.

Therefore, your Committee welcome the enactment of this Bill as this will make the law conform to current migration global trends. Your Committee are, therefore, hopeful that the observations and recommendations contained in their Report will go a long way in helping the House make a decision on the Bill.

Finally, your Committee wish to express their gratitude to you, Mr Speaker, for not only appointing them to your Committee, but also for granting them the opportunity to scrutinise the **Immigration and Deportation Bill, N.A.B. No 9 of 2010**. Your Committee also wish to thank the Office of the Clerk of the National Assembly for the support rendered to them throughout their deliberations. They are indebted to all the witnesses who appeared before them for their co-operation in providing the necessary briefs despite the short notice.

We have the honour to be, Sir, your Committee mandated to scrutinise the **Immigration and Deportation Bill, N.A.B. No 9 of 2010**.

Dr P D Machungwa, MP;
(CHAIRPERSON);

Ms E K Chitika-Molobeka, MP;
(MEMBER)

Mr C W Kakoma, MP;
(MEMBER)

Mr A Sejani, MP;
(MEMBER)

Mr O C Chisala, MP;
(MEMBER)

Mr B Sikazwe, MP;
(MEMBER)

Mr F R Tembo, MP.
(MEMBER)

March 2010
LUSAKA

Dr P D Machungwa, MP
CHAIRPERSON

APPENDIX I

LIST OF OFFICIALS

National Assembly

Mr S M Kateule, Principal Clerk of Committees
Mr Lungu, Deputy Principal Clerk of Committees
Ms M K Sampa, Committee Clerk (F C)
Mr S C Kawimbe, Committee Clerk (S C)
Mr F Nabulyato, Assistant Committee Clerk
Mrs A S Lloyd, Typist
Mr C Bulaya, Committee Assistant
Mr S M Likunyendo, Parliamentary Messenger

APPENDIX II

WITNESSES

MINISTRY OF JUSTICE

Ms P Jere, Chief Parliamentary Counsel
Ms M W Miyaba, Principal Parliamentary Counsel
Ms P Goma, Parliamentary Counsel

MINISTRY OF HOME AFFAIRS

Ms N Mutiti, Permanent Secretary
Mr W Mangimezi, Deputy Permanent Secretary
Mr A S Phiri, Chief Immigration Officer
Ms S Malundu, Director-HARID
Mr P Salumayi, Legal Counsel
Mr E G Ng'uni, Assistant Secretary
Ms P M Nawa, Immigration Secretary

INTERNATIONAL ORGANISATION FOR MIGRATION

Mr A Choga, Chief of Mission

PERMANENT HUMAN RIGHTS COMMISSION

Mr E Mulembe, Director

COMMISSION FOR REFUGEES

Mr J Mphepo, Commissioner
M T Chaiwila, Senior Legal Officer

IMMIGRATION DEPARTMENT

Mr A S Phiri, Chief Immigration Officer

LAW ASSOCIATION OF ZAMBIA

Mrs K Sakala-Chibiya, Council Member

UNITED NATIONS HIGH COMMISSION FOR REFUGEES

Ms K L Billing, Senior Protection Officer
Ms J Malunga, Associate Protection Officer