

REPORT OF THE COMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS ON THE CITIZENSHIP OF ZAMBIA BILL, N.A.B. NO. 33 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 Citizenship of Zambia Bill, N.A.B No. 33 of 2016, referred to it by the House on Friday 6th May, 2016.

Functions of the Committee

2. In addition to any other duties conferred upon it by the Honourable Mr Speaker, or 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 meetings to consider the Citizenship of Zambia Bill, N.A.B No. 33 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 to make oral submissions.

Objects of the Citizenship of Zambia Bill, N.A.B No. 33 of 2016

5. The objects of the Bill are to:-
- a) provide for the composition, functions, tenure and procedures of the Citizenship Board of Zambia;
 - b) make procedural provisions for the acquisition, deprivation and renunciation of citizenship of Zambia;
 - c) repeal and replace the *Citizenship of Zambia Act, 1975*; and
 - d) provide for matters connected with, or incidental to the foregoing.

Consideration of the Citizenship of Zambia Bill, N.A.B No. 33 of 2016

Background

6. The Bill seeks to provide for the composition, functions, tenure and procedures of the Citizenship Board of Zambia; and make procedural provisions for the acquisition, deprivation and renunciation of citizenship of Zambia. The Bill further seeks to repeal and replace the *Citizenship of Zambia Act, 1975*.

Salient features of the Bill and ramifications

7. The salient provisions of the citizenship of Zambia, N.A.B No. 33 of 2016, are as set hereunder.

Specific provisions of the Bill

Clause: 2 Interpretation

This clause provides for definitions of key words used in the Bill.

Clause: 3 Composition of Board

This clause sets out the composition of the Board and the qualifications for appointment as a member. The clause further provides for the manner in which the Vice-Chairperson is to be appointed.

Clause: 4 Functions of Board

This clause provides for the functions of the Board, which include the consideration and determination of applications for registration as a citizen and the consideration and determination of matters relating to deprivation of citizenship acquired by registration.

Clause: 5 Tenure of office and vacancy

This clause sets out the tenure of office for a member of the Board and the manner in which the office of a member becomes vacant. The clause further sets out the manner in which a member may resign from office and permits the President to appoint a person to be a member in place of the member who vacates the office, where the office of a member becomes vacant before the expiry of the term of office.

Clause: 6 Proceedings of Board

This clause empowers the Board to regulate its own procedure. The clause further provides for the times when the Board shall meet for the transaction of its business; the number of members that will form a quorum for a meeting of the Board; the member who shall preside at a meeting of the Board; and the manner in which a decision on a question before the Board is to be decided. Additionally, the clause permits the Board to invite a person to attend and to participate in the deliberations of the meeting of the Board. The clause, further requires minutes to be kept of the proceedings of the meetings of the Board.

Clause: 7 Delegation of functions of Board

This clause permits the Board to delegate any of its functions to the Chief Passports and Citizenship Officer.

Clause: 8 Seal of Board

This clause provides for the seal of the Board which shall be such device as may be determined by the Board and kept by the Chief Passports and Citizenship Officer. The clause further provides for the persons who will authenticate the affixing of the seal.

Clause: 9 Emoluments

This clause provides that a member of the Board shall be paid such emoluments as the Emoluments Commission may determine.

Clause: 10 Chief Passports and Citizenship Officer, Deputy Chief Passports and Citizenship Officer and other staff

This clause mandates the Civil Service Commission to appoint, as public officers, the Chief Passports and Citizenship Officer, Deputy Chief Passports and Citizenship Officer, passports and citizenship officers and other staff as are necessary for the proper administration of the Act. The clause places upon the Chief Passports and Citizenship Officer, the responsibility of the administration of the Act. The clause further permits the Chief Passports and Citizenship Officer to delegate the exercise of any of the powers and functions conferred on the Chief Passports and Citizenship Officer by the Act, to the Deputy or a passports and citizenship officer; and to revoke or vary the said delegated power.

Clause: 11 Disclosure of interest

This clause requires a disclosure of interest where a person or that person's relative or associate is directly or indirectly interested in a private capacity in a matter that is the subject of consideration at a meeting of the Committee or sub-committee and that person is present at such meeting. The clause penalises a failure to disclose such interest and requires that the disclosure is recorded in the minutes of the meeting at which it is made.

Clause: 12 Prohibition of publication or disclosure of information to unauthorised persons

This clause prohibits the publication or disclosure to an unauthorised person, otherwise than in the course of duties of that person, the contents of a document, communication or information which relates to or which has come to the knowledge of a person in the course of that person's duties under the Act. The clause penalises a person who contravenes the aforementioned prohibition. Furthermore, the clause sanctions the unlawful publication or communication to another person, any information which to the knowledge of a person has been published and disclosed in contravention of subsection (1).

Clause: 13 Oath on appointment

This clause requires a member of the Board to take an oath on appointment, in accordance with the *Official Oaths Act, Chapter 5 of the Laws of Zambia*.

Clause: 14 Immunity

This clause grants immunity to a member of the Board or a member of staff for, or in respect of, an act or thing done or omitted to be done in good faith in the exercise or performance of any of the functions conferred under the Act.

Clause: 15 Registration of births and national registration

This clause requires a person born in Zambia to be registered at birth in accordance with the *Births and Deaths Registration Act*. The clause further requires a person who is a citizen by birth to obtain a National Registration Card upon evidence of registerable age in accordance with the *National Registration Act*.

Clause: 16 Citizenship by presumption for foundlings

The clause sets out the procedure to be undertaken where a person finds a child who is or appears to be less than eight years of age, and whose nationality and parents are not known. The clause further sanctions a person who brings into Zambia, conspires, assists or facilitates the abandoning of a child with the intention of conferring citizenship on the child.

Clause: 17 Citizenship by registration

The clause allows a person who qualifies to be registered as a citizen by registration in accordance with Article 37 of the Constitution to apply to the Board under Part IV of the Act.

Clause: 18 Citizenship by marriage

This clause permits a person who has been married to a citizen of Zambia for a period of at least five years to apply to be registered as a citizen and further sets out the conditions to be met for such registration to take place.

Clause: 19 Citizenship of adopted child

This clause entitles a child who is not a citizen, but is adopted by a citizen, on application being made by the adoptive parent or legal guardian, to be registered as a citizen upon certain conditions being met.

Clause: 20 Application for registration as citizen

This clause mandates a person to apply to the Board for registration as a citizen in the prescribed manner and form upon payment of the prescribed fee. The clause further sets out

the period within which the Board shall grant or reject the application; and permits the Board to request the applicant to submit additional information within such period as the Board may determine where additional information is required to process an application for registration as a citizen.

Clause: 21 Rejection of application

This clause sets out the conditions upon which the Board shall reject an application for registration as a citizen. The clause further grants to the Board the discretion to reject an application if the approval of the application would be contrary to public interest. Lastly, the clause requires the Board to inform the applicant where the Board rejects an application for registration as a citizen.

Clause: 22 Computation of period of residence for purposes of registration

This clause provides for the period to be taken into account in computing a period for a person who qualifies for citizenship by registration in accordance with the Constitution and the Act.

Clause: 23 Registration as citizen

This clause mandates the Board to register an applicant as a citizen, within 21 days of the approval of the application for registration as a citizen and if the applicant meets the requirements of the Constitution and the Act.

Clause: 24 Oath of allegiance

This clause requires the Board to cause a person who is registered as a citizen to take an oath of allegiance or make an affirmation in the prescribed manner and form.

Clause: 25 Dual citizenship

The clause permits a citizen to apply for dual citizenship in the prescribed manner and form and further permits a citizen who acquires the citizenship of another country to retain the citizenship of Zambia. The clause further entitles a dual citizen, to a passport, travel documents and to such other rights that citizens are entitled to, subject to the limitations contained in the Constitution.

Clause: 26 Restoration of ceased citizenship

This clause permits a person who ceased to be a citizen before the commencement of the Constitution, as a result of acquiring the citizenship of another country, to make an application to the Board for the restoration of the citizenship of Zambia.

Clause: 27 Loss of citizenship

This clause sets out the manner in which a person loses citizenship by registration.

Clause: 28 Notice of intention to deprive person of citizenship

This clause provides for the grounds on which a notice of intention to deprive a person of citizenship is issued; the form of the notice of intention to deprive a person of citizenship; and the procedure to be followed where the notice of intention is issued.

Clause: 29 Deprivation of citizenship

This clause places on the Board the obligation to deprive a person of citizenship, after consideration of the presentations made by the person in accordance with clause 28, and requires the Board to enter the deprivation into the register for deprivation of citizenship. Additionally, the clause requires the Board to notify a person of its decision to deprive that person of citizenship, within 14 days of doing so.

Clause: 30 Appeal

The clause permits a person aggrieved with a decision of the Board to appeal to the High Court within thirty days of receipt of the decision.

Clause: 31 Appointment of commissioner

This clause mandates the Board to appoint a commissioner, where a person exercises the right to have the case referred to a commissioner in accordance with clause 28, who shall make an inquiry in accordance with the terms of the inquiry. The clause further sets out the qualifications for appointment as a commissioner.

Clause: 32 Renunciation of citizenship

This clause sets out the manner in which a citizen may renounce citizenship and requires the Board to register a declaration of renunciation of citizenship and to issue a certificate. The

clause further sets out the grounds on which the Board may decline to register a declaration of renunciation.

Additionally, the clause provides that a person making a declaration of renunciation of citizenship of Zambia shall cease to be a citizen upon registration of the declaration. Lastly, a person is deemed to have retained the citizenship of Zambia where the person renounces the citizenship of Zambia, but does not thereafter become a citizen of another country within six months from the date of registration of the declaration of renunciation.

Clause: 33 Funds of Board

This clause provides the monies that shall form the funds of the Board and prescribes what is to be paid out from such funds.

Clause: 34 Financial year

This clause provides that the financial year of the Board which shall be a period of twelve months ending on 31st December in each year.

Clause: 35 Accounts and audit

This clause requires the Board to keep proper books of accounts and other records relating to its accounts. The clause further provides that the accounts of the Board shall be audited annually by the Auditor-General or an auditor appointed by the Auditor-General; and that the Auditor-General's fees shall be paid by the Board.

Clause: 36 Annual report

This clause requires the Board to submit to the President a report concerning its activities during the financial year as soon as practicable, but not later than ninety days after the end of the financial year. The clause further requires the Minister to lay the report before the National Assembly, not later than seven days after the first sitting of the National Assembly next after the receipt of the aforementioned report.

Clause: 37 Register

This clause sets out the registers that the Chief Passports and Citizenship Officer is required to keep and maintain.

Clause: 38 Correction of errors in register

This clause permits the Board to direct the Chief Passports and Citizenship Officer to effect alterations in the register as may appear to the Board to be necessary to correct any error where the Board has reason to believe that an error appears in any register compiled and maintained under clause 37.

Clause: 39 Producing false or misleading documents

This clause prohibits the production of a document which is false or misleading in a material particular by a person, in connection with an application for citizenship. The clause further sanctions a person who does the aforementioned.

Clause: 40 Failure or refusal to return national identity document

This clause prohibits a person, without lawful excuse, from refusing or failing to return a national identity document to the Board where that person ceases to be a citizen.

Clause: 41 Unlawful possession of national identity document

This clause prohibits a person from possessing a national identity document in another person's name.

Clause: 42 General offences

This clause sets out general offences and penalties.

Clause: 43 Privileged report

This clause provides that certain reports, statements or other communications of the Board shall be privileged and shall not be produced or compelled in any legal proceeding unless the Chairperson so directs, in writing, or a court so orders.

Clause: 44 Evidence

This clause sets out the documents that shall be received in evidence. The clause further provides that the aforementioned shall, unless the contrary is proved, be deemed to have been given, granted or made by or on behalf of, the person by whom or on whose behalf it purports to have been given, granted or made. Additionally, the clause provides that *prima facie* evidence of the aforementioned document may be given by production of a document purporting to be a certified true copy of the original by such person and in such manner as

prescribed. Lastly, the clause provides that an entry in a register made under section 9 shall be received as evidence of the matters stated in the register.

Clause 45 Regulations

This clause empowers the Minister, by Statutory Instrument, to prescribe anything which by the Act is required to be prescribed or is necessary for the carrying out of the provisions of the Act. The clause further permits the Board to prescribe different procedures to be followed by different classes of persons.

Clause: 46 Repeal of Cap. 124

The clause repeals the *Citizenship of Zambia Act, No. 26 of 1975*.

Clause: 47 Savings and transitional provisions

This clause sets out the savings and transitional provisions.

Concerns raised by stakeholders

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

i. Clause 3

This clause provides for the composition of the Board and that the Minister shall be the chairperson. However, it does not define which minister is being referred to. Further, this provision does not provide for the Board to be ratified by the National Assembly, neither does it provide for the qualifications of the board members.

The stakeholders, therefore, proposed that “minister” be defined and the requirement for ratification by the National Assembly be provided for. Further, the qualifications for members of the Board should be specified in the Bill.

ii. Clause 6

This clause provides that the Board may regulate its own procedure. The stakeholders were of the view that this was likely to result in inconsistency in the manner the Board conducted its affairs. Therefore, they recommended that the procedure of the Board be

laid out by Statutory Instrument for avoidance of uncertainty and arbitrariness.

iii. Clause 18

This clause provides that a person, who has been married to a citizen of Zambia for a period of at least five years, may apply in the prescribed manner to be registered as a citizen. Many stakeholders were of the view that although the Constitution provides for it, five years was not long enough a period to determine the genuineness of the marriage. Considering that this provision has been misused previously, the stakeholders were of the view that the Constitution and the Bill should be amended to increase the period to at least ten years.

iv. Clause 19

This clause provides for the citizenship of an adopted child. Some of the stakeholders were of the view that it was not enough to prove the citizenship of the adoptive parent or the production of a valid adoption certificate. They, therefore, recommended that the child's background also be thoroughly checked to forestall foul play.

Committee's Observations and Recommendations

9. In supporting the Bill, your Committee makes observations and recommendations as presented hereunder.

(a) Clause 3

Your Committee notes that this clause provides for the composition of the Board and the Minister being the Chairperson. It does not, however, define which minister is being referred to. Further, this provision does not provide for the Board to be ratified by the National Assembly, neither does it provide for the qualifications of the board members.

Your Committee, therefore, recommends that "minister" be defined and the requirement for ratification by the National Assembly be provided for. Further, the qualifications for members of the Board should be specified in the Bill.

(b) Clause 6

Your Committee notes that this clause provides that the Board may regulate its own procedure. It is the view of your Committee that this provision may result in inconsistency in the manner the Board conducts its business and therefore, recommends that the procedure of the Board be laid out by Statutory Instrument for avoidance of uncertainty and arbitrariness.

(c) Clause 18

This clause provides that a person, who has been married to a citizen of Zambia for a period of at least five years, may apply in the prescribed manner to be registered as a citizen. Your Committee agrees with the stakeholders who were of the view that although the Constitution provides for it, five years is not long enough a period to determine the genuineness of the marriage and therefore base application for citizenship on it.

Your Committee, therefore, recommends that both the Constitution and the Bill should be amended to increase the period of marriage to at least ten years to forestall the occurrence of marriages of convenience.

(d) Clause 19

This clause provides for the citizenship of an adopted child. Your Committee notes that most of the criteria centres on the adoptive parent and not much on the adopted child.

Your Committee agrees with the stakeholders that it is not enough to prove the citizenship of the adoptive parent or the production of a valid adoption certificate and consequently recommends that the child's background also be thoroughly checked to ensure that adoptive parents, particularly of foreign origin, do not use this provision to register their own relatives as adopted children.

Conclusion

10. In conclusion, your Committee wishes to express its gratitude to you, Mr Speaker, for granting it the opportunity to scrutinise the Citizenship of Zambia Bill, N.A.B No. 33 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 on national Security and Foreign Affairs, mandated to scrutinise the Citizenship of Zambia Bill, N.A.B No. 33 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

(Member)

May, 2016

LUSAKA

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)

Mr A Nkunya, Chief Parliamentary Counsel

Mr G Muntengwa, Parliamentary Counsel

Mrs M Sitali, Parliamentary Counsel

Mr C Chilonga, Parliamentary Legal Counsel

Transparency International-Zambia

Mr G Lungu, Executive Director

Mr C Chibamba, Information Officer

Law Association of Zambia

Ms L Kasonde, President

Mrs F Kateka, Honorary Secretary

Ministry of Home Affairs

Dr C Mulenga, Permanent Secretary

Mr M Nyirongo, Registrar General

Mr E K Chiteta, Assistant Director,

Mr C Sichone, legal Advisor