



**FIRST REPORT OF THE PORTFOLIO COMMITTEE ON HEALTH AND CHILD
CARE**

**ON THE EVIDENCE GATHERED DURING THE PUBLIC HEARINGS ON THE
HEALTH SERVICES AMENDMENT BILL [H.B 8, 2021]**

FOURTH SESSION—NINTH PARLIAMENT

Presented to Parliament May 2022

1.0 Introduction

- 1.1 Following the gazetting of the Health Services Amendment Bill [H.B. 8, 2021], the Portfolio Committee on Health and Child Care undertook public hearings in accordance with Section 141 (a) and (b) which states that, “Parliament must (a) Facilitate public involvement in its legislative and other processes and in the process of its committees; (b) Ensure that interested parties are consulted about bills being considered by Parliament, unless such consultation is inappropriate or impracticable.” The Committee split itself into two (2) teams and conducted the public hearing in each of the 10 provinces of the country. Thus, this report is a summary of the key findings by the Committee.

2.0 COMMITTEE FINDINGS

2.1 Submissions in support of the Bill

- 2.1.1 Most of the participants applauded the aim of the Bill to replace the Health Services Board with a Health Services Commission. However, the participants stressed the need for the Commission to operate in the same manner as other Commissions established by the Constitution.

3.0 Submissions Opposed to the Bill

3.1 Clause 5, Section 16A Restriction of right to strike for Health Service

- 3.1.1 It was indicated that Section 65 (3) of the Constitution must be read together with Section 65 (4) which provides that every employee is entitled to just, equitable and satisfactory conditions of work. The participants stressed that collective job action is a strategy used by workers whose constitutional right to satisfactory conditions of work is being violated. It was also indicated that Section 16A of the Amendment bill constitutes a serious intrusion into labour rights and constitutional freedoms of health service professionals.
- 3.1.2 It was also pointed out that Section 16A(3) criminalises being an executive member of a trade union group that organizes collective job action. As a result, this section is discouraging trade unions which contradicts with Section 65 (2) of the Constitution that provides rights for people to form or join trade unions.
- 3.1.3 It was further highlighted that the restriction of the right to strike for Health Service under Section 16A does not provide any compensatory guarantees which is expected under the International Labour Organisation. It also does not complement Section 104 (4)(a) of the Labour Act [Chapter 28:01] that provide grounds for essential workers, such as health workers, to resort to collective job action in the event that their health and safety is in danger.
- 3.1.4 The participants also raised that Section 16A (5)(a) involves relevant councils in employment issues yet under the Health Professions Act [Chapter 27:19], councils are

not regarded as an employer therefore they should not have powers to make decisions of punishing a health worker or deregistering them.

- 3.1.5 Section 16A contradicts with Section 24 of the Constitution which enjoins the state to remove restrictions from labour relations. It was argued that Section 16A (4)(b) of the Amendment Bill that forces health professionals to return to work contravenes with Sections 54 and 55 of the Constitution that prohibits slavery, servitude, forced and compulsory labour. It was also stated that the Bill should align with Section 56 of the Constitution that emphasis on equality and non-discrimination, by foregoing the criminal punishment imposed on health workers who would have chosen to exercise rights available to other employees of the State.
- 3.1.6 The participants were concerned with health professionals being the only group deemed as essential services in line with Section 65 (3) of the Constitution. It was also stated that the term 'essential service' should come with deserving incentives that equals the term. Therefore, the bill should address the grievances that are triggering collective job action by creating a platform for communication between Health Service and Government. The participants proposed that the Labour Act should not be repealed.
- 3.1.7 Delete Section 16A (2)(b) 'no collective job action' and substitute with 'incentivize'
- 3.1.8 Delete Section 16A (3) that reads, 'Any individual who is a member of the governing body of any trade union or representative body of members of the Health Service which incites or organises any job collective action contrary to subsection 2(b) 25 or (c) shall be guilty of any an offence and liable to a fine not exceeding level 10 or to imprisonment for a period no exceeding three years or to both such fine and such imprisonment.'
- 3.2 *Clause 2, Section 4 Functions of Commission*
- 3.2.1 It was highlighted that, the proposed Section 4 (3) under Clause 2 of the Amendment Bill takes away the independence of the Commission from the Minister of Health and Child Care. Hence it was proposed that the Commission should be independent from the Executive and the Minister should be guided by the Commission. It was proposed that the Commission should be independent to make its own appointments. It was also proposed that the Commission should be answerable to Parliament only.
- 3.2.2 The participants stressed that the Health Service Commission should be regarded in terms of Section 321 (2) of the Constitution which advocates for the effectiveness or independence of Commissions not to be compromised.
- 3.2.3 The participants suggested that the Commission should be better in improving the health care system which the previous board has failed to do. The Commission should ensure that there is adequate medicine, personal protective equipment and all tools of trade required by healthcare workers.

- 3.2.4 The Commission should be granted an independent budget vote which is separate from the Public Service and Ministry of Health and Child Care.
- 3.2.5 A statutory independent tribunal like the Labour Court or Labour Officers should be created which will judge the legality or illegality of a collective job action. The proposed Amendment Bill should borrow from the Labour Act wherein Labour Officers determine the ‘show cause’ process before referring to the Labour Court for confirmation.
- 3.3 *Clause 3, Section 5 Membership of Commission*
- 3.3.1 The participants disagreed with the proposal for the Chairperson of the Health Service Commission to be the person who is also the Chairperson of the Civil Service Commission. The participants were concerned with the overwhelming workload that comes from bearing two positions that are demanding and cited that it may affect the effectiveness of the Commission. It was proposed that the Chairperson of the Health Service Commission should be separated from the Chairmanship of Civil Service. The participants stressed that the Chairperson of Civil Service is already failing to bring better results for the Civil Service.
- 3.3.2 The participants also expressed concern on the Minister of Health and Child Care being involved in the appointment of the Commission which differs from the practice of other Commissions that only involve the President to make his own appointments. It was recommended that Section 5 should read as follows;
- (1) The Commission shall consist of—
- (a) the Chairperson and a deputy Chairperson appointed by the President;
 - (b) a minimum of two and a maximum of five other members appointed by the President;
 - (c) three other practicing health professionals, recommended by the Health Professions Authority, of at least seven years’ continuous experience working at a public medical facility at the time of their appointment; and
 - (d) one person who shall be recommended by the Health Apex Council
- 3.3.3 Some participants proposed that the membership of the Commission should include Persons with Disability.
- 3.3.4 The participants also proposed that the appointment of Commissioners should be facilitated by the various electoral boards that already exist in the Health Service and the Commission should not be appointed by the Executive because it will serve the interests of its appointer.
- 3.3.5 Some of the participants proposed that the Commissioners should appoint their own Chairperson and Deputy Chairperson.

- 3.3.6 Section 5 (1) (c) should ensure that the Commission has 10 or 11 Members that represent the 10 provinces in the country.
- 3.3.7 The appointment process for the Commissioners should be transparent and stakeholders should have an input.
- 3.4 *Clause 4, Section 10 Secretary and other staff of the commission*
- 3.4.1 The Committee was also informed that, the proposed Section 10 (2) must not restrict the role of the Secretary to be reserved for Medical Practitioners only, which refers to a medical doctor when interpreted using the Health Professions Act [Chapter 27:19]. It was therefore proposed that the role should be open to any health practitioner and the term ‘medical practitioner’ should be substituted by ‘health practitioner’. The participants further stressed that making the Secretary role to be occupied by any qualified health practitioner will ensure gender balance in the Commission since the medical profession is highly characterized by male counterparts whilst the nursing field is mostly dominated by females.
- 3.4.2 Section 10 part 5 (b) should present clear conditions under which the Commission may revoke such functions to avoid spurious interference with the secretariat.
- 3.5 The Bill is not addressing pertinent issues to do with health financing which is required to revamp the health care sector that is in a deplorable state.
- 3.6 The Bill should provide clarity on what the Government should do to improve the health care system to ensure there is retention of healthcare workers instead of restricting the Health Service.
- 3.7 The Bill is taking away the responsibility of the Government to be accountable and burdens the healthcare workers to carry the weight of making the health care system work. It is also taking away the platform for engagement between employer and employee.
- 3.8 The participants also proposed that in the future, all Bills crafted should be done so in consultation with Health Service or interested parties so that the country comes up with feasible laws that address the shortcomings in the healthcare system.
- 3.9 The participants stressed that laws should address root causes than demotivate morale of the interested parties.
- 3.10 The proposed Amendment Bill should align the Health Services Act to the Constitution as is stated in its preamble. The proposed Amendment Bill has not shown where the old provisions have been misaligned to the Constitution.

- 3.11 The participants proposed for the whole Bill to be rejected and redrafted in consultation with the Health Service.
- 3.12 The participants suggested for Government to improve the efficiency of the current Health Service Board to address the grievances in the Health Service rather than replacing it with a Commission which is bound to fail as the current Board.

4.0 Committee's Observations

- 4.1 The Committee noted that Clause 3 is silent on the critical skills that those appointed to be members should have for example, a legal person.
- 4.2 The Committee noted that there seemed to have been little or no consultation done by the MoHCC in the drafting of the Bill as most of the provisions of the Bill were rejected by the interested and affected stakeholders, especially the health workers during the public hearings due to its seemingly punitive nature towards job action by the health workers.

5.0 Recommendations

Flowing from the above findings and observations, the Committee recommends that:

- 5.1 Clause 3 should clearly stipulate the critical skills that those appointed to be the members of the Commission should have.
- 5.2 Given the overwhelming rejection of the Bill by the interested and affected stakeholders, the MoHCC should withdraw the Bill and conduct a thorough consultation process with all the interested and affected stakeholders in order to redraft the Bill.

6.0 Conclusion

The Committee is of the opinion that a good law must serve the interest of the people and it must be reasonable, it should not be too harsh or rigid. Thus, the Health Services Amendment Bill should be recrafted in such a way that it protects the health workers, boost their morale at work by creating good platforms for negotiations and cordial work relations between the employee and the employer as well as creating an enabling environment for quality health care services in the country.