



REPUBLIC OF ZAMBIA

REPORT

OF THE

**COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL
GUIDANCE, GENDER MATTERS AND GOVERNANCE**

ON THE

**ZAMBIA INSTITUTE OF ADVANCED LEGAL EDUCATION (AMENDMENT)
BILL, N.A.B. NO. 16 OF 2021**

FOR THE

FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL GUIDANCE, GENDER MATTERS AND GOVERNANCE ON THE ZAMBIA INSTITUTE OF ADVANCED LEGAL EDUCATION (AMENDMENT) BILL, N.A.B. NO. 16 OF 2021 FOR THE FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of Mr M Jere, MP (Chairperson); Mrs P G M Jere, MP (Vice Chairperson); Mr C Nanjuwa, MP; Evg. H Shabula, MP; Mr E Sing'ombe, MP; Mr R Bulaya, MP; Ms M P Langa, MP; Mr S Banda, MP; Mr S Chungu, MP; and Mr M F Fube, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

The Committee has the honour to present its Report on the Zambia Institute of Advanced Legal Education (Amendment) Bill, N.A.B. No. 16 of 2021 for the Fifth Session of the Twelfth National Assembly referred to it by the House on 11th February, 2021.

2.0 FUNCTIONS OF THE COMMITTEE

The functions of the Committee are as set out under Standing Order 157(2). Among these functions, the Committee is mandated to consider Bills that may be referred to it by the House.

3.0 MEETINGS OF THE COMMITTEE

The Committee held seven meetings to consider the Zambia Institute of Advanced Legal Education (Amendment) Bill, N.A.B. No. 16 of 2021.

4.0 PROCEDURE ADOPTED BY THE COMMITTEE

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from the stakeholders listed at Appendix II.

5.0 OBJECT OF THE BILL

The object of the Bill was to amend the *Zambia Institute of Advanced Legal Education Act, Chapter 49 of the Laws of Zambia*, so as to revise the composition of the Council.

6.0 BACKGROUND

The *Zambia Institute of Advanced Legal Education Act, Chapter 49 of the Laws of Zambia* (hereinafter referred to as the “principal Act”) was enacted in 1996 to *inter alia*, constitute the Council of the Zambia Institute of Advanced Legal Education (ZIALE) and provide for its functions.

In 2009, the principal Act was amended to revise the composition of the Council. However, a number of gaps were noticed, and in order to address them, the Government introduced the *Zambia Institute of Advanced Legal Education (Amendment) Bill, N.A.B No. 16 of 2021* to revise the composition of the Council by removing the Permanent Secretary from the Council.

7.0 SALIENT PROVISIONS OF THE BILL

The salient features of the Bill are set out below.

7.1 Clause 1: Short title

Clause 1 provided for the short title of the Act which was to be read as one with the principal Act.

7.2 Clause 2: Amendment of section 4

Clause 2 sought to amend section 6 of the principal Act by granting the minister responsible for justice the discretion to provide general or specific directions to the Council of the Zambia Institute of Advanced Legal Education (ZIALE) in the performance of its functions and the power to enter into performance contracts with the Council for a specified period and in accordance with the provisions of the Act.

7.3 Clause 3: Amendment of section 5

Clause 3 sought to amend section 5(1)(d) of the principal Act so as to delete the provision for the appointment of the Permanent Secretary (Administration) and the renumbering of the subsequent paragraphs.

8.0 STAKEHOLDERS’ SUBMISSIONS AND CONCERNS

8.1 General Concerns

Stakeholders submitted that section 4 of the principal Act provided for the functions of the Council. In this regard, clause 2 of the Bill sought to amend section 6 and not section 4. They submitted that this typographical error should be amended accordingly.

8.2 Specific Concerns

8.2.1 Clause 1: Short title

Stakeholders were concerned that clause 1 did not provide for a commencement date, which meant that the Act would come into force immediately it was assented to and published in the *Government Gazette*. They

submitted that this provision was subjective as it left the appointment of a commencement date to the Minister.

8.2.2 **Clause 2: Amendment of section 4**

The stakeholders observed that the amendment was problematic as it proposed giving an office holder the power to give general or specific directions to the Council when ZIALE's mandate and role was clearly prescribed in the *Zambia Institute of Advanced Legal Education Act, Chapter 49 of the Laws of Zambia*, and by extension, in the *Legal Practitioners Act, Chapter 30 of the Laws of Zambia*.

Stakeholders submitted that this proposed amendment flew in the teeth of transparency, independence and good corporate governance. The effect of the proposed amendment was simply to grant unfettered powers to the Minister responsible for justice to interfere in the affairs of the Council, thereby thwarting its ability to act independently.

Other stakeholders submitted that by virtue of section 3 of the principal Act, the Council was an autonomous body capable of carrying out its functions without outside interference. This autonomy was the cornerstone of good corporate governance. In this regard, the insertion of subsection (3) offended the very principle of good corporate governance by eroding the autonomy of the Council. They were of the view that, as a statutory body or body corporate, ZIALE was created to be separate from normal government operations to ensure profitability, transparency, independence of decision making from the state and to ensure that decisions made by it were based on its mandate and the fulfilment of the same with no political interference despite the Institution being partly funded by government grants.

In that regard, a statutory body such as ZIALE should be left to operate with a greater level of separation and independence from the Minister and indeed government in the spirit of good corporate governance. In this vein, should the Government through the Ministry of Justice wish, to alter or amend the direction or mandate, whether general or specific, of the Council, it should do so in a transparent manner by specifically amending the functions of the Council in section 4 of the *Zambia Institute of Advanced Legal Education Act* in a prescribed manner and form.

With regard to performance contracts, stakeholders observed that the Council consisted of part-time members appointed by the Minister. The majority of the members of the Council held substantive positions in the institutions that they represented. In that regard, it was not desirable for the Minister to enter into performance contracts with the members of the Council because most of its members sat on the Council by virtue of the positions they held in other institutions. They added that performance contracts worked well in institutions

where the members were appointed in their individual capacity on a full-time basis so that when they failed to perform, the Minister could terminate the appointment.

Other stakeholders submitted that the annual reports and any other communications presented to the Minister of Justice indicated whether or not a Council member's appointment should be renewed at the expiration of the 3-year period. Therefore, the *Zambia Institute of Advanced Legal Education Act* in its current form, already created performance contracts with members of the Council, rendering the proposed amendment unnecessary.

8.2.3 Clause 3: Amendment of section 5

Stakeholders submitted that removing the Permanent Secretary responsible for administration in the Ministry of Justice was progressive. They submitted that permanent secretaries were controlling officers for the ministries under which various agencies of the Government fell. In this regard, as overseers of the operations of these agencies, Permanent Secretaries should not sit in the governing bodies of the agencies for purposes of efficiency and efficacy when it came to holding accountable, supervising or directing these governing bodies, and decision-making. Stakeholders submitted that the removal of the Permanent Secretary did not in any way entail that the ministry would not have representation on the Council as there was already an officer from the Ministry who sat on the Council, in addition to the Attorney-General.

9.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

The Committee notes that all the witnesses, who appeared before it, were in support of the Bill. The Committee also supports the Bill. However, in supporting the Bill, the Committee makes the following observations and recommendations:-

- (i) The Committee wonders what mischief the insertion of subsection (3) is trying to cure since the Council's mandate and role is clearly prescribed in the principal Act, and by extension, in the *Legal Practitioners Act, Chapter 30 of the Laws of Zambia*.

The Committee agrees with stakeholders that the proposed amendment in clause 2 will give the Minister responsible for justice unfettered powers to interfere in the affairs of the Council of the Zambia Institute of Advanced Legal Education, thereby thwarting its ability to act independently. The Committee, therefore, recommends that for transparency, independence and good corporate governance, this particular amendment should be dropped.

- (ii) The Committee notes that majority of members of the Council hold substantive positions in the institutions that they represent. In this regard, the Committee agrees with the stakeholders that it is not desirable

for the minister responsible for justice to enter into performance contracts with members of the Council since most of them sit on the Council by virtue of the positions they hold in other institutions. The Committee concurs with the view that performance contracts can work well where the members are appointed in their individual capacity on a full-time basis. If this were the case, in the case of non-performance, their appointments can be terminated. However, given the current arrangements, it would be inappropriate to have performance contracts. The Committee, therefore, recommends that this amendment be dropped.

- (iii) The Committee welcomes the amendment in section 5 which seeks to remove the Permanent Secretary for administration in the Ministry of Justice from the membership of the Council to enhance good corporate governance. The Committee is of the view that removing the Permanent Secretary will not in any way affect the ministry's representation as there already is an officer from the ministry on the Council, in addition to the Attorney-General. The Committee, therefore, recommends that this amendment be enacted.

10.0 CONCLUSION

The Committee wishes to express its gratitude to all stakeholders who virtually appeared before it and rendered both oral and written submissions. The Committee also wishes to thank you, Mr Speaker, for your guidance throughout its deliberations. The Committee further appreciates the services rendered to it by the Office of the Clerk of the National Assembly and her staff.

We have the honour to be, Sir, the Committee on Legal Affairs, Human Rights, National Guidance, Gender Matters and Governance mandated to consider the Zambia Institute of Advanced Legal Education (Amendment) Bill, N.A.B No. 16 of 2021 for the Fifth Session of the Twelfth National Assembly.

Mr M Jere, MP
(Chairperson)

Mrs P G M Jere, MP
(Vice Chairperson)

Mr C Nanjuwa, MP
(Member)

Evg. H Shabula, MP
(Member)

Mr E Sing'ombe, MP
(Member)

Mr R Bulaya, MP
(Member)

Mr S Banda, MP
(Member)

Ms M P Langa, MP
(Member)

Mr S Chungu
(Member)

Mr M F Fube
(Member)

February, 2021
LUSAKA

APPENDIX I - NATIONAL ASSEMBLY OFFICIALS

Ms C Musonda, Principal Clerk of Committees
Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)
Mrs C K Mumba, Senior Committee Clerk (FC)
Ms B P Zulu, Committee Clerk
Mr A Himululi, Committee Clerk
Mrs R N Mwiinga, Typist
Mr M Chikome, Committee Assistant

APPENDIX II–LIST OF WITNESSES

MINISTRY OF JUSTICE

Hon G Lubinda – Minister of Justice

Ms M Siwiwaliondo – Senior Parliamentary Counsel

UNIVERSITY OF LUSAKA – SCHOOL OF LAW

Dr C Mulenga – Deputy Vice Chancellor/ Executive Dean

LAW ASSOCIATION OF ZAMBIA

Mr D Chakoleka – Member

MAGISTRATES’ AND JUDGES’ ASSOCIATION OF ZAMBIA

Mr N Samaubi – National Secretary

ZAMBIA INSTITUTE OF ADVANCED LEGAL EDUCATION

Ms A M Ononuju – Chief Executive Officer/Director