

REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION ON THE JUDICIARY ADMINISTRATION BILL, N.A.B NO. 18 OF 2016, FOR THE FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY APPOINTED ON 23RD SEPTEMBER, 2015

Consisting of:

Mr J J Mwiimbu, MP (Chairperson); Mr I K Banda, MP; Ms M Lubezhi, MP; Mr A Sichula, MP; Mr K Konga, MP; Mr A D Mbewe, MP; Mr M Mutelo, MP; and Mr M J Z Katambo, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
P O Box 31299
LUSAKA

Sir,

Your Committee has the honour to present its Report on the Judiciary Administration Bill, N.A.B No. 18 of 2016, referred to it by the House on Tuesday, 26th April, 2016.

2.0 Functions of the Committee

In addition to any other duties assigned by the Honourable Mr Speaker, or any other Order of the House, your Committee is mandated to consider any Bill that may be referred to it by the House.

3.0 Meetings of the Committee

Your Committee held seven meetings to consider the Bill.

4.0 Procedure adopted by the Committee

In order to appreciate the ramifications of the Bill, your Committee sought both written and oral submissions from various stakeholders who are listed at Appendix II of the Report.

5.0 Objects of the Judiciary Administration Bill, N.A.B No. 18 of 2016

The objects of the Bill are to:

- (a) revise the law relating to the administration of the Judiciary;
- (b) make provision for the appointment of Judicial Officers and staff of the Judiciary;
- (c) repeal and replace the Judicature Administration Act, 1994; and
- (d) provide for matters connected with, or incidental to, the foregoing.

6.0 Background

The Judiciary Administration Bill, 2016, seeks to provide for, among other matters, the revision of the Law relating to the administration of the Judiciary; provision for the appointment of Judicial Officers and Staff of the Judiciary; repeal and replacement of *the Judicature Administration Act, 1994*; and provide for matters connected with, or incidental to, the foregoing.

7.0 Salient Provisions of the Judiciary Administration Bill, N.A.B No. 18 of 2016

The salient provisions of the Judiciary Administration Bill, N.A.B No. 18 of 2016, are as set out below.

Clause 2 - Interpretation

This clause seeks to provide for the definitions of the terms used in the Bill.

Clause 3 - Judicial Ranking

This clause seeks to provide for the ranking of the Judges of the Superior Courts other than the Chief Justice, Deputy Chief Justice and President of the Constitutional Court. The clause provides that Judges of the superior courts, other than the Chief Justice, Deputy Chief Justice, President of the Constitutional Court, shall rank according to the date on which they were appointed as Judges of a superior court and that Judges who hold equal office shall rank according to the date on which their names were entered on the Roll of Practitioners kept for the purposes of the *Legal Practitioners Act*, Chapter 30 of the Laws of Zambia.

Clause 4 - Establishment of Committees

This clause seeks to empower the Chief Justice to constitute advisory committees, which shall consist of Judges or persons with knowledge of the work of the courts and prevailing social conditions to advise on matters relating to the Judiciary as the Chief Justice may consider necessary. The committees shall regulate their own procedure and members shall hold office on such terms as the Chief Justice may determine.

Clause 5 - Functions of Chief Administrator

This clause provides for the office and functions of the Chief Administrator. The clause provides that the Chief Administrator shall be the Chief Executive Officer of the Judiciary and shall, among other things, be responsible to the Chief Justice for the day-to-day-administration of the Judiciary and that the Chief Administrator shall hold office on such terms and conditions as the Judicial Service Commission may determine.

Clause 6 – Vacancy in Office of Chief Administrator

This clause seeks to provide for the instances where the office of the Chief Administrator may become vacant. The clause provides that the office of the Chief Administrator shall fall vacant upon death, resignation, retirement or bankruptcy of the office holder, among other things. The clause further empowers the Chief Justice to temporarily appoint any person from amongst senior persons employed in the Judicial Service to perform the functions of the Chief Administrator where the Chief Administrator is unable to perform the functions under the Act.

Clause 7 – Appointment of Judicial Officers and Other Staff

This clause seeks to empower the Judicial Service Commission to appoint Judicial Officers. The clause further provides the requisite qualifications for appointment of Judicial Officers.

Clause 8 – Functions of Chief Registrar

This clause provides for the functions of the Chief Registrar and further provides that the Chief Registrar shall be assisted by a Registrar of each Superior Court and such number of Deputy Registrars as the Judicial Service Commission may determine.

Clause 9 – Suspension or Removal of Chief Registrar

This clause seeks to provide for the suspension or removal of the Chief Registrar from office. The clause further provides for the grounds on which the Chief Registrar may be suspended or removed from office. The clause mandates the Judicial Service Commission to give the Chief Registrar an opportunity to be heard before suspending or removing the Chief Registrar from office.

Clause 10 – Vacancy in Office of Chief Registrar

This clause empowers the Chief Justice to appoint any person who is qualified for appointment as the Chief Registrar to perform the functions of Chief Registrar in instances where the office of the Chief Registrar falls vacant.

Clause 11 - Functions of Registrar

This clause seeks to provide for the functions of the Registrar of a superior court as assigned by the Chief Registrar, this Act or any other written law. The clause further provides for the specific functions of the Registrar.

Clause 12 – Judicial Staff

This clause empowers the Judicial Service Commission to appoint judicial staff, which includes Research Advocates, Sheriffs, Court Interpreters, Reporters and other staff as the Commission may prescribe.

Clause 13 – Research Advocate

This clause provides that a Judge of a superior court shall have a Research Advocate who shall be a practitioner, with at least two years post qualification experience.

Clause 14 – Oath of Office

This clause requires a Judicial Officer, the Chief Administrator and other staff on first appointment to take an oath or make an affirmation in accordance with the *Official Oaths Act*, Chapter 5 of the Laws of Zambia.

Clause 15 – Exercise by Commission of Disciplinary Powers

This clause empowers the Judicial Service Commission to exercise its powers with respect to the dismissal, disciplinary action or termination of appointment of a person appointed under this Act. The clause further mandates the Commission to personally hear the Chief Administrator when exercising the powers conferred under this clause.

Clause 16 – Emoluments

This clause empowers the Emoluments Commission to determine the emoluments of a Judge, Judicial Officer and any member of staff of the Judiciary on the recommendation of the Judicial Service Commission.

Clause 17 – Funds of Judiciary

This clause provides for funds of the Judiciary which shall consist monies which may be appropriated by Parliament, paid to the Judiciary by way of court fees, grants, gifts, donations, bequests or monies which may vest in or accrue to the Judiciary from investments, fees or levies administered by the Judiciary.

Clause 18 – Financial Year

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

Clause 19 – Accounts and Audit

This clause requires the Chief Administrator to keep proper books of account and other records relating to the accounts of the Judiciary. The clause further provides that the accounts of the Judiciary shall be audited annually and that the Auditor General's fees shall be paid by the Judiciary.

Clause 20 – Annual Report

This clause compels the Chief Administrator to submit an annual report to the National Assembly as soon as practicable, but not later than six months after the expiry of the financial year. The clause further requires the Minister to lay the report before the House not later than seven days after the first sitting of the National Assembly.

Clause 21 – Allocation of Court Work

This clause empowers the Chief Justice to designate, in respect of each court, a Judge or Judicial Officer who shall be responsible for allocation of the court's professional work.

Clause 22 – Capital Expenditure on Property and Buildings

This clause compels the Government to provide, equip and maintain court houses, offices, Judges' lodges and other buildings as may be necessary for the Judiciary.

Clause 23 – Regulations

This clause empowers the Judicial Service Commission to make regulations for the better carrying out of the provisions of the Act. The regulations may be made, among other things, with respect to prescription of qualifications, appointments, confirmations, promotions, disciplinary actions, termination, secondment or training courses necessary to the promotion or maintaining of efficiency in the Judicial Service.

Clause 24 – Repeal of the *Judicature Administration Act, Chapter 24 of the Laws of Zambia and Transitional Arrangements for Staff*

This clause seeks to repeal the *Judicature Administration Act*, No. 24 of 1994 and provides for transition arrangements for staff of the Judiciary.

Concerns Raised by Stakeholders

8.0 The stakeholders who appeared before your Committee raised some concerns as outlined below.

a) **Clause 2 – Interpretation**

The stakeholders noted that the definition of Chief Registrar, had erroneously referred to clause “ten” of the Bill. It was, therefore, proposed that clause “ten” be replaced with clause “seven” which provides for appointment of Judicial Officers and other staff.

The stakeholders also submitted that the definition of the word “Court” has not been provided in the Bill. It was, therefore, proposed that the term “Court” should be specifically defined.

b) **Clause 5 - Functions of the Chief Administrator**

The stakeholders raised concern that the Bill does not provide for the qualifications of the Chief Administrator. It was proposed that the Bill should be amended to clearly outline the qualifications of the Chief Administrator.

c) **Clause 6 - Vacancy in Office of the Chief Administrator**

The stakeholders noted that the words “good cause” in clause 6 (1)(f) have not been defined in the Bill and could be subject to abuse. It was proposed that the term “good cause” should be clearly defined in the Bill.

d) **Clause 7 - Appointment of Judicial Officers and Other Staff**

The stakeholders raised concern that Local Court Magistrates had been omitted on the list of Judicial Officers to be appointed by the Commission in clause 7 (1)(f). It was proposed that clause 7 (1) (f) should be recast to read as follows:

“Senior Presiding Magistrate, Presiding Magistrate of a Local Court and a Local Court Magistrate.”

e) **Clause 8- Functions of Chief Registrar**

The stakeholders expressed concern that the functions of the Chief Registrar under clause 8 (2)(a), (b) and (c) were ambiguous. In order to avoid uncertainty, it was proposed that they be clearly defined.

Stakeholders further noted that clause 8 (2)(f) provides that the Chief Registrar shall advise the Government on matters relating to the judicial profession. However,

stakeholders were of the view that the Chief Justice who is the head of the Judiciary was in a better position to perform the function of advising the Government.

f) **Clause 10 – Vacancy in the office of Chief Registrar**

The stakeholders raised concern that clause 10 (2) gives the Chief Justice discretion to determine in writing such conditions, exceptions or qualification in the manner in which the person appointed to act in the position of Chief Registrar shall or may exercise the functions of that office. They contended that this was contrary to the provision in clause 6 (2) with regard to the person appointed to act in the office of the Chief Administrator in case of a vacancy. The stakeholders, therefore, proposed that the discretion granted to the Chief Justice under clause 10(2) should be removed to ensure uniformity and uncertainty. This will allow the person appointed to act in the office of Chief Registrar to act without discretionary conditions being applied.

On the contrary, other stakeholders were of the view that the Commission as opposed to the Chief Justice should appoint a person to perform the functions of Chief Registrar when a vacancy arose in the office of the Chief Registrar.

g) **Clause 11- Functions of Registrar**

The stakeholders expressed concern that clause 11 (2) (d) empowers the Registrar to execute or ensure compliance with Court Orders. They noted that the function of execution and compliance of Court Orders was done by lawyers. The court merely endorsed or signed the Orders.

h) **Clause 13- Functions of Research Advocates**

The stakeholders, whilst commending the provision for the existence of Research Advocates, raised concern that the Bill does not clearly outline their role. They were of the view that their close proximity to Judges or superior courts entailed that they had access to sensitive information and as such their role had to be distinctly outlined. In this regard, they proposed that the role of a Research Advocate should be clearly set out in the Bill.

The stakeholders further noted that the Bill does not clearly state the post qualification being referred to under this clause. It was, therefore, proposed that clause 13 be recast to read as follows:

“A Judge or superior court shall have a Research Advocate who shall be a legal practitioner, with at least two years post qualification experience.”

i) **Clause 14- Oath of Office**

The stakeholders were of the view that in addition to taking an oath of office, all personnel to be appointed under this Act should be made to declare their assets and liabilities upon taking office and every five years thereafter. This will enable the Government to develop a mechanism to ensure that officers who are charged with matters pertaining to justice are not engaged in corrupt practices.

j) **Clause 17 – Funds of Judiciary**

The stakeholders noted that clause 17 (1)(a) provides that the funds of the Judiciary shall be as appropriated by Parliament. In appreciating this provision, the stakeholders proposed that a minimum threshold should be set in terms of budgetary allocation to the Judiciary.

The stakeholders also submitted that the provision clause 17 1 (b) relating to what may constitute the funds for the Judiciary, and includes which gifts, donations and bequests does not provide for the receipt, management and disposal of gifts. It was, therefore, proposed that clear provisions to provide for the receipt, management and disposal of the gifts should be included in the Bill.

Committee’s Observations and Recommendations

9.0 Your Committee’s observations and recommendations are as outlined below.

- a) Your Committee is aware that Article 146(1) of the Constitution of Zambia provides for the appointment of a Chief Administrator whose functions and qualifications shall be prescribed. However, your Committee observes that the Bill in clause 5 only provides for the functions leaving out the qualifications. It is of the view that the failure to provide for the qualifications in the Bill leaves a lacuna in the law which can be susceptible to abuse. In this regard, your Committee recommends that the qualifications of the Chief Administrator should be specified in the Bill.
- b) Your Committee observes that in clause 6 (1)(f), the words “good cause” have not been defined in the Bill and could be subject to abuse. Your Committee, therefore, recommends that the words “good cause” should be clearly defined in the Bill in order to avoid ambiguity.
- c) Your Committee observes that the functions of the Chief Registrar under clauses 8 (2) (a), (b) and (c) are too broad and could lead to uncertainty in the performance of the said functions. Your Committee, therefore, recommends that the functions of the Chief Registrar should be clearly defined and outlined in order to avoid uncertainty in the performance of these functions.
- d) Your Committee observes that clause 8 (2)(f) provides that the Chief Registrar shall advise the Government on matters relating to the judicial profession. Your Committee is greatly concerned about this provision as it is at variance with Article 136 of the Constitution of Zambia which stipulates that the Chief Justice is the head of the Judiciary. Your Committee therefore recommends that the Bill should be aligned with the Constitution by the deletion of clause 8 (2)(f).
- e) Your Committee, whilst appreciating that the Bill provides for Research Advocates in clause 13 observes that their role has not been clearly defined. Your Committee,

therefore, recommends that the Bill be amended to ensure that the role of Research Advocates is clearly defined.

- f) Your Committee notes that the Constitution is the supreme law of the land and that every piece of legislation should conform to it. In this regard, your Committee supports the Judiciary Administration Bill, N.A.B No. 18 of 2016, subject to the amendment and realignment of the provisions in clauses 5 and 8 with the provisions in the Constitution of Zambia.

10.0 Conclusion

Your Committee wishes to pay tribute to all the stakeholders who appeared before it and made both oral and written submissions. Your Committee also wishes to thank you, Mr Speaker, for the opportunity to study the Bill. Gratitude also goes to the office of the Clerk of the National Assembly for the services provided.

We have the honour to be, Sir, your Committee on Delegated Legislation mandated to consider the Judiciary Administration Bill, N.A.B No. 18 of 2016.

Mr J J Mwiimbu, MP
(Chairperson)

Mr I K Banda, MP
Member

Ms M Lubezhi, MP
Member

Mr A Sichula, MP
Member

Mr K Konga, MP
Member

Mr A D Mbewe, MP
Member

Mr M Mutelo, MP
Member

Mr M J Z Katambo, 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)
Mrs A M Banda, Assistant Committee Clerk
Mrs M E Z Banda, Assistant Committee Clerk
Ms C Mtonga, Stenographer
Mr M Chikome, Acting Committee Assistant

APPENDIX II WITNESSES

MINISTRY OF JUSTICE

Mrs D Kafunya, Acting Senior Parliamentary Counsel
Mr F Chilunga, Parliamentary Counsel

LAW ASSOCIATION OF ZAMBIA (LAZ)

Ms L Kasonde, President
Mr M A Musukwa, Honorary Treasurer

TRANSPARENCY INTERNATIONAL ZAMBIA (TIZ)

Mr W Chibamba, Director - Programmes
Mr P Bwalya, Advocacy Officer

JUDICIAL SERVICE COMMISSION/JUDICIARY

Mrs A M Sitali, Judge - Judiciary
Ms E Zimba, Senior Research Advocate - Judiciary
Mr M Zulu, Secretary – Judiciary/Judicial Service Commission
Mr E Pengele, Deputy Secretary - Judiciary/Judicial Service Commission

JUDICIAL COMPLAINTS AUTHORITY

Prof M P Mvunga, Chairperson
Mr M Zaloumis, Member

ANTI-CORRUPTION COMMISSION (ACC)

Mrs I C Lamba, Acting Director-General
Mr K Phiri, Acting Director – Legal and Prosecution