



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS AND GOVERNANCE

ON THE

THE JUDICIAL TRAINING INSTITUTE BILL, N.A.B. NO. 14 OF 2023

FOR THE

THIRD SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

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FOREWORD

Honourable Madam Speaker, the Committee on Legal Affairs, Human Rights and Governance, has the honour to present its Report on the consideration of the Judicial Training Institute Bill, N.A.B No. 14 of 2023, for the Third Session of the Thirteenth National Assembly. The Committee is mandated to consider any Bills that may be referred to it by the House, as per Standing Order 198(j) of the National Assembly Standing Orders, 2021.

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from different stakeholders, the list of which is at Appendix II. The Report highlights a summary of submissions from stakeholders and the observations and recommendations made by the Committee.

Madam Speaker, the Committee is grateful to the stakeholders who tendered both written and oral submissions. The Committee also wishes to thank you, for affording it the opportunity to scrutinise the Judicial Training Institute Bill, N.A.B No. 14 of 2023. Further, appreciation is extended to the Clerk of the National Assembly for the support and guidance rendered throughout the Committee's deliberations.



Mr Chinga Miyutu, MP
CHAIRPERSON

November, 2023
LUSAKA

TABLE OF CONTENTS

No.	Item	Page
	Foreword	i
1.0	Composition of the Committee	1
2.0	Background	1
3.0	Salient Provisions of the Bill	1
4.0	Stakeholders' Submissions and Concerns	4
5.0	Committee's Observations and Recommendations	6
6.0	Conclusion	7
	Appendix I – List of National Assembly Officials	8
	Appendix II – List of Witnesses	9

1.0 COMPOSITION OF THE COMMITTEE

The Committee consisted of Mr Chinga Miyutu, MP (Chairperson); Ms Tasila E Lungu, MP (Vice Chairperson); Mr Clement Andeleki, MP; Mr Pavyuma Kalobo, MP; Mr Sunday Chanda, MP; Mr Monty Chinkuli, MP; Mr Joseph S Munsanje, MP; Mr Lameck Hamwaata, MP; Mr Mulenga F Fube, MP; and Mr Menyani Zulu, MP.

2.0. BACKGROUND

The Judicial Training Institute Bill, N.A.B No. 14 of 2023 sought to establish the Judicial Training Institute of Zambia for the purposes of providing continuing professional development training for judges, judicial officers and judicial staff in order to enhance the quality of the justice system in Zambia. The Bill further sought to constitute the Council of the Institute and provide for its functions.

The Bill was introduced because there was no specific law that provided for judicial education and professional training for judges, judicial officers, and judicial staff. With the fast-changing legal landscape and constant amendments to the laws and the introduction of new legislation, it had become increasingly important to have personnel serving in the judicial service that were kept abreast with the changes.

Additionally, the training of judges, judicial officers and judicial staff had over the years been carried out on an *ad hoc* basis, as and when funds were available. However, with the continued emergence of the new areas of the law, advances in technology and changes in commerce, the mode of conducting training was unsustainable.

The establishment of the Judicial Training Institute of Zambia would reflect the principles espoused by the International Organisation for Judicial Training and the SADC Protocol on Education and Training; and would be in line with best practice within the region and other jurisdictions.

The Bill, once enacted, would provide in-service education and professional training of judges, judicial officers and judicial staff and would ensure that they were equipped with enhanced knowledge and skills necessary to deliver justice effectively and efficiently in line with the principles set out under Article 118 of the *Constitution of Zambia, Chapter 1 of the Laws of Zambia*.

3.0. SALIENT PROVISIONS OF THE BILL

Clause 3- Establishment of Judicial Training Institute of Zambia

The clause sought to establish the Judicial Training Institute of Zambia as a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, with powers to do all acts and things that a body corporate could do.

Clause 4 - Seal of Institute

The clause mandated the Council of the Institute to determine the seal of the Institute. The clause further provided that the seal should be authenticated by the Chairperson or Vice-Chairperson and the Registrar or any other person that was authorised to authenticate the seal by the Council.

Clause 5 - Functions of Institute

The clause set out the functions of the Institute which, among others, were to establish, provide and develop judicial education and professional training for judges, judicial officers and judicial staff, award certificates to judges, judicial officers and judicial staff and induct and mentor newly appointed judges, judicial officers and judicial staff.

The clause further provided that a certificate awarded in this clause was not a qualification because qualifications could only be granted in accordance with the *Zambia Qualifications Authority Act, No 13 of 2011*.

Clause 6 - Council of Institute

The clause constituted the Council of the Institute. The clause further provided for the composition and appointment of the members of the Council of the Institute and set out the conditions on which a person was disqualified from being appointed as a member of the Council of the Institute.

Clause 8 - Tenure of office for member and vacancy

The clause provided the tenure of office for members of the Council and the circumstances under which the office of a member of the Council would become vacant.

Clause 10 - Committees

The clause empowered the Council, for the purposes of performing the functions of the Council under the Act, to constitute committees that the Council considered necessary and delegate to those committees any of the Council's functions.

The clause further empowered the Council to appoint as members of a committee persons who were or not members of the Council, provided that at least one member of Council should be a member of the committee.

Clause 12 - Disclosure of Interest

The clause mandated a person who was present at a meeting of the Council or a committee of the Council at which a matter was the subject of consideration, and in which matter that person or that person's relative or associate was directly or indirectly interested in a private capacity, to declare interest. Further, the clause imposed a penalty on a person who failed to declare such interest.

Clause 13 - Registrar, Secretary, and other staff

The clause empowered the Council to appoint the Registrar, who would be the chief executive officer of the Institute, and responsible for the day-to-day administration of the Institute. The clause also mandated the Council to appoint the Secretary, and other staff of the Institute that the Council considered necessary for the performance of the functions of the Institute.

The clause further mandated the Council to determine the terms and conditions of service, other than emoluments, of the Registrar, Secretary and other staff of the Institute.

Clause 14 - Funds of Institute

The clause set out the sources of funding of the Institute and how the funds of the Institute would be expended.

Clause 18 - Immunity

The clause granted immunity to a member of the Council, a member of a committee of the Council or a member of staff of the Institute from an action or other proceedings in respect of an act or anything done or omitted to be done in good faith in the exercise or performance of any of the powers, functions or duties conferred under the Act.

Clause 19 - Prohibition of publication or disclosure of information to unauthorised persons

The clause prohibited the publication or disclosure of the contents of a document, communication or information which related to that person's duties, to an unauthorised person without the written consent of the Institute. Further, the clause imposed a penalty on a person who failed to comply with the prohibition.

The clause, further, prohibited third parties who obtained information in contravention of this provision, from publishing or communicating such information and set out a penalty on a person who failed to comply with the prohibition.

Clause 20 - Register

The clause mandated the Registrar to keep and maintain a register in which the details and particulars were entered relating to, among others, judges, judicial officers, and judicial staff registered under the Institute, and the holder of certificates awarded by the Institute.

Additionally, the clause mandated the Registrar to have custody of the register at the offices of the Institute, which should be open for inspection to members of the public during normal office hours on payment of the prescribed fee.

4.0. SUBMISSIONS AND CONCERNS OF STAKEHOLDERS

Stakeholders submitted that the Bill was progressive as it sought to establish a Judicial Training Institute, which was the first of its kind in Zambia. They further submitted that the Bill sought to provide a coordinated mechanism for providing training and continuous professional development to judges, judicial officers, and staff of the Judiciary. They also submitted that the aspirations of the Bill were to work towards enhancing the quality of the justice system.

Stakeholders, however, submitted that there was need to amend some of the provisions of the Bill in order to make it more progressive.

i. Clause 2: Zambia Institute of Advanced Legal Education

- a) Clause 2 of the Bill defined the words “Zambia Institute of Advanced Legal Education”.

Stakeholders submitted that these words were not used in any other clause of the Bill. They, therefore, recommended that the definition of the words “Zambia Institute of Advanced Legal Education” be deleted.

They further proposed that if the definition was to be maintained, the Zambia Institute of Advanced Legal Education (ZIALE) should be represented on the Council of the Institute.

- b) Stakeholders submitted further that Clause 2 of the Bill defined the words “legally disqualified” as the absence of legal capacity, as provided under section 4 of the *Mental Health Act, No 6 of 2019*.

Stakeholders submitted that legal capacity was a human right that could not be taken away from a person. It was their submission that denial of legal capacity meant that the State could not recognise such a person at law. Stakeholders submitted that this was dehumanising and could form the basis for the denial of other human rights.

They submitted that the law should instead have protected the right to legal capacity for all persons on an equal basis, including to persons with mental and psychosocial disabilities.

ii. Clause 5(1) (c) enhance delivery of justice in the Republic

Stakeholders submitted that while they fully supported the proposed functions of the Institute, they recommended that this particular provision be amended to make it more actionable. Implementation of the function of enhancing delivery of justice was a shared objective of many institutions in the justice sector including the Ministry of Justice, the Legal Aid Board, the National Prosecution Authority and several civil society organisations. Therefore, this provision was ambiguous.

Stakeholders informed the Committee that identification of the training needs of the Judiciary would enable the Institute to focus on critical areas that needed improvement. Consequently, the Institute could develop training programmes tailor-made to bridge the knowledge gaps and enhance the effectiveness of the judges, judicial officers, and judicial staff in their dispensation of justice in Zambia.

They further informed the Committee that the enhancement of justice delivery was the basis for the establishment of the Institute and a by-product of the effective implementation of all of the Institute's functions. Therefore, it could not be one of the functions of the Institute. They informed the Committee that the functions of a statutory body should be specific to the extent that it was clear what actions should be undertaken to carry it out.

iii. Clause 5(1)(e)

The Committee was informed that clause 5(1)(e) provided that one of the functions of the Institute was to “collaborate with other judicial education and professional training institutions or organisations to improve the quality of professional skills and the delivery of justice”.

Stakeholders recommended that the function be redrafted as follows: “collaborate with education and professional training institutions, research institutions, organisations or persons to improve the quality of professional skills and the delivery of justice”.

iv. Broaden functions of the Institute

Stakeholders proposed that the functions of the Institute be broadened to include the following provisions:

- a) the Institute to carry out functions as may be assigned to it by the Council;
- b) mandatory orientation of judges upon appointment to take up office;
- c) conducting research on any inadequacies in the judiciary, existing laws or policies; and
- d) coordinated training activities, with specified timelines so as not to disrupt court activities and/or case adjournment(s) due to training programs.

v. Clause 6 – Council of the Institute

- a) Stakeholders submitted that the composition of the Council must include the Public Protector in order to represent the interests of the Ombudsperson and quasi-judicial tribunals in the training curriculum.
- b) Stakeholders submitted that one of the objects of the Bill was for the Judicial Training Institute of Zambia to provide continuing professional development training for judges,

judicial officers, and judicial staff. However, they noted that clause 6(1) of the Bill provided for a nine-member Council composed of judges and judicial officers but omitted representation from judicial staff.

They stated that section 12 of the *Judiciary Administration Act, No 23 of 2016*, provided for the appointment of judicial staff who included research advocates, sheriffs, court reporters and interpreters, among other staff. However, these staff had no representation on the Council of the Institute.

Stakeholders stated that considering the vital role that research advocates played in the Judiciary, including serving as Deputy Registrars, two slots should be added on the Council to cater for these staff. They, therefore, proposed that apart providing for research advocates, one representative for all the other staff should have been included on the Council.

- c) Stakeholders proposed to broaden the Council by including representatives from other fields such as accountants, information technology experts, medical doctors and requisite knowledge in the evolving world.
- d) Stakeholders submitted that section 4(2) h of the *Zambian Institute of Advanced Legal Education Act, Chapter 49 of the Laws of Zambia* gave the ZIALE Council authority to provide post-graduate judicial training to Magistrates and Judges.

They submitted that the establishment of the Judicial Training Institute of Zambia would, therefore, be taking away the training function of adjudicators from ZIALE. They submitted that this would be a duplication of functions and would increase the financial burden on the Treasury.

They further submitted that, Clause 14 of the Bill provided that the funds of the Institute would be appropriated by Parliament. In this regard, creation of the Institute imposed a financial burden on the Treasury. They, therefore, urged the Government to consider the option of capacitating ZIALE by creating a department to carry out the mandate that the Institute was being created for in order to lessen the financial burden on the Treasury.

5.0. COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

The Committee notes that majority of 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 observations and recommendations set out below.

- i) The Committee observes that the creation of the Judicial Training Institute will equip judicial officers with requisite knowledge that will be beneficial to the delivery of justice for citizens. The Committee, however, is of the view that in order for this to be achieved, there is need to reconsider the Composition of the Council.

In this regard, the Committee recommends that the composition of the Council must include representatives from other fields that the Judiciary deals with on a daily basis

such as accountants, information technology experts, medical doctors and engineers, among professionals. The Committee is of the view that, inclusion of other specialised fields will enhance the quality of training for judicial officers.

- ii) The Committee observes that section 4(2)(h) of the *Zambia Institute of Advanced Legal Education Act* already mandates ZIALE to train Magistrates and Judges.

Therefore, the Committee recommends that a consequential amendment be made to the *Zambia Institute of Advanced Legal Education Act* in order to avoid duplication of functions.

6.0. CONCLUSION

The Committee wishes to express its profound gratitude to all stakeholders who appeared before it and rendered both oral and written submissions. The Committee also wishes to thank you, Madam 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.

We have the Honour to be, Madam, the Committee on Legal Affairs, Human Rights and Governance mandated to consider the Judicial Training Institute Bill, N.A.B No. 14 of 2023.



Mr Chinga Miyutu, MP
CHAIRPERSON

November, 2023
LUSAKA

APPENDIX I - NATIONAL ASSEMBLY OFFICIALS

Mrs Doreen N C Mukwanka, Acting Principal Clerk of Committees (SC)

Mr Joseph Sianyabo, Deputy Parliamentary Legal Counsel

Mr Geoffrey Zulu, Senior Committee Clerk (SC2)

Mr Sanford Mwiinde, Committee Clerk

Ms Grace Mbewe, Administrative Assistant

Mr Daniel Lupiya, Committee Assistant

Mr Muyembi Kantumoya, Parliamentary Messenger

APPENDIX II–LIST OF WITNESSES

Ministry of Justice
National Prosecution Authority
The Judiciary
Legal Aid Board
University of Zambia, School of Law
Law Association of Zambia
Zambia Law Development Commission
Magistrates and Judges Association of Zambia
Office of the Public Protector
National Institute of Public Administration
Higher Education Authority
Cavendish University
Zambia Qualifications Authority
National Action for Quality Education in Zambia
Zambia Institute of Advanced Legal Education
Anti-Corruption Commission