

## **The Omissions of the Higher Education Act of 2013 and Its Amended Act of 2021**

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### **ABSTRACT**

*This paper sought to highlight some omissions of the Higher Education Act of 2013 and its Amendment Act of 2021. In this regard, the principal Act and its amendment Act were analysed. Further, higher education and universities Acts in other countries were reviewed. The findings show that the Higher Education Act of 2013 has not entrenched Quality Assurance (QA) in higher education by failing to provide for a permanent committee on QA. Further, the removal of workers and student representatives from sitting on the University Councils partly erodes transparency in the governance of universities. Furthermore, the reduction of council members from 16 to 9 limits the knowledge and skills available to the council. Other omissions observed include the allowing of private higher education institutions (HEIs) to affiliate other HEIs which may compromise the quality of higher education. It is therefore recommended that the Act be amended to cure the observed omissions.*

**Keywords:** Higher Education, Higher Education Act of 2013, the Amended Higher Education Act of 2021, Higher Education Institutions, Zambia

### **1. INTRODUCTION**

The Zambia higher education sector has been growing exponentially since the democratisation of the country in the early 1990s by the Movement for Multiple Democracy (MMD) government. The MMD government's philosophy of liberal democracy saw the liberalisation of all the sectors of the economy which include education (Rakner, 2003). Liberalisation of the education sector resulted in the higher education sector attracting many players. In this regard, many higher education institutions (universities, colleges, and institutes) have been established to provide higher education. It has been observed by scholars that the liberalisation of the higher education sector has increased access to higher education, but also brought many challenges to the higher education sector (Muyunda, 2021). These include the mushrooming of higher education institutions (HEIs) offering poor-quality education.

To regulate and ensure the provision of quality higher education, the Government of the Republic of Zambia enacted the Higher Education Act in 2013, which was amended in 2021. The Higher Education Act created the Higher Education Authority (HEA) whose mandate includes regulating and ensuring the provision of quality higher education in the sector. This paper, therefore, seeks to highlight some omissions of the Higher Education Act of 2013 and its Amendment Act of 2021.

#### **1.1 The Concepts of the Higher Education and Law**

An Act is a law enacted by Parliament (Law Insider, 2023). It is a formal written document that embodies a law, created through the legislative process and carrying legal weight (Sakshi, 2023). An Act of Parliament creates a new law or amend existing law. The term Law refers to a binding custom or practice of a community. It is a rule of conduct or action prescribed or formally recognised as binding or enforced by a controlling authority (Merriam-Webster, 2022). The law is concerned with the customs, practices, and rules of conduct of a community that is recognised as binding by the community, and it is enforced by a controlling authority (Britannica, 2022). Law is a rule of conduct developed by the government or society over a certain territory (Toppr, [2021]). In line with the above definitions, it can be argued that a law is a body of principles recognised and applied by the State in the administration of justice and it is enforced by the state machinery which includes the Police and Courts of law.

The term higher education refers to post-secondary education, which is offered at institutions such as colleges, universities, community colleges, and vocational-technical schools (Learn.org, 2022). Learning occurs at a university, college, or institute beyond a high school level (Cano & Ion, 2014). According to the Amended Higher Education Act of 2021, higher education institutions (HEIs) consist of a college, a university college, a university, a technical university college, a technical university, an institute, an institution established by any other written law and an institution for the specialised training of professionals in a specified field (Government of Zambia, 2021). From the above definitions, it can be contended that higher education is schooling pursued after secondary education and results in an award of degree, diploma, and certificate qualifications to the graduates.

## **1.2 Historical Perspective of Higher Education Acts in Zambia**

Before the 2013 Higher Education Act and its 2021 amendment of the Higher Education Act, there were other Acts that regulated higher education, in particular university education. The oldest Act, the 1965 Act No. 66 was enacted to establish the University of Zambia (Mkandawire & Ilon, 2019). This Act was later amended in 1987 to provide for the establishment of the Copperbelt University, which was created under the Act of 1987. The University Act of 1987 was replaced with the 1992 University Act which was later replaced with the 1999 University Act (Republic of Zambia, 1999). Following the emergence of private HEIs in the higher education sector and the creation of more public universities such as Mulungushi, Kwame Nkrumah, Mukuba, and Chalimbana universities by the government, the University Act of 1999 was replaced by the Higher Education Act of 2013 which was later amended with the Higher Education Amendment Act of 2021 to cater for other types of HEIs. It is important to mention that in Zambia, the Higher Education Act does not regulate colleges of education, nursing colleges, and Technical and vocational colleges. These types of colleges are regulated by the Education Act of 2011, the Technical Education, Vocational, and Entrepreneurship Training Act of 1998, and the Nurses and Midwives Act of 2019.

## **1.3 Objectives of the 2013 Higher Education Act and its Amendment Act**

The law is essential in society or sector as it guides behavior among players in a sector. Further, the law protects individual rights and liberties. It also provides a framework and rules to help resolve disputes between individuals and helps societies maintain order (Cronus Law, PLLC, 2019). Like any other Act, the Higher Education Act of 2013, which was amended in 2021 sought to: provide for the establishment of the Higher Education Authority (HEA) and define its functions and powers; provide for quality assurance and quality promotion in higher education; provide for the establishment, governance, and regulation of public HEIs; and provide for the registration and regulation of private HEIs (Government of Zambia, 2013). The Higher Education Act has been enacted to regulate the provision of higher education to ensure order in the sector. More importantly, the Higher Education Act ensures the provision of high-quality higher education in Zambia. Some of the purposes or objectives of the act have been implemented and have affected the provision of higher education in Zambia in either a positive or negative manner.

## **1.4 The Structure of the Higher Education Act**

The Act is structured into seven (7) parts or sections. Part I constitutes the preliminary which explains and defines the terms used. In Part II, the Act establishes the Higher Education Authority and spells out its functions, governance structure, and management (Government of Zambia, 2013). Part III of the Act explains organisations constituting the higher education system in Zambia which include universities and colleges. In the amendment act of 2021, the list of HEIs has included university colleges, technical universities, technical colleges, and institutes (Government of Zambia, 2021). This section also explains the functions of these HEIs and the powers of the Minister of Education. In Part IV, the Act explains how both private and public HEIs should be established, and Part V describes the general governance and regulatory framework of the higher education institution (HEI). Part VI deals with issues relating to the transformation, amalgamation, and closure of HEIs. In Part VII, the Act explains general provisions such as how the HEI should keep information and the management of a register of all accredited HEIs by HEA.

The Act has also three (3) schedules. Schedule I explains the composition of the Board of HEA and financial provisions for HEA. In Schedule II, the Act explains the composition of the Council for a Public HEI and its financial provisions. The third schedule talks about the staff of the HEI and the composition of its Senate (Government of Zambia, 2013).

### **1.5 Objectives of the Study**

The main objective of the paper was to highlight the major omissions of the Higher Education Act of 2013 and its Amendment Act of 2021. In doing so, the paper sought to:

- i. establish the Act's provision on Quality assurance in higher education,
- ii. assess the extent to which major stakeholders have been included in the governance of HEIs,
- iii. establish what the Act provides for Council members, and issues surrounding the election and removal of the chairperson of the Council of HEI.

## **2. METHODOLOGY**

In analysing the major omissions of the Higher Education Act of 2013 Act and its amendment Act of 2021, the Acts were thoroughly studied. Further, articles, commentaries, and postings regarding the weaknesses of the Zambian Higher Education Act were downloaded from the Internet and scrutinised. Furthermore, other literature available online concerning the Higher Education Acts in Uganda, South Africa, the United States of America, and the United Kingdom were consulted. The author also used his experiences with the Act to highlight some of the omissions of the Higher Education Act.

## **3. THE FINDINGS OF THE STUDY**

Since the enactment of the Higher Education Act of 2013 and its subsequent amendment in 2021, there has been some level of sanity in the higher education sector. The Higher Education Authority (HEA) has been closing private HEIs that could not meet the requirements prescribed by the Law. For example, in March 2021, five HEIs were closed by the HEA (Higher Education Authority, 2021). In 2020, the HEA closed 4 HEIs (Zambia National Broadcasting Corporation, 2020). Further, in 2018, HEA refused to register 19 HEIs on account that they failed to meet the requirements (Lusaka Live Voices, 2018). Further, the HEA has been accrediting all learning programmes in both private and public. This is done to ensure that programmes being offered in HEIs meet the requirements to be designated as higher education programmes. In this regard, all (public and private) HEIs must submit their programmes for accreditation. Academic programmes which fail to meet the set standard by HEA are not accredited and HEIs that proceed to offer unaccredited programmes are deregistered. For example, in 2021, HEA deregistered Green Light University for offering students programmes that were not approved (Higher Education Authority, 2021). This has brought about quality in the design and development of academic programmes in higher education.

### **3.1 Omissions of the Higher Education Act of 2013 and its Amendment Act**

Despite the Higher Education Act of 2013 having brought some level of sanity to higher education, some omissions need to be rectified for the betterment of the higher education sector. Below are some of the observed flaws and omissions of the Act.

#### ***3.1.1 Lack of a Permanent Committee on Quality Assurance Within the Higher Education Authority***

The Higher Education Act of 2013 in Part II, section 6 (i) e and f employs the HEA to promote quality assurance in higher education and audit the quality assurance mechanisms of higher education (Government of Zambia, 2013). In this regard, the HEA has established a Quality Assurance Department, but this is not adequate. The Higher Education Act needed to create a Committee on Quality Assurance within HEA. This Committee should be a think tank (advisor) whose membership should be drawn from a broader spectrum of higher education experts to advise HEA on quality assurance issues. It should also be the responsibility of such a committee to prescribe the quality assurance mechanisms and standards in the higher education

sector. Many Higher Education and University Acts reviewed from other countries mandate the HEA or the Council on Higher Education/ Universities to establish a permanent committee on quality assurance in the higher education sector. This is the practice in the British Higher Education and Research Act of 2017. The Office for Students (OfS) that regulates and registers HEIs in the United Kingdom (UK) is compelled by the Law to create a committee on quality assurance in higher education. According to the UK Higher Education and Research Act of 2017, persons experienced in providing higher education should sit on the Quality Assurance Committee and the role of the Committee is to advise the OfS on quality assurance issues in higher (The Government. United Kingdom, 2017). Similarly, in South Africa and Ghana, the Councils on Universities are mandated by the University Act to establish an advisory Committee on Quality Assurance (The Republic of South Africa, 1997).

### ***3.1.2 Erosion of Transparency in the Management of Higher Education Institutions***

The 2013 Higher Education Act (amendment of 2021) has significantly eroded the principles of transparency and involvement of various stakeholders in the running of public universities. Before its amendment in 2021, the Higher Education Act of 2013 provided for the establishment of a 16-member council to run a public university (Government of Zambia, 2013). Among the members of the council were union and student representatives. This was provided for in the Act to ensure the involvement of employees and students in making decisions regarding the university to enhance the broader participation of critical stakeholders and transparency. Good corporate governance principles include fairness, transparency, and accountability (Pearse Trust, 2014). However, the 2021 Amendment Act reduced the number of members of the Council to nine (9), and workers and student representatives (Unions) were removed (Government of Zambia, 2021). The practice in other countries is to include representatives of workers and students. For example, the South African Higher Education Act 101 of 1997 provides for workers and student representatives to be councilors of a university. This is also the case with the Universities and Other Tertiary Institutions Act of 2001 in Uganda which allows student representatives to sit on the University Council (The Republic of Uganda. Parliament, 2001). This brings about trust and ownership of major university decisions among workers and students in the University.

### ***3.1.3 Reduction of the Council Membership***

Further, the reduction of council members from 16 to 9 has implications for the ability of the council to adequately supervise all the aspects of university management. Notwithstanding the concept of co-option in council Committees, the deduction in members of the councils by the 2021 Amended Act limits the knowledge and skills available in the council. More members of the council brought more knowledge, skills, and experiences to the council. There is strength in diversity. It seems to be a good practice to have more members of the council. In many universities in the United Kingdom (UK) and the United States of America (USA), university councils are made up of more than 20 members. For instance, the University of Reading has 27 council members, the University of Oxford has a 25-member council, and Harvard University has 31 members of the University Board (Council) (Harvard University, 2022; University of Oxford, 2022; University of Reading, 2022). In Uganda, the Council members are 23 (The Republic of Uganda. Parliament, 2001).

### ***3.1.4 Exclusion of Officers from Quasi-Government Bodies from Becoming Council Chairperson***

As indicated above, the amended Higher Education Act of 2021 has reduced the number of Councillors sitting on the University Council to nine (9) instead of sixteen (16). The Amended Act also prescribes who should be the Chairperson of the Council. In the second schedule of the Act, in part I says:

“The members of the Council shall elect the Chairperson and Vice-Chairperson of the Council from among themselves, except that the Chairperson shall not be elected from among the members who are officers in another higher education institution or is a public officer” (Government of Zambia, 2021).

It is just fair that the Chairperson of a public university council should not come from another public university. However, the strict definition of a *public officer* in this clause implies a person working from the mainstream government (civil servant) and those from quasi-government organisations such as the Examination Council of Zambia (ECZ), the Zambia Revenue Authority (ZRA), and Zambia Electricity Supply Corporation (ZESCO). Officers from line Ministries such as Education and Finance should indeed not be the Chairperson of the Council as their role in the Council is to articulate government position and policies on many issues in the Council. However, this clause prevents many qualified and experienced Zambians from quasi-government bodies from being elected as Chairperson of a public university which is unfortunate. In Uganda, for example, the Universities and Other Tertiary Institutions Act of 2001 prohibits only student representatives, employees of the same university, and civil servants from being elected chairperson and vice chairperson as captured below:

“The University Council shall elect a Chairperson and a Vice-Chairperson from among the members of the Council who are not members of staff or students at the University, persons employed by the Public Service, or a member of the District Council or Parliament” (The Republic of Uganda. Parliament, 2001).

This implies that officers from quasi-government organisations as well as employees of another public university are allowed to be elected as Chairperson and Vice Chairperson respectively.

### ***3.1.5 Omission of the Procedure to Remove the Council Chairperson and Vice Chairperson from the University Council***

It should be noted that the Higher Education Act of 2013 and its 2021 Amendment Act explain who qualifies to be elected by other Council members as a chairperson or Vice Chairperson. However, the law does not explain how Council members can remove the Chairperson or Vice Chairperson if they fail to perform their duties or if their conduct is prejudicial to the interest of the public university and the country. By omitting this important aspect, Chairpersons and Vice-Chairpersons may not have their powers, behavior, and conduct checked by other Council members. In Uganda, the Universities and Other Tertiary Institutions Act of 2001 provides for the removal of the Chairperson from the Council by other Council members. Section 38 of the Universities and Other Tertiary Institutions Act of 2001 (iii) reads:

“The Chairperson of Council and the Chair of any Council Committee may be removed by two-thirds of all the members of Council and Committees respectively” (The Republic of Uganda. Parliament, 2001).

The provision of this procedure in the Ugandan Universities Act makes it clear to council Chairpersons and Vice-Chairpersons not to betray the interest of the public university and the country when presiding over the affairs of a university.

### ***3.1.6 Extension of Affiliation Activities to Private Universities***

The Higher Education Act of 2013 with its amendment in 2021 has allowed private universities to be accrediting other HEIs. Before the 2013 Act, only public universities, preferably the University of Zambia (UNZA) were mandated to affiliate with other HEIs in the country. The philosophy of affiliating an institution with another one is to ensure quality assurance and mentorship (Ikhram, Wahdiyati, & Barinta, 2012). In this way, the University of Zambia helped other small HEIs to develop. The current Higher Education Act empowers all Universities (private and public) to affiliate other HEIs. It is now common for small and newly established universities, with limited human resources and experience to affiliate programmes of colleges. The opening up of affiliation to private universities has to some extent compromised the quality of higher education in the country. It is difficult for small private universities to oversee other HEIs when they are also struggling to provide quality education to their students.

#### 4. CONCLUSION AND RECOMMENDATIONS

In conclusion, it can be said that the absence of a permanent Quality Assurance Committee at HEA subtracts from the quality assurance efforts of HEA and the Country, Further, the Higher Education Act Amendment act of 2021 has outlawed the spirit of transparency in the running of universities by removing stakeholders such as unions from sitting on the university council. Further, the Act has reduced the number of councilors to sit on the council from 16 to 9, thereby limiting the diversity of membership to the council. The Act has unfairly prevented qualified and experienced officers from quasi-government bodies from being elected as Chairpersons of the public university councils. Furthermore, the Higher Education Act and its amendment act have omitted the procedure to remove both the Council Chairperson and Vice Chairperson from the Council in case their conduct becomes prejudicial to the interest of the university and the public. The Higher Education Act has also opened higher education institutions' affiliations to even private universities with little or no capacity thereby further compromising the quality of higher education in Zambia. It is therefore recommended that the Act be amended to:

- (i) Provide for the creation of a permanent Quality Assurance Committee under the Higher Education Authority,
- (ii) Allow unions and other stakeholders to sit on university councils that run universities,
- (iii) Stop private universities without the capacity to affiliate colleges,
- (iv) Allow officers from quasi-government bodies to be elected as Chairperson of the University Councils,
- (v) Provide for the procedure to remove the Chairperson and Vice Chairperson of the University Council.

#### REFERENCES

- Britannica. (2022). *Head of State*. Retrieved August 22, 2022, from Britannica: <https://www.britannica.com/biography/Liu-Shaoqi>
- Britannica. (2022). *Law*. Retrieved August 22, 2022, from Britannica: <https://www.britannica.com/search?query=What+is+a+Law%3F>
- Cano, E., & Ion, G. (2014). Curriculum Development through Competency-Based Approach in Higher Education. In S. Mukerji, & P. Tripathi, *Handbook of Research on Transnational Higher Education* (pp. 79-95). Hershey: IGI Global.
- Cronus Law, PLLC. (2019, September 2). *The Purpose of Law and Its Functions In Society*. Retrieved August 23, 2022, from Cronus Law, PLLC: <https://cronuslaw.com/the-purpose-of-law-and-its-functions-in-society/>
- Government of the Republic of Zambia. (1964). *The Acts of Parliament Act*. Lusaka: Government Printers.
- Government of Zambia. (1999). *Act no.11 of 1999*. Lusaka: Government Printers.
- Government of Zambia. (2011). *Education Act, 2011*. Lusaka: Government Printers.
- Government of Zambia. (2013). *The Higher Education Bill, 2013*. Lusaka: Government Printers.
- Government of Zambia. (2021). *Higher Education Amendment Act of 2021*. Lusaka: Government Printers.
- Government of Zambia. (2019). *Nurses and Midwives Act of 2019*. Lusaka: Government Printers .
- Harvard University. (2022). *Members of the Board*. Retrieved August 26, 2022, from Harvard University: <https://www.harvard.edu/about/leadership-and-governance/board-of-overseers/>
- Higher Education Authority. (2021). *Zambia Standards and Guidelines for Quality Assurance*. Lusaka: Higher Education Authority.
- Higher Education Authority. (2021). *Classification of Academic Ranks and General Promotion Criteria in Zambia*. Lusaka: Higher Education Authority.
- Higher Education Authority. (2021, January 28). *HEA Deregisters Greenlight University*. Retrieved August 24, 2021, from Higher Education Authority: <https://hea.org.zm/hea-deregisters-greenlight-university/>

- Higher Education Authority. (2021, March 18). *Illegally Operating Universities in Zambia*. Retrieved August 23, 2022, from Higher Education Authority: <https://hea.org.zm/illegally-operating-universities-in-zambia/>
- Higher Education Authority. (2021). *Know HEA*. Retrieved August 24, 2022, from Higher Education Authority: <https://hea.org.zm/know-hea/>
- Ikhrum, W. M., Wahdiyat, M., & Barinta, D. D. (2012). Affiliation in Higher Education: Roles University Satisfaction and Gender as Moderation. *Advances in Economics, Business and Management Research, volume 206*, 80-87.
- Law Insider. (2023). *Act of Parliament definition*. Retrieved from Law Insider Dictionary: <https://www.lawinsider.com/dictionary/act-of-parliament>
- Learn.org. (2022). *What Is Higher Education?* Retrieved August 22, 2022, from Learn.org: [https://learn.org/articles/What\\_is\\_Higher\\_Education.html](https://learn.org/articles/What_is_Higher_Education.html)
- Lusaka Live Voices. (2018, December 12). *Higher Education Authority rejects Institutions and Programmes*. Retrieved August 23, 2022, from Lusaka Live Voices: <https://www.lusakavoices.com/2018/12/18/higher-education-authority-rejects-institutions-and-programmes/>
- Mambwe, K. (2019, July 23). *UNZALARU will not miss Prof. Luo*. Retrieved August 26, 2022, from New Day Zambia: <https://newsdayzambia.com/?p=10915>
- Merriam-Webster. (2022). *Definition of Law*. Retrieved August 22, 2022, from Merriam-Webster: <https://www.merriam-webster.com/dictionary/law>
- Mkandawire, S. B., & Ilon, L. (2019). Higher Education Systems. In J. C. Shin, & P. Teixeira, *Encyclopedia of International Higher Education Systems and Institutions* (pp. 1-5). [London]: © Springer Nature B.V.
- Muyunda, G. (2021). The Higher Education Policy in Zambia: An Analysis. *Journal of Multidisciplinary Studies in Education*, 112-122.
- National Assembly of Belize. (2021). *Acts of Parliament*. Retrieved August 22, 2022, from National Assembly of Belize: <https://www.nationalassembly.gov.bz/acts-of-parliament/>
- Pearse Trust. (2014, February 19). *The Core Principles Of Good Corporate Governance*. Retrieved August 26, 2022, from Pearse Trust: <https://www.pearse-trust.ie/blog/bid/108866/the-core-principles-of-good-corporate-governance>
- Rakner, L. (2003). *Political and Economic Liberalisation in Zambia 1991–2001*. Stockholm: Elanders Gotab.
- Republic of Zambia. (1992). *The University Act*. Lusaka: Government Printers.
- Sakshi. (2023, August 9). *Difference Between Law, Act and Bill in Detail, Act vs Law vs Bill*. Retrieved from UPSC Exams: <https://www.studyiq.com/articles/difference-between-law-act-and-bill/#:~:text=An%20Act%20is%20a%20formal,once%20enforced%2C%20becomes%20a%20law.>
- The Government. United Kingdom. (2017). *The Higher Education and Research Act of 2017*. London: UK Parliament.
- The Republic of South Africa. (1997). *The Higher Education Act 101 of 1997*. Pretoria: The Parliament of South Africa.
- The Republic of Uganda. Parliament. (2001). *The Universities and Other Tertiary Institutions Act, 2001*. Kampala: National Assembly of Uganda.
- Toppr. ([2021]). *Various Definitions of Law*. Retrieved August 22, 2022, from Toppr: <https://www.toppr.com/guides/business-law-cs/introduction-to-law/various-definitions-of-law/>
- UK Parliament. (2022). *What is an Act of Parliament?* Retrieved August 22, 2022, from UK Parliament: <https://www.parliament.uk/about/how/laws/acts/>
- University of Oxford. (2022). *Members of Council*. Retrieved August 26, 2022, from University of Oxford: <https://governance.admin.ox.ac.uk/council/members-council>
- University of Reading. (2022). *University Council*. Retrieved August 2022, 2022, from University of Reading: <https://www.reading.ac.uk/about/governance/university-council>

- University of York. (2022). *Role description for Members of the University Council*. Retrieved August 26, 2022, from University of York:  
<https://www.york.ac.uk/about/organisation/governance/council/members/members-role/#:~:text=The%20Council%20is%20the%20governing,training%20and%20development%20as%20appropriate.>
- Zambia National Broadcasting Corporation. (2020, January 14). *Three Higher Education Institutions De-registered*. Retrieved August 23, 2022, from Zambia National Broadcasting Corporation:  
<https://www.znbc.co.zm/news/three-universities-de-registered/>