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[Tuesday Bwalya](#) \*

Posted Date: 13 January 2023

doi: 10.20944/preprints202301.0237.v1

Keywords: Higher Education Act; Higher Education; Zambia; Universities



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Concept Paper

# The Impact of the Higher Education Act on the Provision of Higher Education in Zambia

Tuesday Bwalya (P.h.D)

The University of Zambia, Department of Library and Information Science, P.O Box 32379, Lusaka;  
bwalya.tuesday@unza.zm

**Abstract:** The higher education act of 2013 with its amendment act of 2021 was enacted to guide and regulate the provision of higher education in Zambia. This conceptual paper sought to assess the impact of this act in the higher education sector. It was qualitative in design and data was collected using content analysis. In this regard, literature regarding the Zambia higher education act and higher education provision were scrutinised. The findings show that the higher education act has resulted in the creation of the higher education authority (HEA) which has brought sanity to the higher education sector by compelling all higher education institutions to be registering themselves and programmes with HEA. Further, the HEA has developed a policy for the promotion of academic staff in the higher education sector. However, the higher education act (the amended act of 2021) has negatively impacted the higher education sector. The amended act outlawed the spirit of accountability 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 to run public universities from 16 to 8, thereby limiting the diversity of membership to the council. Furthermore, the higher education act has opened higher education institutions' affiliations to even private universities with little or no capacity thereby further compromising the quality of higher. The Act has also increased the cost of running universities by introducing additional administrative structures in universities. Based on the above findings, the paper recommends that the Act be amended to remove the retrogressive clauses highlighted in this paper.

**Keywords:** higher education act; higher education; Zambia; universities

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## 1. Introduction

If peace, orderliness, and rule of law have to be established in society, there is a need to have laws to control and regulate the behaviour of people. Law is an instrument that regulates human conduct/behavior. The law ensures justice, morality, reason, order, and righteousness from the viewpoint of society. In the absence of laws, society quickly descends into serious mayhem. Similarly, in various sectors of society, there is a need to have laws to govern and control the behaviours of actors in such sectors. Various sectors exist in our country, which includes the higher education sub-sector. To ensure order and a better way of providing higher education to people, the Government of the Republic of Zambia enacted the Higher Education Act in 2013 and amended it in 2021. This paper, therefore, seeks to critically analysis this Act about its impact on the provision of higher education in Zambia. The paper begins by defining major concepts which include the Act, law, and higher education. Thereafter, it provides a historical perspective of higher education laws in the country. After, that it critically analyses the impact of the higher education act on the provision of education in Zambia and draws up a conclusion.

## 2. Definition of Concepts

An Act of Parliament is a form of legislation that is passed by both House of Parliament that is, the House of Representatives and the Senate, to create a new law or to change existing law (National Assembly of Belize, 2021). An Act of Parliament creates a new law or changes existing law. An Act is a Bill that has been approved by both the House of Commons and the House of Lords and given

Royal Assent by the Monarch (National Assembly of Belize, 2021; UK Parliament, 2022). Taken together, Acts of Parliament make up what is known as Statute Law in countries that include the United Kingdom (UK) and Zambia. An Act provides for the form and commencement of Acts; provides for the procedure following the perusing of bills; and provides for matters incidental to or connected with the foregoing (Government of the Republic of Zambia, 1964). In a constitutional monarchy, where the Queen or King is the head of the State, once the bill is passed in Parliament or Senate, it is signed by the Monarch while in a Republic; this role is typically performed by the president (Britannica, 2022).

Once the Act of Parliament is signed or assented to by either the President or Monarch, it becomes a 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.

On the other hand, 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; all education beyond the secondary level leads to a formal degree (Cano & Ion, 2014). The term higher education means tertiary education leading to the award of a certificate, diploma, bachelor's degree, postgraduate diploma, master's degree, or doctorate (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 its graduates. According to the Higher Education Act (amendment) of 2021, higher education institution consists of the following: 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). In Zambia, the Higher Education Act (amendment) of 2013 and its amended Act of 2021 do not regulate colleges of education, nursing colleges, and Technical and vocational colleges. These types of colleges are regulated by the Education Act of 2011 and the Technical Education, Vocational and Entrepreneurship Training Act of 1998, and the Nurses and Midwives Act of 2019.

### **3. Historical Perspective of Higher Education Acts in Zambia**

Before the 2013 higher education Act and now the 2021 higher education Act (amendment), there was the University Act of 1999 which regulated and controlled the provision of higher education particularly, university education. The 1999 University Act replaced the 1992 Act (Government of Zambia, 1999). This Act concentrated only on universities and neglected other players in the higher sector. In this regard, institutions such as academies, institutes, university colleges, and other types of colleges were not covered by the University Act. This is partly because learning institutions such as academies and institutes did not exist at that time. However, colleges of education, nursing colleges/schools, and other colleges aligned to various Government Ministries were controlled and regulated by pieces of the legislation obtained in their ministries and this has continued to be a trend even today. For example, the colleges of education were governed by the education act which is still the case. The nursing colleges were government and still governed by the Nurses and Midwives Act and the current Act was enacted in 2019 (Government of Zambia, 2019). All colleges of education were governed and continued to be governed by the Education Act, now the 2011 Act, not the Higher Education Act (Government of Zambia, 2011).

It is important to mention that other Acts to regulate university provision in Zambia existed before 1999. For example in 1965, Act No. 66 of 1965 was enacted to pave way for the creation of 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. 1987 was replaced with the 1992 university which was later replaced with the 1999 University Act (the Republic of Zambia, 1992). Following the emergence of private universities and the government's creation of more public universities such as Mulungushi, Kwame Nkrumah, Mukuba, and Chalimbana universities, the university Act of 1999 was replaced by the Higher Education Act of 2013 which was later replaced with the Higher Education Act of 2021 (amendment) to cater for other forms of higher education institutions apart from universities.

#### **4. Purpose of the Higher Education Act**

As indicated in the introduction, the law is essential in the running of society. The law protects individual rights and liberties. It also provides a framework and rules to help resolve disputes between individuals and helps societies to maintain order (Cronus Law, PLLC, 2019). Like any other Act, the higher education Act of 2013, which was amended in 2021 seeks to: provide for the establishment of the Higher Education Authority 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 higher education institutions; and provide for the registration and regulation of private higher education institution (Government of Zambia, 2013). The Higher Education Act has been enacted to regulate the provision of higher education to ensure order in the sector and more importantly 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.

#### **5. The Impact of the Higher Education Act on the Provision of Education in Zambia**

Since the enactment of the higher education Act of 2013 and its subsequent amendment, the government through the Ministry of Education and various government organs has been implementing the act to improve higher education provision in the country. Some of the steps taken by the government in actualising what is contained in the higher education act have impacted positively or negatively on the provision of higher education in Zambia.

##### *5.1. Positive Impact of the Higher Education Act*

Indeed, the implementation of certain provisions or clauses of the higher education act has affected higher education institutions thus affecting positively the provision of high education in Zambia.

##### *5.1.1. Creation of the Higher Education Authority*

The Higher Education Act in part II, 4 (1), provided for the establishment of the Higher Education Authority (HEA) whose functions include among other functions:

1. advising the Minister on any aspect of higher education;
2. develop and recommend policy on higher education;
3. the establishment of public higher education institutions and the registration of private higher education institutions;
4. establish a coordinated higher education system that promotes corporate governance and provides for a programme based on higher education;
5. promote quality assurance in higher education;

The HEA has to some extent managed to discharge some of the above functions to improve the quality of higher education in Zambia. For instance, it is now a requirement for any higher education institution (HEI) in Zambia especially the privately owned ones to register with HEA before commencing operations. Higher Education institutions that have commenced operations without HEA approval have been closed. 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).

#### 5.1.1.1. Control of the Proliferation of Higher Education Institutions

The coming of HEA has brought some sanity to the higher education sector. Unqualified HEIs are not allowed to operate and provide education to the people. Only HEIs that have met the basic requirements of being HEIs are allowed to run. Before the enactment of the higher education act, in 2013, HEIs mushroomed. Some had no basic infrastructure and were providing poor quality higher education. HEA has helped to improve the quality of higher education to some extent. However, the HEA needs to enforce standards and quality requirements not only in private HEIs but also in government-run HEIs. Currently, some public HEIs do not have good facilities to offer higher education but on the basis that they are public institutions, HEA reluctantly enforces the law on such HEIs. This is contrary to part III, 12 (1) of the act which implores HEIs (whether public or private) to provide adequate learning facilities for the provision of higher education (Government of Zambia, 2013). There is a lot to be done by the HEA to ensure quality standards are observed in HEIs as stipulated in the Act.

#### 5.1.1.2. Accreditation of Programmes by Higher Education Institutions

Further, the passing of the higher education act and the subsequent birth of the HEA has placed responsibility on HEIs to submit their academic programmes to the authority for accreditation (Higher Education Authority, 2021). 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 have to 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.

#### 5.1.1.3. Development of a Promotional Policy for Academic Staff

The 2013 higher Act empowers the HEA to develop policies and guidelines to improve higher education in the country. One such policy is the classification of academic ranks and general promotion criteria in Zambia. This policy has set the criteria for one to be a senior lecturer, associate professor, and full professor in the higher education sector. For example, for one to be a full professor, he or she should have:

- (i) an earned Doctor of Philosophy (Ph.D.) or equivalent qualifications in the relevant discipline from a registered/accredited university;
- (ii) at least ten (10) years of teaching/research experience at the university or research institute;
- (iii) at least 25 peer-reviewed publications in recognised outlets, in the field of specialisation for promotions to Full Research Professor and 20 peer-reviewed publications for teaching-focused Full Professor;
- (iv) demonstrated research impact (e.g. publication citations, patents, or other evidence of research results uptake by industry or society);
- (v) supervised a minimum of ten (10) postgraduate students to completion including at least four (04) at the doctoral level. For the supervision of doctoral students, at least two (02) must be principal supervisors;
- (vi) attracted research or development funds;
- (vii) a significant contribution to innovation in research or educational innovations including designing an appropriate curriculum;
- (viii) demonstrated provision of leadership in the discipline area;
- (ix) at least five (5) years of administrative experience;
- (x) contributed significantly to the life of the University or Research Institute;

- (xi) a significant contribution to public service, professional bodies, international associations networks, etc.; and
- (xii) significant contributions to consultancy services of the university (Higher Education Authority, 2021).

The development of this promotional policy for lecturers in all HEIs is a positive move and will enforce standards on the promotion of staff. The policy provides for the minimum requirements for one to be a senior lecturer, associate professor, and full professor. HEIs are at liberty to raise the bar in terms of requirements for promotion to these academic ranks. In this regard, the University of Zambia (UNZA) has developed a promotional policy for academic staff which is more demanding than the one developed by HEA. The bottom line however is that the introduction of a promotional policy by HEA in its implementation of the higher education act will curb mediocrity as regards the promotion of academic staff in HEIs across the country. Before the introduction of this policy, it has been common to find small universities promoting some of their academic staff to professorial rank even when they did not qualify for such a promotion.

## *5.2. Negative Impact of the Act on Higher Education Provision*

The higher education act has impacted negatively on the provision of higher education in the country. In this regard, the higher education amendment act of 2021 has been seen by many stakeholders in the higher education sector to have brought more harm than good (Mambwe, 2019).

### *5.2.1. Erosion of Accountability in the Management of Higher Education Institutions*

The 2013 higher education act (amendment of 2021) has 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). And among the members of the council, were three union representatives. This was provided for in the Act to ensure the involvement of employees 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, in 2021, higher education reduced the number of members of the Council to eight (8), and for all workers' representatives, the Unions were removed (Government of Zambia, 2021). This is a serious affront to good corporate governance and has shrouded the management of public universities in suspicion, thus creating mistrust between employees and the Council and management of the University. In the case of the University of Zambia, the removal of union representatives from the council has resulted in the council making decisions that are not in the interest of the university and workers. Many council decisions have been deemed to be anti-workers, thereby creating industrial disharmony at UNZA.

### *5.2.2. Retention of the Vice Chancellor in the University Council*

The perusal of the higher education act reveals that the amended act of 2021 has removed the Deputy Vice-Chancellor (DVC) from the council as an ex-officio, which is a good thing but the retention of the Vice Chancellor (VC) as an ex-officio does not serve the interest of good corporate governance. According to the higher education Act of 2013 and its amendment of 2021, the council performs among other functions, the employing and supervision of principal officers in the University. The Council is the governing body of the University and exercises general oversight over the institution and its affairs (University of York, 2022). The inclusion, and retention of the Vice-Chancellor (VC), whether as an ex-officio member of the council is a serious omission and possess a serious challenge for the University council to play its oversight role in the running of the university. It is difficult for the council to scrutinise the decisions of management freely when the VC is also part of the council. On the other hand, the VC cannot scrutinise his/her management decisions in the council. The best would have been for the drafters of the law to remove all principal officers of a university to sit on a council.

### 5.2.3. Reduction of the Council Membership

Further, the reduction of council members from 16 to 8 has implications for the ability of the council to adequately supervise all the aspects of university management. Reduction in members of the councils by the act implies limitations in the knowledge and skills available in the council. More members of the council brought more knowledge, skills, and experiences to the council which benefits the university. 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).

### 5.2.4. Creation of the New Position of the Second Deputy Vice-Chancellor

The third schedule of the Higher Education Act of 2013 has been amended (higher education act amendment of 2021) to provide for the creation of another office of the Deputy Vice-Chancellor (DVC). According to schedule three 32 (2) of the Higher Education Act Amendment of 2021, the academic staff of a university consists of:

- (i) the Vice-Chancellor;
- (ii) the Deputy Vice-Chancellor in charge of academic affairs;
- (iii) the Deputy Vice-Chancellor in charge of research and innovation;
- (iv) principal of constituent college;
- (v) the Deans of Schools;
- (vi) the Directors of institutes, bureaux, and other similar bodies;
- (vii) members of staff engaged in teaching, research, and skills development;
- (viii) the chief librarian; and
- (ix) other persons that the Council may designate (Government of Zambia, 2021).
- (x) This implies that a university should have seven principal officers. These are the vice chancellor, two deputy vice-chancellors, registrar, chief financial officer, librarian, and dean of students. The introduction of another office of the Deputy Vice-Chancellor may help to coordinate research and innovation in universities. However, for some universities with a narrow financial base, this could be an additional cost in the running of the university and they will struggle to maintain many offices of principal officers. In the current environment, where universities are struggling to mobilise enough financial resources, the ideal situation is to reduce organizational structures by doing away with some offices. But the 2021 higher education amendment Act has done the opposite by introducing more administrative structures, thereby increasing the cost of running a university.

### 5.2.5. Extension of Affiliation Activities to Private Universities

The higher education act of 2013 with its amendment in 2021 has allowed private universities to be accredited by other higher learning institutions. Before the 2013 Act, only public universities, preferably the University of Zambia (UNZA) were mandated to affiliate with other higher institutions in the country. This was because the University could help other small higher education institutions. The philosophy of affiliating an institution with another one is to ensure quality assurance and mentorship (Ikhrum, Wahdiyat, & Barinta, 2012). With the coming of the higher education act of 2013, the country has witnessed situations where small and newly established universities, with limited human resources and experience, affiliate programmes of colleges. This is common in colleges of education. 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 higher education institutions as they are also struggling to provide quality education to their students.

### 5.2.6. Empowerment of the Minister of Education to Intervene in Higher Education Authority Activities

Part III, 13 (3) gives the Minister of Education the to take steps in the interest of HEI. This article reads: "the Minister may, where the Minister reasonably believes that it is necessary to do so, take such steps as the Minister considers necessary in the best interest of the higher education institution." Such an article in the Act can be abused by the Minister and may impede the legal enforcement of the Act by inspectors from HEA. For example, if the HEA deregisters an HEI, the Minister can intervene based on his /her belief on what constitutes the best interest of the HEIs.

## 6. Conclusion and Recommendations

In conclusion, it can be said that the higher education act of 2013 with its amendment act of 2021 has impacted both positively and negatively on the provision of higher education in Zambia. The higher education act through the creation of the higher education authority (HEA) has brought sanity to higher education by compelling all higher education institutions to be registering themselves and programmes with HEA. Further, the HEA has developed a policy for the promotion of academic staff in the higher education sector. However, the higher education act (the amended act of 2021) has negatively impacted the higher education sector. The amended act outlawed the spirit of accountability 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 8, thereby limiting the diversity of membership to the council. The higher education act has 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) Allow unions and other stakeholders to sit on university councils that run universities,
- (ii) Stop universities without the capacity to affiliate colleges,
- (iii) Curtail the powers of the Minister of Education in interference in the work of HEA,
- (iv) Make it optional for universities to have two or more vice-chancellors,
- (v) Restrict the application of colleges to universities with capacity preferably, public universities.

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