

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN JUDICIAL EDUCATION INSTITUTE BILL

*(As introduced in the National Assembly (proposed section 75);
explanatory summary of Bill published in Government Gazette No. 29625 of
9 February 2007)
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

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BILL

To establish a South African Judicial Education Institute in order to promote the independence, impartiality, dignity, accessibility and effectiveness of the courts by providing judicial education for judicial officers; to provide for the administration and control of the affairs of that Institute and for the regulation of its activities; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the value and benefits of education and training, in general, are commonly accepted;

AND WHEREAS law has become much more complex and varied, develops rapidly and is increasingly influenced by the globalisation of legal systems, trade, technology, new insights and challenges;

AND WHEREAS there is a need for the education and training of judicial officers in a quest for enhanced service delivery and the rapid transformation of the judiciary;

AND WHEREAS the judicial authority of the Republic is vested in the courts by section 165 of the Constitution;

AND WHEREAS the courts are by that section also vested with independence, and are subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice;

AND WHEREAS organs of state, through legislative and other measures, must assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness;

AND WHEREAS section 180(a) of the Constitution provides that national legislation may provide for training programmes for judicial officers;

AND WHEREAS the need for education and training of judicial officers, whether aspiring, newly appointed or experienced, has long been recognised and that principle is practised and entrenched in most judicial systems around the world;

AND WHEREAS education and training of judicial officers is necessary to uphold judicial independence, on the one hand, and to facilitate judicial accountability, on the other, and both are indispensable requirements of a judiciary in a functioning democracy;

AND WHEREAS it is desirable that, as far as possible, the education and training of judicial officers should be directed and controlled by the judiciary,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa,
as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
 - (i) **“Constitution”** means the Constitution of the Republic of South Africa, 1996; 5
 - (ii) **“Council”** means the Council of the Institute established by section 6;
 - (iii) **“Department”** means the Department of Justice and Constitutional Development;
 - (iv) **“Director”** means the Director appointed in terms of section 11(1);
 - (v) **“Director-General”** means the head of the Department; 10
 - (vi) **“Institute”** means the South African Judicial Education Institute established by section 3;
 - (vii) **“Minister”** means the Cabinet member responsible for the administration of justice and constitutional development;
 - (viii) **“retired judge”** means a judge who is no longer in active service; 15
 - (ix) **“this Act”** includes the guidelines issued under section 15.

Objects of Act

2. The main objects of this Act are to establish a national education and training institution for the judiciary so as to enhance judicial accountability and the transformation of the judiciary, in order to promote the implementation of the values 20 mentioned in section 1 of the Constitution, and for that purpose to—
 - (a) provide proper, appropriate and transformational judicial education and training, having due regard to both our inherited legacy and our new constitutional dispensation; and
 - (b) offer judicial education and training to aspiring and newly appointed judicial 25 officers as well as continued training for experienced judicial officers.

Establishment of Institute

3. There is hereby established a body to be known as the South African Judicial Education Institute, which—
 - (a) is a juristic person; and 30
 - (b) is responsible for the judicial education and training of judicial officers and aspiring judicial officers.

Seat of Institute

4. The seat of the Institute is at a place to be determined by the Council with the concurrence of the Minister: Provided that the Institute may, with the approval of the 35 Minister, also conduct its activities away from its seat.

Functions of Institute

5. (1) The functions of the Institute are—
 - (a) to establish, develop, maintain and provide judicial education and professional training for judicial officers; 40
 - (b) to provide entry level education and training for aspiring judicial officers to enhance their suitability for appointment to judicial office;
 - (c) to conduct research into judicial education and professional training and to liaise with other judicial education and professional training institutions, persons and organisations in connection with the performance of its functions; 45
 - (d) to promote, through education and training, the quality and efficiency of services provided in the administration of justice in the Republic;
 - (e) to promote the independence, impartiality, dignity, accessibility and effectiveness of the courts;
 - (f) to enter into contracts with service providers and accept liability for the 50 expenses incurred as a result of such services being rendered;

- (g) to provide services to foreign judicial institutions and courts;
- (h) to publish contributions to matters of relevance to the Institute in its own publications or books or in other publications and books, electronically or otherwise.

(2) In order to perform its functions the Institute must, amongst other things, 5
employ—

- (a) a Director to head the Institute;
- (b) a suitably qualified person as Registrar to be the head of the Institute's administration;
- (c) a suitably qualified person as Operations Officer who must prepare and 10
provide quarterly management reports to the Director-General;
- (d) academic staff and procure the services of suitably qualified judicial educators;
- (e) such administrative staff as may be necessary.

Establishment of Council 15

6. There is hereby established a Council responsible for the governance of the Institute.

Composition of Council

7. (1) The Council is composed of the following members:
- (a) The Chief Justice as chairperson; 20
 - (b) the Deputy-Chief Justice as deputy chairperson;
 - (c) the Minister or her or his nominee;
 - (d) a judge of the Constitutional Court;
 - (e) a person or a judge nominated by the Judicial Service Commission from 25
among its ranks;
 - (f) the President of the Supreme Court of Appeal;
 - (g) two judges president and two other judges, one of whom must be a woman, nominated by the Chief Justice after consultation with the judges president;
 - (h) three magistrates, one of whom must be a woman, appointed by the 30
Magistrates' Commission and one of whom must be a Regional Court magistrate;
 - (i) a retired judge;
 - (j) the Director;
 - (k) one advocate nominated by the General Council of the Bar of South Africa;
 - (l) one attorney nominated by the Law Society of South Africa; 35
 - (m) two university teachers of law nominated by the South African Law Deans Association; and
 - (n) two other members who must be members of the public not involved in the administration of justice.

(2) The members of the Council are appointed for a period of five years but any 40
nominee may be replaced by the nominating person or body on written notice to the Chief Justice.

(3) Any member whose term of office has expired may be re-appointed.

(4) A vacancy in the membership does not affect the validity of the proceedings or the 45
decisions of the Council.

(5) Due consideration must be given in the composition of the Council to 50
demographic and gender representivity.

Meetings of Council

8. (1) Meetings of the Council must be held at the times and places determined by the 55
Chief Justice, but at least every six months.

(2) The majority of the members of the Council constitutes a quorum.

(3) If the Chief Justice is absent from a meeting, the Deputy-Chief Justice must act as chairperson, and if both are absent, the members must elect one of their number to 60
preside at that meeting.

(4) The Council may regulate the proceedings at its meetings as it considers fit and 65
must cause minutes of the proceedings to be kept.

- (5) (a) Every member of the Council has one vote.
 (b) In the event of an equality of votes the person presiding will have both a deliberative and a casting vote.

Committees of Council

- 9.** (1) The Council must establish a standing committee to take responsibility for each of the following areas of the Institute's activities: 5
- (a) Curriculum planning and development;
 - (b) oversight of particular aspects of judicial education;
 - (c) budget and finance;
 - (d) personnel management; and 10
 - (e) general administration.
- (2) The Council may further appoint—
- (a) an executive committee from its ranks, which must be chaired by the Deputy Chief Justice;
 - (b) such further standing committee or other committee for a particular purpose as may become necessary; 15
- (3) The member or members of a committee may be members of the Council or may be co-opted for that purpose by the Council.

Powers and duties of Council

- 10.** (1) The Council may do all that is necessary or expedient to achieve the objects of this Act. 20
- (2) Without derogating from the generality of subsection (1), the Council—
- (a) may—
 - (i) acquire and alienate movable and immovable property;
 - (ii) hire and let movable and immovable property; 25
 - (iii) arrange public lectures, national and international conferences and participate in such events arranged by other parties;
 - (b) must—
 - (i) appoint temporary and permanent professional and administrative staff;
 - (ii) engage in research into matters affecting the Institute and its functions and engage suitably qualified persons or institutions to conduct such research on its behalf; 30
 - (iii) establish and maintain contact with the Judicial Service Commission, the Magistrates' Commission, Heads of Courts, the organised legal profession, academics and other individuals and entities with an interest in judicial education. 35

Appointment of Director

- 11.** (1) The Council must appoint a Director for a determined term and on such conditions as the Council may determine.
- (2) The Council may re-appoint the Director at the end of the term. 40
- (3) The Director, as the head and chief executive officer of the Institute, is responsible for the general administration of the Institute, and must—
- (a) manage and direct the activities of the Institute subject to the direction of the Council; and
 - (b) appoint and supervise the staff of the Institute. 45
- (4) (a) The Minister must, with the concurrence of the Council and after consultation with the Minister of Finance, determine the Director's remuneration, allowances, benefits and other terms and conditions of employment.
- (b) If the Director is a judicial officer, the remuneration must be on such conditions as are determined in terms of legislation dealing with the remuneration of judicial officers. 50

Finances and accountability

- 12.** (1) Expenditure in connection with the administration and functioning of the Institute must be defrayed from monies appropriated by Parliament for this purpose.

- (2) Monies appropriated by Parliament for this purpose—
 - (a) constitute earmarked funds on the Departmental vote; and
 - (b) may not be used by the Department for any other purpose, without the approval of the National Treasury;
- (3) The Institute may receive funds from donations, contributions or gifts and from other sources approved by the Council in accordance with National Treasury regulations. 5
- (4) Subject to the Public Finance Management Act, 1999, the Director-General—
 - (a) is charged with the responsibility of accounting for monies received or paid out for or on account of the administration and functioning of the Institute and for donations, contributions or gifts in accordance with National Treasury regulations; and 10
 - (b) must cause the necessary accounting and other related records to be kept, which records must be audited by the Auditor-General.
- (5) The Institute must utilise its funds to defray expenses incurred by it in the performance of its functions. 15
- (6) The Institute must utilise the donations, contributions or gifts to advance the objects of the Institute as contained in this Act or any other law.
- (7) The financial year of the Institute is the period of 1 April in any year to 31 March in the following year, except that the first financial year of the Institute begins on the date on which this Act comes into operation, and ends on 31 March of the following year. 20
- (8) The Institute may invest or deposit money that is not immediately required for contingencies or current expenditure—
 - (a) on a call account or short-term fixed deposit with any registered bank or financial institution in the Republic; or 25
 - (b) in an investment account with the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).
- (9) Within six months after the end of each financial year, the Director must prepare financial statements in accordance with established accounting practice, principles and procedures, comprising— 30
 - (a) a statement, with suitable and sufficient particulars, reflecting the income and expenditure of the Institute during the preceding financial year; and
 - (b) a balance sheet showing the state of its assets, liabilities and financial position as at the end of that financial year. 35
- (10) The Auditor-General must audit the financial statements of the Institute each year.

Remuneration of staff of Institute

- 13.** The Council may, with the concurrence of the Minister and after consultation with the Minister of Finance, determine the remuneration, allowances, benefits, and other terms and conditions of appointment of each member of staff. 40

Annual report

- 14.** (1) The Council must prepare and submit to the Minister an annual report in the form prescribed by the Minister within six months after the end of the Institute's financial year. 45
- (2) The annual report referred to in subsection (1) must include the following documents:
 - (a) The audited financial statements prepared in terms of this Act;
 - (b) the auditor's report prepared in terms of this Act;
 - (c) a report of the activities undertaken in terms of the Institute's functions set out in this Act; and 50
 - (d) a statement of the progress made during the preceding year towards achieving the objects of this Act.
- (3) The Minister must table in the National Assembly each annual report submitted in terms of this Act. 55

Guidelines

15. The Chief Justice may issue guidelines, with the concurrence of the Minister, in respect of any matter concerning the exercise of any power and the performance of any function of the Institute.

Remuneration of members of Council

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16. (1) No member of the Council, other than the members referred to in section 7(1)(n), may be remunerated for her or his services on the Council.

(2) Members may be reimbursed for their expenses incurred during their service as members of the Council.

Seal of Institute

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17. (1) The seal of the Institute must be determined by the Council with the concurrence of the Minister.

(2) The President must approve the seal of the Institute.

(3) The seal of the Institute must be published in the *Gazette* on approval by the President.

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Transitional provisions

18. (1) The Institute must commence with its training functions as from a date fixed by the Minister by notice in the *Gazette*.

(2) Before the date so fixed, the necessary arrangements must be made for the Institute to be accommodated, equipped and staffed in order to perform its functions properly.

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Short title and commencement

19. This Act is called the South African Judicial Education Institute Act, 2007, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN JUDICIAL EDUCATION INSTITUTE BILL

1. BACKGROUND TO AND OBJECTS OF BILL

- 1.1 Section 180(a) of the Constitution provides that national legislation may provide for training programmes for judicial officers. During September 2003 a committee set up some years before by a previous Minister of Justice under the auspices of the Canada-South Africa Linkage Project reported on current judicial education trends elsewhere in the world and made a number of recommendations for the development of judicial education in South Africa. Although the committee itself was broadly based and represented a spectrum of differing opinions and skills, it consulted an extremely wide array of persons, bodies and groups with an interest in or knowledge of judicial education, both in South Africa and abroad. The committee collated the responses, studied the theoretical basis and actual delivery of judicial education in many democratic societies and analysed the relationship between the education and the independence of judges. The conclusion was that the education and training of judicial officers in South Africa required urgent and fundamental adaptation.

The said committee's proposal that Justice College be converted into an independent statutory institution for this purpose was not implemented at that stage, but the predecessor of the current Bill, namely, the South African National Justice Training College Bill ("SANJTAC Bill") was drafted and discussed at a major Colloquium during April 2005, together with a package of other Bills affecting the judiciary. When the SANJTAC Bill proved not to be acceptable to the judiciary, the matters raised therein were referred for further consultation. The Advisory Committee on Judicial Education then put the matter on its agenda. This Advisory Committee was established by the Chief Justice to advise on judicial education. On it are represented judges, magistrates, the Judicial Service Commission, the Magistrates' Commission, the Justice Ministry, the Director-General: Justice and Constitutional Development, the General Council of the Bar of South Africa, the Law Society of South Africa, the National Prosecuting Authority, magistrates' organisations (JOASA, ARMSA and LCMC), the Justice College and the Society of Law Deans of South Africa. After several meetings of this Advisory Committee a draft Bill was decided upon and sent to the Minister for consideration. This draft Bill was subsequently adapted during the consultation process into the current Bill. It appears that all the role players are now satisfied with the Bill in its current form.

- 1.2 It is now being proposed that the South African Judicial Education Institute ("the Institute") be established as a juristic person with jurisdiction for the judicial education and training of judicial officers and aspiring judicial officers. The governance of the Institute will vest in the Council of the Institute which will consist of representatives of all interested parties and role players, as well as two persons from the public not involved in the administration of justice. The objects of the Bill can be summarised as follows: To establish the Institute as a juristic person in order—
- (a) to provide proper, appropriate and transformational judicial education and training, having due regard to both our inherited legacy and our new constitutional dispensation; and
 - (b) to offer judicial education and training to aspiring and newly appointed judicial officers as well as continued training for experienced judicial officers.

1.3 The Bill contains the following:

- (a) A long title: a short description of the purpose and contents of the Bill.
- (b) A preamble: setting out, *inter alia*, the value of, and need for, education and training in general and for members of the judiciary in particular, in promoting the independence, impartiality, dignity, accessibility and effectiveness of the courts.
- (c) Clause 1: definitions.
- (d) Clause 2: the objects of the Bill with special reference to the transformation of the judiciary and judicial accountability, in order to promote the values mentioned in section 1 of the Constitution.
- (e) Clause 3: the establishment of the Institute.
- (f) Clause 4: the seat of the Institute.
- (g) Clause 5: the functions of the Institute. Extensive powers are conferred on the Institute in order to empower it to realise the objects of the Bill. The Institute must further appoint a Director to head the Institute, a Registrar to head the administration of the Institute and an Operations Officer who must prepare and provide quarterly management reports to the Director-General.
- (h) Clause 6: the establishment of the Council of the Institute responsible for its governance.
- (i) Clause 7: the composition of the Council of the Institute. All interested parties are to be represented and due consideration must be given to demographic and gender representivity.
- (j) Clause 8: the meetings of the Council and proceedings thereat.
- (k) Clause 9: committees of the Council.
- (l) Clause 10: the powers and duties of the Council.
- (m) Clause 11: the appointment of the Director of the Institute.
- (n) Clause 12: the finances and accountability. Expenditure in connection with the administration and functioning of the Institute must be defrayed from monies appropriated by Parliament for this purpose to the Departmental vote. Such monies will constitute earmarked funds on the Departmental vote and may not be used by the Department for any other purpose, without approval of the National Treasury. The Institute may also receive donations and contributions from other sources approved by the Council in accordance with National Treasury regulations. The Director-General will, subject to the Public Finance Management Act, 1999, be responsible for accounting for monies received or paid out on account of the Institute, and must cause the necessary accounting and other related records to be kept, which must be audited by the Auditor-General. The usual financial statements must be prepared within six months of the end of each financial year, which must likewise be audited.
- (o) Clause 13: remuneration of the staff of the Institute. The Council may, with the concurrence of the Minister and after consultation with the Minister of Finance, determine the remuneration, allowances, benefits, and other terms and conditions of appointment of each member of staff.

- (p) Clause 14: annual report. Within six months of the end of each financial year, the Council must prepare and submit to the Minister an annual report in the form prescribed by the Minister. The audited financial statements, the auditor's report, a report of the activities undertaken and a statement of progress achieved during the preceding year towards the realisation of the objects of the Bill must accompany the report. The Minister must table in the National Assembly each annual report received.
- (q) Clause 15: guidelines. The Chief Justice may issue guidelines, with the concurrence of the Minister, in respect of any matter concerning the exercise of any power and the performance of any function of the Institute.
- (r) Clause 16: remuneration of members of the Council. Members of the Council may be reimbursed for their expenses incurred in their service as members, but not remunerated. The two members of the public may be remunerated for their service.
- (s) Clause 17: seal of the Institute. The seal of the Institute must be determined by the Council with the concurrence of the Minister. The President must approve the seal and it must be published in the *Gazette*.
- (t) Clause 18: transitional provisions. The Institute must commence with its training functions as from a date fixed by the Minister by notice in the *Gazette*. Before the date so fixed, the necessary arrangements must be made for the Institute to be accommodated, equipped and staffed in order to perform its functions properly.
- (u) Clause 19: short title and commencement.

2. DEPARTMENTS/BODIES/PERSONS CONSULTED

An exposition of the consultation process is given in paragraph 1.1.

3. IMPLICATIONS FOR PROVINCES

None.

4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The Bill will have organisational and personnel implications similar to those required in the establishment of a university. The proposed new institution will need lecturing as well as administrative and supporting staff, including a Director, a Registrar and an Operations Officer. The necessary arrangements will have to be made for the proposed Institute to be accommodated, equipped and staffed in order to perform its functions properly.

5. FINANCIAL IMPLICATIONS FOR STATE

There will be financial implications for the State which are not quantifiable at the moment. They will, however, be catered for by means of the annual budget vote of the Department.

6. COMMUNICATIONS IMPLICATIONS

Appropriate communication measures may be implemented by GCIS.

7. PARLIAMENTARY PROCEDURE

- 7.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the view that this Bill must be dealt with in accordance

with the procedure established by section 75 of the Constitution, since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies.

- 7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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