

**A CRITICAL ANALYSIS OF THE LEGAL FRAMEWORK OF THE RIGHT TO
REMAIN SILENT IN ZAMBIA**

**BY
ISABEL NAMPAKWA KAPOTWE
(11027690)**

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DEDICATION

I dedicate this dissertation to the memory of my late father and mother, Mr. Stephen Kapotwe and Mrs. Veronica Banda and also my late brother, Stephen Kapotwe. Your legacy lives on through me and I know that you would have been so proud that I have made it this far. I also dedicate this dissertation to my loving Grandmother, Mrs. Egness Phiri. If not for your great appreciation for education, I would not have made it this far. I work hard to see that proud look on your face.

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Lastly and most importantly, I thank Jehovah God for through him all things are possible.

ABSTRACT

This research assesses whether the legal framework of the right to remain silent is adequate in advancing the administration of justice in Zambia. This is achieved by examining the legal framework of the right to remain silent in Zambia both at the pre-trial and trial stages. The research assesses whether the right to remain silent at pre-trial and trial stages advances or suppresses the administration of justice in Zambia. This is due to the fact there is an ongoing debate on the right to remain silent. While others are of the view that it advances justice, others are of the view that it suppresses it. Most of the studies that have been carried out pertaining to the right to remain silent relate to foreign jurisdictions. Thus this research studies the efficacy of the right to remain silent under the Zambian context. This is done with a view of drawing a conclusion as to whether the legal framework on the right to remain silent is adequate in advancing the administration of justice in Zambia.

This research is qualitative and was conducted through interviews and collection of secondary sources. The research establishes that the right to remain silent in Zambia extends to the pre-trial stage. The research establishes that this right is provided for in the constitution, albeit implicitly. However, the only set of rules that recognize the right to remain silent in Zambia are the judges' rules. This leads to disregard of a suspect's right to remain silent by police officers as the judge's rules are merely rules of practice and have no binding force. Since the right is not expressly provided for in the constitution and in statutes that govern the arrest and detention of suspects, the legal framework on the right to remain silent at the pre-trial stage is not adequate in advancing the administration of justice in Zambia. This is because the right to remain silent is vital in protecting suspects from inhumane ways of extracting evidence by police officers. Thus the Zambian Constitution should be amended so that it expressly states that a person under police custody has the right to remain silent.

The right to remain silent at trial is expressly provided for in the constitution. The research establishes that the right to remain silent at trial advances the administration of justice in Zambia as it fairly balances the rights of the accused and society's interests to secure conviction of a guilty offender. Pertaining to the right to remain silent at trial, no reforms are necessary as it is fairly balanced. Thus the legal framework on the right to remain silent at trial is adequate in advancing the administration of justice in Zambia.

TABLE OF STATUTES

The Zambian Constitution, Act no.18 of 1996

Corrupt Practices Act, Chapter 91 of the laws of Zambia

Criminal Procedure Code, Chapter 88 of the laws of Zambia\

The United Nations International Covenant on Civil and Political Rights (1967)

TABLE OF CASES

Ashcraft v Tennessee 322 U.S. 143(1944)
Carter v. Kentucky, 101 S. Ct. 1112 (1981)
Chambers v Florida 1940, 309 U.S 227 (1940)
Charles Lukolongo and Others v The People (1986) Z.R.115
Chileshe v The (1997) Z.R 125
Colorado v. Connelly, 479 U.S. 157 (1986)
Haynes v Washington, 373 U.S. 503 (1963)
Illinois v Perkins 496 U.S. 292 (1990)
Mambwe v The People, (2014) SC 16
Miranda v Arizona 384 U.S. 436 (1966)
Muwowo v The People (1965) Z.R. 91
New York v Quarles 467 U.S. 649 (1984)
R v Voisin (1918) 1 KB 531
Rhode Island v Innis 446 US 291 1980
Salinas v Texas 570 U.S. 133(2013)
Saunders v United Kingdom (1996) ECHR 65
The people v Nyambe Musakanya (2012) HC 74
Thomas Mumba v The People (1984) Z.R.38
Tobias Kambenja v the people, (2014) S.C 22
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