

## CHAPTER SEVEN

### RENOVOI : SOME REFLECTIONS

The protection and promotion of human rights in the country cannot be complete without mentioning other agencies or institutions which are playing or are likely to play a significant role in the promotion and protection of human rights in Zambia. Some of these institutions like the Constitutional Court which is here being advocated will conceivably, were it to be established, be better placed to play a more effective role than the existing judicial institutions in the protection and promotion of human rights.

Other institutions such as the Permanent Human Rights Commission, the Commission for Investigations, the Electoral Commission and the Lands Tribunal which are already in existence are playing an important role in the area of human rights education and the promotion of human rights in general.

Apart from these state owned bodies there are many human rights Non-Governmental Organisations (NGOs) that have given themselves the task of creating human rights awareness, cultivating a culture of human rights, promoting and monitoring human rights violations.

## Section 1

### The Permanent Human Rights Commission

It is now common for democratic states to establish state institutions which support and strengthen democratic governance. One such institution is the Human Rights Commission which is intended to promote and protect respect for human rights.

In common with most modern democratic states, Zambia has now recognised that human rights issues cannot be left to the judiciary alone. Consequently, the Human Rights Commission was established in 1996 by an Act of Parliament<sup>1</sup>. The creation of such a supportive institution came after thirty two years of the birth of the Zambian Constitutional Bill of Rights in the Zambian Constitution. It took the Third Republic

to recognise the importance of exposing human rights violations in the country through an independent and autonomous state institution.

The newly elected Government of the Movement for Multi-Party Democracy (MMD) had showed a genuine desire to revisit the country's human rights record which hitherto appeared unsatisfactory. Consequently, the new Government appointed the Munyama Human Rights Commission of Inquiry in May, 1993<sup>2</sup>. It is safe to assume that the establishment of the Permanent Human Rights Commission in 1996 was mainly as result of the revelations of the Munyama Commission of Inquiry.

The Constitution provides for the establishment of a Human Rights Commission whose "functions, powers, composition, funding and administrative procedures, including employment of staff" are prescribed by an Act of Parliament<sup>3</sup>.

The selection and subsequent appointment of the Commissioners was the subject of much divergent opinion. Some critics opined that the majority of the Commissioners were selected on a partisan basis and not on merit.<sup>4</sup> A brief examination of the background of the Commissioners might

assist in determining whether or not such allegations were true or false.

Starting with the Chairperson. Judge Lombe Chibesakunda has undoubtedly distinguished herself in high judicial office. She was already High Court judge-in-charge at Ndola when she was appointed to Chair the Permanent Human Rights Commission<sup>5</sup>. She is now a member of the Supreme Court.

It is interesting, however, to note that Section 5 Subsection 3 of the Human Rights Commission Act provides that the Chairperson and the Vice-Chairperson shall be persons who have held, or are qualified to hold, high judicial office. On close examination, this provision appears to indicate that an incumbent holder of high judicial office such as Justice Chibesakunda may not be qualified for appointment as Chairperson or Vice-Chairperson of the Commission. The Section provides for those "who have held" and those "who are qualified" to hold high judicial office and not those who are already holding high judicial office.

Commissioner Lavu Mulimba has a long standing record of being a member of Parliament in the First and

Second Republics under the United National Independence Party (UNIP) until his retirement from politics just before he was appointed to the Commission. Some skeptics have attributed his appointment to the Commission as his reward for criticizing UNIP policies towards the end of his political career.<sup>6</sup>

Reverend Foston Sakala is a cleric but he is also famous for his connections with FODEP (Foundation for Democratic Process). Commissioner Francis Nsokolo is a former Resident Magistrate who wanted to stand on an MMD ticket for a Parliamentary bye-election in Chinsali before he was appointed to the Commission.

Commissioner Lewis Changufu was appointed to the Commission after the death of veteran politician, Dr. Dixon Konkola in December 1997. His appointment was received with mixed feelings in Parliament. Some MPs were concerned over his so-called advanced age (71 years). Others felt his appointment was meant to replace the deceased clansman. Some backbenchers in Parliament were particularly critical of Mr. Changufu's appointment as a Human Rights Commissioner.<sup>7</sup>

Commissioner Changufu held various senior positions in the First and Second Republics under UNIP but seemed to have severed his connections with UNIP when MMD came to power. Mr. Changufu was Minister of Home Affairs at the material time<sup>8</sup>. Commissioner John Sakulanda enjoys a quiet posture but he is known to be an MMD card-carrying member. He also served under the Munyama Human Rights Commission of Inquiry.

Three Commissioners are from the Northern or Bemba speaking group of Zambia, two are from the Eastern or Nyanja speaking group and one comes from the North-Western Province. All Commissioners are currently resident in Lusaka. Before his death, Commissioner Dr. Dixon Konkola was resident in Chililabombwe. Age-wise, four Commissioners are over 50 years old and two are below that age. With the exception of the Chairperson, they are all male. The Chairperson has however been quick to point out that the gender imbalance has been remedied by the infusion of more women in the Commission's Standing Committees. Commissioners are appointed for a term not exceeding three years but their tenure of office is renewable without limitation<sup>9</sup>. Since its establishment in May 1997 the Vice-Chairperson has not been appointed.

Any person appointed as a Commissioner may be removed by the President for inability to discharge the functions of his or her office, for infirmity of mind or body or for misbehaviour. It is obvious from the provisions of Section 7(2) of the Act that any Commissioner's security of tenure is the absolute prerogative of the President. The Chairperson's tenure is equally insecure because there is no provision for the appointment of an independent tribunal to inquire into a Commissioner's misbehaviour before being removed from office.

Under the provisions of Section 9, the Act empowers the Commission to investigate human rights violations, to investigate any maladministration of justice and to propose effective measures to prevent human rights abuses. The Commission is also empowered to visit prisons and places of detention in order to inspect and assess conditions of persons held therein and to make recommendations to redress any existing problems.

The Commission is also empowered to establish programmes for research, education, rehabilitation of victims of human rights abuse and to promote programmes for the

enhancement of respect for human rights and carry out such functions necessary for the promotion and protection of human rights in the country<sup>10</sup>.

The Commission is further empowered to investigate any human rights abuses on its own initiative or at the instigation of an aggrieved person or persons. It is vested with powers to issue summonses or orders requiring the attendance of any person or authority before it. It can question any person in respect of any matter under its investigation and it can order any person to disclose any information relevant to any matter under its investigation.

The Commission can recommend appropriate punishment against any officer found to have perpetrated human rights abuses. It can also recommend the release of any person from detention and payment of compensation to a victim's family. But the Commission has no powers to investigate a matter which is pending before a Court<sup>11</sup>. This is in accordance with the well-known principle of **sub-judice**; namely that the matter is in the course of a trial.

The Commission can investigate human rights abuses either on its own initiative or on receipt of a complaint by an



aggrieved person acting on his or her own behalf or on behalf of some other aggrieved person or group of persons. An association can also submit its complaint to the Commission on behalf of its members.<sup>12</sup> Such complaints can be made orally or in writing addressed to the Secretary. If the complaint is made orally, the Secretary must reduce it into writing which complaint shall then be signed or thumb-printed by the person making it. The complaint must bear the complainant's name and address.

The complaint must be filed within two years of the event from which it has arisen or two years from the date when the complaint or allegation became known to the complainant or his or her agent. The Commission is not compelled to investigate every complaint or allegation made before it. It can refuse to investigate any allegation on grounds that it is malicious, frivolous or vexatious. But if the Commission refuses to investigate an allegation, it must give its reasons in writing to the complainant.<sup>13</sup> Currently, there is no fee payable for lodging a complaint with the Commission. All sittings of the Commission must be held in public unless it is not necessary for it to do so for some compelling reasons.

Some critics have argued that the Commission is toothless because it has no powers to institute legal proceedings on behalf of any complainant. This is a valid criticism. Under the **sub-judice** principle, it has no power to intervene where an alleged violation of human rights is pending before a Court. It is not clear whether the Commission can entertain a complaint after proceedings in a court have been disposed of. The limitation of two years within which to lodge a complaint is also seen as a serious impediment to the prospective complainant bearing in mind the low level of education in the country and long distances which may be involved.

The Commission is not obliged to submit its findings of an investigation or to investigate at all within a specified period. Yet, when the Commission makes a recommendation to the "appropriate authority" that authority must submit its report to the Commission within thirty days from the date of such recommendation on what action the authority has taken to redress the violation.<sup>14</sup>

The Commission was recently criticized for referring labour related complaints to the Industrial Relations Court where there are Court fees payable when the Commission

itself could have dealt with the complaints without charging fees. Again, this is a valid criticism. Most of the indigent complainants had to abandon their complaints. Currently, the composition of the Commission itself lacks a broader representation by way of gender and cultural aspects of the country. It is still being perceived as an urban institution for the **apamwamba**<sup>15</sup>.

The Commission is obviously still experiencing some teething problems through being under-staffed and under-funded. It is still highly debatable as to whether or not it is operating effectively, but it cannot be denied that its establishment was a step in the right direction. Given the good-will of all stakeholders, it has the potential of developing into a national institution of vital importance in the development of human rights in the country.

## **Section 2:**

### **The Commission for Investigations**

The idea of establishing the Commission for Investigations in Zambia was considered during the advent of the one-party state in the Second Republic. The 1973

Constitution of Zambia under which the one-party state was established provided for the establishment of a Commission for Investigations which was vested with "jurisdiction to inquire into the conduct of any person to whom the Article applied in the exercise of his office or authority, or in abuse thereof"<sup>16</sup>

The Article in question applied to any person in the service of the Republic; any person holding office in the Party which meant the United National Independence Party (UNIP) members and persons in the service of any institution or organisation in which Government had a majority of shares or exercised financial or administrative control and members or persons in the service of any Commission established by the Constitution or by any Act of Parliament. But the Article did not apply to the President<sup>17</sup>. Neither did it apply to any ordinary member of the public. Essentially, the application of the Commission's provisions are of vertical nature. This means complaints can only be made against the state, its servants or agents or against quasi-state institutions. The return to plural politics and the delinking of the ruling party from the State has removed that provision of the Commission which referred to persons holding office in the ruling political party.

The Constitutional article also contained an **ouster clause** which provided that the Commission would have no power to question or review any decision of any court or any judicial officer in the exercise of his judicial functions, or any decision of a tribunal in the performance of its judicial functions or any matter which was **sub-judice** or the Presidential exercise of the prerogative of mercy.<sup>18</sup> Surprisingly, when the Act of Parliament was enacted to enable the Commission to perform its functions, a section was inserted which conferred powers on the Commission to exercise its jurisdiction despite any such ousters. The relevant Section in the 1974 Act which has been reproduced in the 1991 Commission for Investigations Act provides that:

Subject to the provisions of this Act, the jurisdiction and powers conferred on the Commission may be exercised notwithstanding any provision in any written law to the effect that an act or omission shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision shall be challenged, reviewed, quashed or called in question.<sup>19</sup>

In obvious contradiction to the above provision, both the 1974 and 1991 Acts contain exclusion of the Commission's

jurisdiction from questioning any decision of any court, or any judicial officer in the exercise of his or her judicial functions or questioning any decision of a tribunal established by law<sup>20</sup>

The Commission consists of an Investigator-General who is appointed by the President in consultation with the Judicial Service Commission as Chairman and three Commissioners appointed by the President without consulting the Judicial Service Commission. There is no provision for the appointment of the Investigator-General or Commissioners to be ratified by Parliament.<sup>21</sup>

Currently, a person appointed as a "Commissioner", which term does not include the Investigator-General, has a three year tenure of office which is not renewable within three years of his or her last ceasing as Commissioner.<sup>22</sup> The 1974, Act Cap 183 contained no such limitation. The President, Vice-President, Minister, Deputy Minister, Members of Parliament or a Public Officer do not qualify for appointment on the Commission<sup>24</sup>.

Once appointed as Investigator-General, a person may remain in that office until the age of sixty-five years. The President, can however, extend the period after the incumbent

has attained that age. There is more security of tenure in the office of the Investigator-General than in the office of the Chairperson for the Human Rights Commission in that the Investigator-General cannot be removed from office by the President unless the question of his or her removal has been referred to a tribunal consisting of a Chairperson and two other persons. The Chairperson and one other member of the tribunal must hold or have held high judicial office.<sup>25</sup>

A person can only be appointed to the office of Investigator-General if he or she is qualified to be appointed as a judge of the High Court.<sup>26</sup>

The Commission for Investigations is the Zambian nomenclature for the **Ombudsman** in other jurisdictions. However, the institution of an Ombudsman, like the Commission for Investigations in Zambia cannot replace the role of an independent judiciary in the enforcement of human rights in any country, but it has proved to have a certain value in complementing the judiciary.<sup>27</sup>

The Zambian Commission has jurisdiction to enquire into the conduct of any person to whom the Act applies.<sup>28</sup> In terms of Section 3 of the Act, its application is limited to:

- (a) any person in the service of the Republic;
- (b) the members and persons in the service of local authorities;
- (c) the members and persons in the service of any institution or organisation, whether established by or under an Act of Parliament or otherwise, in which the Government holds a majority of shares or exercises financial or administrative control;
- (d) the members or persons in the service of any Commission established by or under the Constitution or any Act of Parliament

The Commission does not investigate the President to whom it submits its reports.

A complaint to the Commission for alleged maladministration or abuse of authority can be made by any person or body of persons whether corporate or incorporate.<sup>29</sup> The President can also direct the Commission to investigate any alleged misconduct of any person covered by the Commission's jurisdiction.<sup>30</sup>



Like the Human Rights Commission a complaint to the Investigations Commission can be made orally or in writing. If made orally it must be reduced into writing by the Commission's Secretary. Upon receipt of a complaint, the Commission has discretion whether or not to conduct an investigation. Unlike the Human Rights Commission, the Commission for Investigations is not bound to give reasons for its decision not to proceed with any investigations<sup>31</sup>.

The actual procedure for conducting investigations is left to the Chairman, who is the Investigator-General to determine in the circumstances of each case. Every investigation must be conducted in camera<sup>32</sup> and no person is entitled as of right to appear in person or to be legally represented.<sup>33</sup> There is a two-year limitation period even though the Commission can decide to receive a complaint outside that period.<sup>34</sup> In practice, however, such extensions are rare.

The Commission cannot investigate a complaint if the complainant has the right or opportunity of obtaining redress through any executive authority or through an appeal, reference or review before a tribunal or court of law.<sup>35</sup> In special circumstances the Commission may investigate if the

complainant can prove the delay was due to fear, undue hardship, delay or expense.<sup>36</sup> But again, in practice, these elements are not easy to prove except, perhaps, for expenses.

It is submitted that openness in investigating human rights violations is in itself a human right. So are the rights to be heard and to be legally represented. It is equally a human right for the complainant to be given reasons why his or her complaint cannot be investigated or why the investigation is discontinued. The provision that the Commission need not give reasons for its refusal to investigate is, therefore, a violation of a complainant's human rights.

The Commission submits its reports to the President, who may or may not act upon its recommendations. If a Commission's report is required to be submitted to Parliament, then it should not identify any person whose conduct has been or is about to be made<sup>37</sup>. It is doubtful whether under such secretive investigative procedures efficiency and transparency among public officers can be enhanced or promoted.

Despite these shortcomings, it can be safely said that the Commission's establishment has contributed to the

promotion and protection of human rights. The Commission investigates cases of mal-administration which include abuse of office, tribalism, nepotism, victimisation, incompetence and unreasonable delay.<sup>38</sup> Although its jurisdiction is limited to Government offices, parastatal bodies and Commissions, there is no doubt that the Commission's role has contributed considerably towards minimising human rights abuses in the administrative system of the country. In addition, the Commission's work is contributing to the promotion of the rule of law. The Commission has very wide investigatory powers, including the power of access to confidential or secret information unless the President is of the view that production of such documents "would be injurious to the public interest".<sup>39</sup>

The Commission has powers to enter premises and it can make such orders or issue such writs or give directions as are necessary for the conduct of any investigation<sup>40</sup>.

### **Section 3**

#### **The Electoral Commission**

The right of the citizens to participate freely in the affairs of one's country either directly or through freely

chosen representatives is a human right. Both the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights have made provisions to this effect which bind state parties to the relevant treaties<sup>41</sup>. The right to vote is no doubt a human right.

The Constitution of Zambia provides for the establishment of an autonomous Electoral Commission to supervise the registration of voters and to conduct Presidential and Parliamentary elections. The Commission is also empowered to review Constituencies from which people are elected to Parliament<sup>42</sup>. The Commission has also been empowered under the Local Government Elections (Amendment) Act of 1997 to conduct Local Government elections.<sup>43</sup>

An Act of Parliament was enacted to provide for the composition, functions and operations of the Commission which is appointed by the President subject to ratification by Parliament.<sup>44</sup> The Commission consists of a Chairperson and not more than four other members. The Chairperson must be a person who has held or is qualified to hold high judicial office or "any other suitably qualified person".<sup>45</sup> This last provision which permits "any other suitably qualified person" to be

appointed to the office of Chairperson of the Electoral Commission is in contrast with the strict qualifications required for the office of Chairperson for the Human Rights Commission and for the Investigator-General where the qualification of "high judicial office" appears mandatory. The current Chairperson of the Commission Mr. Justice Bobby Bwalya is a judge of the High Court.

Members of the Commission, which includes the Chairperson, are appointed for a term not exceeding seven years. This period is renewable at the expiry of the said term of office. There is no limit to its renewability. Compare this provision with that contained in the Commission for Investigations Act where a Commissioner, which does not include the Investigator-General, does not qualify for re-appointment within three years of that Commissioner's ceasing to hold such office.<sup>46</sup>

The President can only remove a member of the Commission if that person "becomes insane or is declared to be of unsound mind or is declared bankrupt".<sup>47</sup> There is no provision for the removal of a member of the Electoral Commission for inability to discharge his or her functions arising out of any other cause than insanity or unsoundness of

mind. There is also no provision for the removal from office for incompetence or misbehaviour as contained in the Acts of the two previous Commissions discussed above.

The Commission is empowered to appoint a Director and other staff on such terms and condition of service as it may determine. The Director is the Chief Executive of the Commission and is responsible to the Commission for its management and administration.

The opposition parties have severely criticized the State over the appointments of the Commissioners. They have argued that the Commissioners were hand-picked, and that they lack autonomy which is enshrined in Article 76(1) of the Constitution.<sup>48</sup> The opposition parties have also accused the Commission of being a party to the perceived manipulation of voters registers through the infamous NIKUV Registers. This led to some opposition parties boycotting the 1996 Presidential and Parliamentary elections. The Supreme Court was reported as having observed that the Electoral Commission as well as opposition parties had contributed "to the mess in the 1996 Presidential and General Elections. The report was as a result of the Supreme Court's landmark judgment of 1996 on the Presidential and general election."<sup>49</sup>

Earlier, Mr. Sebastian Zulu, Secretary General of the United National Independence Party (UNIP), the largest opposition party in Parliament at the material time and Dr. Rodger Chongwe of the Liberal Progressive Front (LPF), had petitioned the High Court for an **Order of Certiorari** to quash the decision of the State to award the contract of the registration of voters to NIKUV an Israeli Company.

The Petitioners had submitted that there were rampant anomalies and malpractices perpetuated by the MMD in the exercise of the registration of voters. They further contended that many eligible voters were going to be disenfranchised as a result of the alleged anomalies.<sup>50</sup>

The High Court refused to grant the relief sought. On appeal to the Supreme Court, the apex Court ruled against the appellants, holding that their apprehension that many eligible voters may be disenfranchised was unfounded. The Supreme Court further held that there was no evidence to show that the MMD was involved in the alleged malpractices. The Court also held that there was no evidence of conspiracy to rig the election established against the two respondents. However, in a subsequent petition the Supreme Court held that there were

some discrepancies in the registration of voters under the NIKUV exercise.<sup>51</sup>

For accountability, the Commission is required to submit an annual report to the President concerning its activities and its financial affairs. The President then tables the report before Parliament. This procedure is in line with the provisions of the other two Commissions already discussed in this Chapter.

Currently, the Commission is facing great challenges in terms of its performance and credibility. Since its establishment it has been faced with voter-apathy and in the wake of the NIKUV affair its autonomy is still being doubted by many opposition political parties. After many years of the one-party electoral system, the Commission must develop and articulate its mission of supervising the registration of voters conducting Presidential, Parliamentary and local government elections with undoubted impartiality.

The Commission has a task of invoking public awareness of its activities especially in rural areas and among the less educated populace. The Chairperson's recently reported attempt to meet all stakeholders on the outcome of the



Commission's just ended voter's registration exercise is certainly a step in the right direction.<sup>52</sup> The Electoral Commission, like its sister Commission the HRC, is still under-funded and under-staffed.<sup>53</sup> Constitutionally, the Commission is an autonomous body with powers to conduct free and fair elections in the country.<sup>54</sup> However, its performance is seriously compromised because the State is currently the major financial provider.

#### **Section 4 The Lands Tribunal**

Article 17 of the Universal Declaration of Human Rights provides that every person has the right to own property alone or in association with others and that no one should be arbitrarily deprived of his or her property. Similarly, Article 14 of the African Charter on Human and People's Rights guarantees the right to property which may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of "appropriate law."

In conformity with these international instruments, the Constitution of Zambia provides for the protection of individuals from deprivation of their property unless

adequate compensation is paid in accordance with appropriate law<sup>55</sup>. In line with this Constitutional provision the Lands Tribunal has been established under the Lands Act<sup>56</sup>.

To the African, land issues are of particular significance in that the dominant concept is that of communal ownership and therefore, many ethnic groups in Zambia are exceptionally sensitive over land rights. What Lord Hailey wrote nearly fifty years ago about the "mystic bond" of the African over land rights is still true in Zambia to-day<sup>57</sup>.

The current Tribunal consists of a Chairperson, who is qualified to be appointed as a judge of the High Court; a Deputy Chairperson who is similarly qualified and five other members, making a total of seven. The full Tribunal should consist of a total membership of nine. Members of the Tribunal are appointed by the Minister of Lands in consultation with the Judicial Service Commission on such terms and conditions as may be stated in their respective letters of appointment<sup>58</sup>.

The Tribunal is also empowered to appoint persons with experience in Land, Agricultural and Commercial matters as assessors to assist in determining disputes under its

jurisdiction. Although the Tribunal is appointed by the Minister of Lands, the Secretarial and Accounting staff are provided by the Ministry of Legal Affairs<sup>59</sup>.

The Tribunal is empowered to enquire into land disputes and make awards or compensation if necessary. It can enquire into land rights and obligations of any person or the State itself.<sup>60</sup> Its proceedings are informal and it is not bound by the rules of evidence which are normally applied in civil proceedings. The Tribunal, however, enjoys the status of a High Court in that appeals therefrom lie to the Supreme Court. Such appeals must be made within thirty days of the Tribunal's ruling<sup>61</sup>.

The Tribunal appears to enjoy some popularity judging by the growing number of people opting to take disputes before it rather than go to ordinary courts. A person appearing before the Tribunal can do so in person or through a legal representative<sup>62</sup>.

The Tribunal, is however, currently severely under-funded and under-staffed. It has no full time staff and depends on borrowed staff from the Ministry of Legal Affairs and the Judiciary. There is an inherent conflict of interests

between the Tribunal and the appointing authority who is the Minister of Lands. This arises from the fact that most disputes over land rights and obligations involve the Ministry of Lands in one way or another. In a recent interview with the writer, the Chairperson intimated that this anomaly was likely to be cured in the very near future when the Tribunal will be made autonomous and independent.<sup>63</sup>

The other constraint over the Tribunal's operations relates to the quorum at its sittings. The current Act provides for five members to constitute a quorum at such sittings. The Chairperson's experience shows that the quorum is on the high side and it inhibits the expeditious operation of the Tribunal. It has been suggested that a quorum of three members would promote speed and efficiency in the Tribunal's operations.

## **Section 5 The Anti-Corruption Commission**

It is an acknowledged fact that corruption exists in all societies but it has a much more devastating effect on emerging democracies than it has on mature democracies. The social and economic infrastructures of mature democracies tend to have an insulating effect on the social

and economic evils of corruption. As for human rights corruption has a negative impact on the rights of the individual in society especially in the criminal justice system. It negatively affects the right of access to justice. In **The Road to Justice**, Lord Denning (then Sir Alfred Denning) describes how corruption and bribery impeded access to justice in the English criminal justice system.<sup>64</sup>

As early as the 1980s, Zambia recognised that corruption was a social and economic evil which needed to be seriously addressed. It thus enacted the Corrupt Practices Act No. 14 of 1980 under which the Anti-Corruption Commission was established<sup>65</sup>. The Commission was a Government Department under the control and supervision of the President<sup>66</sup>.

The Commission was empowered, inter alia, to take necessary measures for the prevention of corruption in public and private bodies<sup>67</sup>. The President appointed the Commissioner who was qualified to be appointed a judge of the High Court. The Commissioner was responsible for the administration of the Commission. The President was also empowered to appoint a Deputy Commissioner who was also qualified to be appointed a judge of the High Court.<sup>68</sup> The

Commissioner was empowered to appoint investigating officers and such other officers as the President may deem necessary to assist the Commissioner in the performance of his functions.<sup>69</sup>

In 1996 the MMD Government re-visited the operations of the Anti-Corruption Commission and concluded that it needed a reappraisal. Consequently, the Corrupt Practices Act of 1980 was repealed and replaced by the Anti-Corruption Act No. 42 of that year. The new Commission was established as a body corporate capable of suing and being sued in its corporate name.<sup>70</sup>

The Commission is now an autonomous and independent body and not subject to the directions or control of any person or authority<sup>71</sup>. The functions of the new Commission are broadly the same as those of the 1980 Commission, namely to prevent and take necessary and effective measures for the prevention of corruption in public and private bodies.

The President is empowered to appoint the Commissioners subject to ratification by the National Assembly. Commissioners hold office for a term of three years.

A Commissioner can be removed by the President for good cause. The Commission is empowered to establish Committees for the purpose of enhancing the performance of its functions.

The Commission can investigate the conduct of any public officer but it may refuse to conduct an investigation if, in its opinion, the allegation is frivolous, trivial or vexatious. In any investigation, the Commission is empowered to make such orders and give such direction as it may consider necessary for the purpose of carrying out any investigation.

Since its inception, one major criticism of this institution is that its reports are subjected to severe restriction by the Head of State. On a number of occasions, public concern has been expressed to the effect that when corrupt practices have been investigated involving people holding high office in the Government or other public institutions, the results of such investigations are often kept secret.<sup>72</sup>

Commenting on the work of the Commission and its statistics for the years 1992-96, Mrs Eva Jhala, Permanent Secretary at the Ministry of Legal Affairs, observed that current figures on corruption in the country suggest a rise of

this social evil presumably because there is now a free media which is exposing such issues.<sup>73</sup>

## **Section 6 Non-Governmental Organisations(NGOs)**

Non-Governmental Organisations with a particular focus on the protection and promotion of human rights in the world have increased in number and importance since the Universal Declaration of Human Rights was proclaimed and adopted in 1948. But before that the International League for Human Rights was already established in 1942 in New York with a similar vision.<sup>74</sup>

After 1948 the world experienced a proliferation of human rights non-governmental organisations at both international and local levels. At the international level are such NGO as the Geneva based **International Commission of Jurists(ICJ)** with over seventy national sections all over the world; **the International Committee of the Red Cross** and the London based **Amnesty International**.

In Zambia, however, it was not until the advent of plural politics in the 1990s that the country began to experience a similar proliferation of Non-Governmental



Organisations and independent media determined to expose human rights violations.

Among the most prominent NGOs in the country are the **Foundation for Democratic Process (FODEP)** the **Zambia Civic Education Association** established by the late Lucy Banda Sichone; the **Inter-Africa Network for Human Rights and Development (Aironet)** the **Zambia Independent Monitoring Team (ZIMT)** the **Catholic Commission for Justice and Peace (CCJP)** **Women for Change** the **Legal Resources Foundation** the **Law Association of Zambia (LAZ)** **Young Women's Christian Association (YWCA)** **People Act Foundation (PAF)** and the **Girl Guides Association of Zambia**, which has a bias towards the girl-child in its operations.

Churches in general have also been in the fore front in promoting and protecting human rights. Some of these NGOs run legal aid clinics which greatly supplement the meagre services of the Legal Aid Department. Among them are the **Law Association of Zambia**, the **Legal Resources Foundation**, the **CCJP** and the **Zambia Civic Education Association**. The role of the independent press and media has also been extremely

significant in complementing the operations of these Non Governmental Organisations.

Unfortunately some of these NGOs are being perceived as avenues for propagating hidden political agenda and most of them tend to concentrate their activities in urban areas especially in Lusaka.

## Section 7:

### The Quest for a Constitutional Court

The Constitution of Zambia is the supreme law of the land. In it however is enshrined the Bill of Rights which is not merely a declaratory document but which also contains justiciable human rights issues. The powers of interpretation, protection and enforcement of the provisions of the Bill of Rights, as has already been discussed, are vested in the High Court which is the Court of first instance over alleged human rights violations.<sup>75</sup>

A Constitutional Court is a specialised court whose jurisdiction is often centred on the interpretation, protection or enforcement of the provisions of a State's constitution. The

older jurisdictions, such as those of England and America consider that the inherent powers of ordinary Courts through the process of **judicial review or habeas corpus** are sufficient and strong enough to provide checks and balances that may be occasioned through abuse of authority by the state or its agents.<sup>76</sup>

In nascent jurisdictions, however, reliance has not only been placed on judicial review as a method of testing the constitutionality of national statutes. They have also resorted to the establishment of specialist courts to deal with constitutional matters as well as human rights issues whose dimensions have now become internationalised. In interpreting any bill of rights, courts can hardly avoid applying comparative jurisprudence in addition to the provisions of the national or domestic legal systems.

The increasing awareness of human rights issues and their growing complexity has necessitated the creation of these specialist courts. In South Africa, the Constitutional Court is vested with jurisdiction over constitutional matters which include alleged violations or threatened violations of the provisions of the Bill of Rights which are contained in Chapter 2 of that country's Constitution.<sup>77</sup> The Court has both original

9th October 1998. The Conferees unanimously recommended the establishment of a Constitutional Court in Zambia.

The Mvunga Constitution Commission of 1991 received submissions from people who strongly felt that a Constitutional Court was necessary in order to maintain and enhance a proper system of checks and balances among the three main organs of the State. The Petitioners felt that such checks and balances were particularly required with regard to Constitutional issues and fundamental rights and freedoms of the individual.<sup>81</sup> Earlier, the then President of the Republic Dr. Kenneth Kaunda, had hinted on the need for establishing a Constitutional Court "in order that neither Parliament nor the Executive could abuse its powers".<sup>82</sup> The Kaunda Government accepted the recommendation of the Mvunga Commission for the establishment of a Constitutional Court, however, the MMD Government was opposed to this recommendation and it was not included in the 1991 Constitution.

In 1995 the Mwanakatwe Constitutional Review Commission also recommended the establishment of a Constitutional Court under the Judicature. The MMD Government did not accept the recommendation for reasons which are discussed below.<sup>83</sup>

There are strong arguments both for and against the establishment of a Constitutional Court. The current judiciary is fraught with inordinate delays in the disposition of cases or delivery of judgments. Human rights issues have become more complex than ever before. Their interpretation and enforcement require an informed and specialist judicial personnel operating within an effective judicial mechanism. Current delays in delivering judgments could partly be attributed to heavy work loads and partly to the incompetence of some of the deliverers.<sup>84</sup>

Although the recommendation of the Mvunga Commission for the establishment of a Constitutional Court was accepted by the the Kaunda Government, the new MMD Government was of the view that the volume of work which the proposed Constitutional Court would handle was already being adequately dealt with by the High Court. It was also felt that a proliferation of Courts would overstretch the meager resources of the State.<sup>85</sup>

Currently, there is no divisional Court of the High Court which specifically deals with human rights issues or constitutional matters. The original jurisdiction is still vested

in the High Court before a single judge. A divisional Court of the High Court with three judges as a quorum only deals with election petitions. It is submitted that speed and finality are key issues in the effective adjudication of constitutional and human rights issues. These should never be sacrificed even in the face of meager financial and human resources.

### **Conclusion**

The role of various institutions in the promotion, protection and even enforcement of human rights in Zambia is as crucial as that played by the judiciary. It is virtually pointless to have an entrenched bill of rights and accede to international human rights instruments if a human rights culture is not developed through institutions other than the judiciary. Only when these other institutions become effective organs in the promotion and protection of human rights will such rights be truly enjoyed by the ordinary citizenry.

## CHAPTER SEVEN

### End Notes

1. See Act No. 39 of 1996. The Commission became effective on 17th May 1997 when the Human Rights Commission (Commencement) Order was passed under Statutory Instrument No. 34 of 1997. The Commissioners were appointed and then the Commission became operational under the Chair of a Supreme Court Judge, Madam Justice Lombe Chibesakunda. Until her appointment to the Commission's Chair she was High Court Judge-in-charge at Ndola.
2. The President appointed the Munyama Human Rights Commission of Inquiry under Statutory Instrument No. 70 of 1993.
3. See Part XII of the Constitution, Articles 125 and 126.
4. **The Post**, Monday, 21st July, 1997, p 10.

5. Incidentally, the Act refers to the **Human Rights Commission** but in its correspondence the Commission refers to itself as the **Permanent Human Rights Commission**.
6. **The Post**, Friday, September 18, 1998 at pp 1 and 6, entitled 'Mulimba lobbies to become Speaker' and see the editorial at p. 10.
7. **Times of Zambia**, Friday April 3 1998 at p. 1 entitled 'Backbenchers reject Changufu'.
8. **Dr. Remmy Mushota and Patrick Katyoka v. The Attorney-Genral and Dr. Kenneth Kaunda :** 1997/HN/359. Amazingly, Mr. Justice Chalendo Sakala has declared the former President a stateless person.
9. See section 7(1) of Act No. 39 of 1996.
10. Ibid, section 9.
11. Ibid, section 10(5).



- 12 Ibid, section 10(1)(a)(b).
- 13 Ibid, section 10(5).
- 14 Ibid, section 13(2).
- 15 **Apamwamba** is a Nyanja word meaning the well-to-do people.
- 16 Article 117(7) of the Constitution of Zambia 1973
- 17 Ibid, Article 117(4).
- 18 Ibid, Article 117(5) as read with section 7(2) of Chapter 183 of the then Laws of Zambia now Section 11 of Act No. 20 of 1991.
- 19 See section 10 of Chapter 183, now Section 11 of Act No. 20 of 1991.
- 20 See section 3(2) of Act No. 20 of 1991.  
See also Section 7(2) of Cap. 183 of 1974.

- 21 See Article 90 of the Constitution of Zambia as read with section 4(1) of Act No. 20 of 1991.
- 22 Act No. 20 of 1991, section 5(2).
- 23 Cap 183.
- 24 Ibid, section 5(1).
- 25 See Article 90(5)(6)(7) of the Constitution of Zambia.
- 26 The Constitution of Zambia Article 90(2)(a).
- 27 See Footnote 71 in **South African Constitutional Law** by Professors Basson and Viljoen, Juta & Co. Ltd, Cape Town 1988 at p. 235
- 28 Act No. 20 of 1991, section 8.
- 29 Ibid, section 9.
- 30 Ibid, section 8(a).

31 See section 10(3) of the **Commission for Investigations Act No 20 of 1991** and compare that with Section 11(5) of the **Human Rights Commission Act No, 39 of 1996** which compels the Commission to give reasons if it decides not to conduct an investigation.

32 The **Commission for Investigations**, Act No. 20 of 1997, section 16.

33 Ibid, section 17(2).

34 Ibid, section 9(4).

35 Ibid, section 10(1).

36 Ibid.

37 Ibid, sections 21(3) and 22(2).

38. Sakala E.L., 'The Role of the Commission for Investigations in Law Development in Zambia', a paper presented to a Seminar on Law Development in Zambia held at the Savoy Hotel, Ndola, 14th January 1989 and chaired by this writer.
39. section 14, Act 20 of 1991, *supra* note 32.
40. *Ibid*, section 12.
41. See Article 21 of the Universal Declaration of Human Rights and Article 13(1) of the African Charter on Human and People's Rights.
42. **The Constitution of Zambia**, Article 76(1).
43. Act No.17 of 1997
44. See Article 76(2) of the Constitution as read with section 4(3) of the Electoral Commission Act No. 24 of 1996.

- 45 Section 4(4) of the Electoral Commission Act No. 2 of 1991.
- 46 **Commission for Investigations Act No. 20 of 1991.**  
Section 5(2).
- 47 The Electoral Commission Act, Section 5(3) a) b)
- 48 **The Times of Zambia**, Wednesday,  
November 11, 1998 at p. 1.
- 49 **Akashambatwa Mbikusita Lewanika and 4**  
**Others v. Frederick Jacob Titus Chiluba,**  
Supreme Court Judgment No. 14 of 1998
- 50 **Sebastian Saizi Zulu and Rodger Masauso Alivas**  
**Chongwe v. Attorney General and NIKUV**  
**Computers** SCZ No. 8/75/of 1996 (unreported)
- 51 Akashambatwa Mbikusita, *supra* note 49, pp77 et seq.

- 52     **Times of Zambia**, Saturday, December 5 1998, p. 1  
entitled 'Nikuv dumped'.
- 53     This was confirmed in March, 1999 by the Director at  
the Commission in a telephone conversation with  
the writer.
- 54     Article 76(1) of the Constitution.
- 55     See Article 16 of the Constitution.
- 56     **The Lands Act No, 29 of 1995**, Section 20.
- 57     Lord Hailey, **An African Survey: A Study of  
Problems Arising in Africa South of the  
Sahara**. Oxford University Press, London 1957, p  
685 et seq.
- 58     **The Lands Act** Section 20(2)(3"4).
- 59     Ibid, section 28.
- 60     Ibid, section 22.

61 Ibid, section 29.

62 In an interview outside St. Andrew Church (UCZ) in Ndola sometime in January, 1999, the current Chairperson of the Tribunal, Mr. Lloyd Siame, a prominent Ndola lawyer, confirmed that the number of persons appearing before the Tribunal has more than doubled since its establishment just over two years ago.

63 Ibid, during the same interview, Mr. Siame indicated that the establishment of an independent and autonomous Land Tribunal was already accepted in principle by the Government.

64. Sir Alfred Denning, **The Road to Justice**

Steven & Sons Ltd, London, 1955, Chapter 2

'The Just Judge' See also Lord Denning's

**Landmarks in the Law** Butterworths,

London, 1984. at pp 44-45.

re: Awbrey's and Egerton's Cases on corruption and bribery.

- 65     **Corrupt Practices Act**, No. 14 of 1980 Section 4(1).
- 66     Ibid, section 4(2).
- 67     Ibid, section 10(1)(a).
- 68     Ibid, section 5(1) and 7.
- 69     Ibid, section 9.
- 70     **The Anti-Corruption Commission Act** No. 42 of  
         1996, section 4.
- 71     Ibid, section 5.
- 72     See, for example, the accusations against Mr. Ephraim  
         Chibwe, a former Minister of Works and Supply  
         who was alleged to have failed to account for  
         three million rand for the purchase of State House  
         furniture in 1992 - vide **Parliamentary**



**Debates** No. 91 of the 1st Session of the National Assembly, 16th June - 9th July 1992. See also the manner in which the Corruption issue was handled against Mr. Michael Sata when he was Minister of Local Government and Housing by the Anti-Corruption Commission and the Director of Public Prosecutions. Full details of the Sata story can be found in **Michael Chilufya Sata v. Post Newspapers Limited** 1992 /HP/1395 and 1804 and 1993/HP/821 (unreported) pages 40 -41.

- 73 Mrs. Jhala was addressing a Workshop on 'Accountability and Transparency in Governance' at the Pamodzi Hotel, Lusaka on April 21, 1998.
- 74 Shivji, Issa G. **The Concept of Human Rights in Africa**, Codesria Books Series, London 1989, p 34.
- 75 **The Constitution of Zambia**, Article 28 (1).
- 76 See, for example the American case of **Marbury v. Madison** Crauch 137 (US 1803) which concerned a constitutional right of William Marbury and

others in the district of Columbia in Washington Chief Justice John Marshall created an innovation when he opined that "judicial review was part of the legal spirit" of the American Constitution.

- 77 **Constitution of the Republic of South Africa**, 1996, Chapter 2 as read with Chapter 8 thereof
- 78 Ibid, section 167(1)(2).
- 79 Cotran, Eugene and Sherif, Add Omar (eds), **The Role of the Judiciary in the Protection of Human Rights**, Kluwer Law International, 1997 - Preface at page xii paragraph.1.
- 80 Anyangwe, C., **The Camerounian Judicial System**, Publishing and Production Centre Teaching and Research, Yaounde, 1987 p.206.
- 81 See, for example, the **The Mvunga Constitutional Commission Report**, April 1991 p 152 para 6
- 82 Ibid, p. 152.

83 See **Government White Paper** No 1 of 1995,

pp 75-76

84 Parliamentary Petitions appear to be the subject of inordinate delays. The Mkaika Constituency Petition in the Eastern Province and the Samuel Miyanda Case in the Matero Constituency of Lusaka Province are but a few examples. See **Josephat Mlewa v. Eric Wightman**, Supreme Court Judgment No. 1 of 1996 and **Samuel Miyanda v. Raymond Handahu** SCJ No. 6 of 1994, both unreported.

85 Supra note 81.

## CHAPTER EIGHT

### SUMMARY AND CONCLUSION

#### 1. Summary:

The main focus of this study has been on the role which the judiciary plays in the enforcement and protection of human rights in Zambia. It is now common experience that the judiciary in any modern legal system plays a pivotal role in the promotion, protection, and enforcement of human rights wherever a system of democratic governance exists.

During her pre-colonial days, Zambia had its own indigenous judicial system which administered justice while concepts of human rights were already established. The coming of colonial rule ushered in a European justice system which operated side by side with the indigenous legal system. This created what is commonly known as **legal dualism**.

Upon attaining independence from its colonial rulers, Zambia adopted a Constitution which provided for a Bill of Rights and which guaranteed the protection and enforcement of fundamental human rights. In addition, the country joined the United Nations Organisation which, among its objectives requires State parties to observe and apply international human rights norms wherever possible in their domestic justice systems. The Universal Declaration of Human Rights has been the driving force in the dissemination of the concept of human rights as a basic pre-requisite to democratic governance. The judiciary is undoubtedly the foundation upon which any meaningful enjoyment of human rights can be sustained.

Chapter One discusses and examines the emergence of human rights in domestic legislation. It also examines the internationalisation of human rights norms or standards on the domestic application of these standards. So, in tracing the development of human rights in the world, it has been shown that the theory of **natural rights** and **natural law** has played a very significant role in the promotion and protection of these rights. The Chapter traces the role which other theories such as **positivism** and the **Social**

**Contract** played in the early development of human rights. Historically, the struggle for individual liberties and rights started with the **Magna Carta** in England in the 13th Century. The impetus then moved to America and France in the 18th century. The growth of the human rights movement throughout the world has not spared Zambia which is a signatory to both the Universal Declaration of Human Rights and the African Charter on Human and People's Rights. The Chapter concludes that the Universal Declaration of Human Rights has given a universal value to the concept of human rights which greatly influenced Zambia in its formulation of the Bill of Rights.

Chapter two surveys broadly, the state of human rights in pre-colonial and colonial Zambia. It discusses the role played by both the indigenous and colonial Courts in protecting and enforcing human rights of the day. The Chapter concludes that in pre-colonial Zambia indigenous justice systems were based on tribal or ethnic systems which recognised concepts of human rights such as the right to life, the right to justice, the right to fair trial and the right to freedom of expression. The advent of colonialism introduced **legal dualism** which encouraged the administration of justice based on race or colour. This resulted in the

subordination of the indigenous justice system to the imported European system thereby whittling away the indigenous legal and judicial system.<sup>1</sup>

Chapter three considers the legal framework of the human rights provisions under the Bill of Rights in the Zambian Constitution. It discusses the meaning of a "Bill of Rights" and how the standards set by the world body have been incorporated into the Zambian Constitution. The Chapter analyses and critically examines the effect of **derogations** or **exception clauses** which are contained in the Bill of Rights. The Chapter also examines the enforcement provisions under the Bill of Rights and the role the Courts play in redressing any violation or alleged violation of fundamental human rights by the State. The Chapter concludes that the provisions of the Bill of Rights under Part III of the Constitution are largely of cosmetic value due to numerous **derogations** which have tended to water down the spirit and intent of the Universal Declaration of Human Rights as read with the 1966 International Human Rights Covenants.<sup>2</sup>

Chapter Four analyses the role which the Judiciary has played in the promotion and enforcement of human rights. It

examines the extent to which the Courts are prepared to uphold fundamental rights and freedoms enshrined in the Constitution in the face of a very powerful Executive government. The Chapter further examines the manner in which Zambian Courts apply international human rights standards in their domestic adjudication. The Chapter concludes that the pivotal role of the judiciary in the implementation and interpretation of human rights in Zambia has not been easy to play, especially during states of emergency. Most judges are still largely timid and most of them, even at the Supreme Court level, have not kept abreast with international human rights norms<sup>3</sup>

Chapter Five discusses the independence of the judiciary and the concept of the separation of powers under the Zambian Constitution. The Chapter examines other factors which contribute to the independence of the judiciary such as the method of appointing judges, their qualifications, general conditions of service, and security of tenure.

The Chapter concludes that on paper, Zambia has indeed put in place the minimum accepted international standards for the independence and autonomy of the judiciary.<sup>4</sup> But in practice the separation of powers between



the judiciary on the one hand and the Executive and the Legislature on the other is still largely mythical. Although conditions of service for senior personnel in the judiciary have recently been improved, conditions for those in the lower echelon are still far from being satisfactory. The Chapter further concludes that a few judges are now beginning to show their assertiveness even where politically sensitive issues are concerned.<sup>5</sup> But generally the courts are still tepid in terms of judicial activism.

In Chapter Six, discussion centres on **access** to justice as a human right. The Chapter examines those aspects of the justice system relating to access to justice in both civil and criminal matters. It is argued that access to justice is an important ingredient to the enjoyment of human rights. The Chapter then examines the international and regional instruments relating to access to justice in as far as Zambia is a State party to some of those instruments. It is noticed that all human rights instruments at international, regional and domestic levels contain provisions for guaranteeing access to justice but for Zambia such access as there is, is not easily available for various reasons such as economic, political, education or even social attitudes.

The Chapter concludes that human rights litigation in Zambia is still too technical, too cumbersome and too expensive especially for the indigent litigant and rural dwellers.

Chapter Seven examines the role which other institutions play in the protection and promotion of human rights. It is recognised that human rights issues cannot be left to the Judiciary or Courts alone. Other human rights institutions such as the recently created Human Rights Commission, the Commission for Investigation (the Zambian version of the Ombudsman), Lands Tribunal and the Electoral Commission and, indeed the numerous NGOs, all have an equally important role to play.

## **2. Suggested Areas of Intervention.**

It is obvious from this study that there are a number of areas in the sphere of human rights and the role of the judiciary in Zambia which require special focus and prioritisation.

First and foremost, the promotion and protection of human rights in the country will not flourish unless and until a **culture** of democratic governance and tolerance of divergent view is created and nurtured.

Secondly, an immediate re-visit of the Bill of Rights is absolutely necessary if the country is to keep abreast of international human rights developments. The current Bill of Rights, which was enshrined in the 1964 Constitution is still a product of the first generation of human rights and is based mainly on Civil and Political Rights and freedoms of the individual. These rights are full of derogations or exception clauses.<sup>6</sup>

Thirdly, it is imperative for Zambia to domesticate those international human rights instruments to which it is a state party and which have not yet been incorporated into national legislation.

Fourthly, the current Constitution provides that if any person alleges that any of his/her rights and freedoms have been, are been or are likely to be violated then that person must seek redress in the High Court.<sup>7</sup> It is submitted that in view of the omnipresence of human rights throughout various

societal strata, human rights litigation should start at the lowest stratum in the judicial hierarchy of the country, namely, the Local Courts, which are heavily involved in the adjudication of numerous human rights issues especially those affecting women and children.

Fifthly, if the independence of the judiciary is to be truly meaningful, the concept of the separation of powers should be genuinely adhered to by the Executive and the Legislature. Currently, these two organs of the State are enjoying an extremely domineering role over the judiciary. 5

Sixthly, as a further means, of enhancing the independence of the judiciary, judicial personnel from top to bottom should be exposed to more judicial colloquia, workshops or seminars on current issues of the domestic application of international human rights norms. The Post-graduate Diploma Course in Human Rights at the University of Zambia, School of Law, should be fully utilised by the Judiciary.

Seventhly, the state and other human rights stakeholders should devise methods of reducing or minimising the cost of litigation in the country especially for the indigent

litigants by providing **legal aid** and encouraging **pro-bono** services.

Eighthly, it is submitted that the establishment of a **Constitutional Court** which could play a **specialist** role in the enforcement of human rights in the country should be seriously considered. Neighbouring South Africa, for example, has already successfully established such a Court.<sup>9</sup>

Ninthly, the Permanent Human Rights Commission and other statutory Commissions involved in Human Rights issues should be given sufficient legal teeth to make them effective in their operations. The functions and composition of the PHRC in particular should be re-drafted and expanded. It should also be adequately funded.

Lastly, although the judiciary has a long way to go in its role in the enforcement of human rights in the country, there is a silver lining in the sky. A few judges have begun to show signs of judicial activism in terms of international standards as shown in some cited cases in this study.

## Chapter Eight

### End Notes

1. Anyangwe. C., 'The Whittling Away of African Indigenous Legal and Judicial System', **Zambia Law Journal**, Special Edition, 1988p. 46 et.seq.
2. **The International Covenant on Civil and Political Rights (ICCPR) and The International Covenant on Economic, Social and Cultural Rights (ICESCR).**
3. See, for example the obiter dicta of Mr. Justice Kabazo Chanda in **Alfred Mthakathi Zulu v. The Attorney General** 1992/HP/2225 (unreported) in which the learned trial judge opined that the action of the police in suddenly changing the venue for the student's rally did not violate the students human rights. See also Mr. Justice David Lewanika's observation in **The People v. Christine Mulundika and Seven others,**

HPR/11/95, to the effect that if the accused persons were allowed to hold rallies without a police permit a state of anarchy would prevail in the country. On appeal to the Supreme Court, Mr. Justice Chaila in his dissension took a similar view to that of Mr. Justice Lewanika - Supreme Court Judgement No. 25 of 1995 (unreported)

4. Article 91 of the Constitution as read with the Judicature Administration Act No. 42 of 1994.
5. See the majority view of the Supreme Court in **Christine Mulundika's** case, supra note 3.
6. See Part III of the Constitution of Zambia.
7. See Article 28 of the Constitution.
8. See Government's reaction as reported in **The Post**, 26 January, 1996 p3 about the Public Order Act saga in **Christine Mulundika and 7 Others v The People**, Supreme Court Judgement No. 25 of 1995 /HPR/11/95 unreported.
9. The Constitution of South Africa, Chapter 8 Section 167.

## TABLE OF CASES

**Akashambatwa Mbikusita Lewanika and 4 Others v.  
Fredrick Jacob Titus Chiluba**, SCZ Judgment No. 14  
of 1998 (unreported)

**Alfred M'thakati Zulu v. The Attorney-General**,  
Supreme Court Judgment No. 5 of 1994 (unreported)

**Andreas Sachariah Shipanga v. Attorney-General**,  
(1976) ZR 224

**Arthur Lubinda Wina and Six Others v. Attorney-  
General** 1990/HP/1511 (unreported)

**Attorney-General v. Kapwepwe**, (1974) ZR 207.

**Attorney-General v. Thixton**, (1967) ZR 10.

**Attorney-General v. Valentine Shula Musakanya**,  
(1981) ZR 1

**Attorney-General v. William Muzala Chipango**,  
(1971) ZR 1



**Canea Catholic Church v. Greece, ECHR**  
(143/1996/762/963)

**Chetankumar Shantkal Parek v. The People, SCZ**  
Judgment No. 46 of 1995 (unreported)

**Christine Mulundika and Seven Others v. The People,**  
HPR/11/95, Supreme Court Judgment No. 25 of 1995  
(unreported)

**Commission Nationale de Juristes de Droit de l'homme  
et de liberte v. Chad, 4/92**

**Cuthbert Mambwe Nyirongo v. Attorney-General, SCZ**  
Judgment No. 10 of 1991 unreported but briefly  
commented upon in **Zambia Law Journal**, Vol. 21-24  
(1989-92) p. 93.

**Dean Namulya Mung'omba v. Attorney-General,**  
1997/HP/2617 (unreported)

**Director of Public Prosecutions v. Mbayo Mutwala**  
**Augustine, 1977) ZR 287.**

**Edward Jack Shamwana and 7 Others v. The People,**  
Supreme Court Appeals Nos. 12-19, 1983.

**Eleftheriadis v. Attorney-General** (1975) ZR 69.

**Faliya Kachasu v. Attorney-General** (1967) ZR 145

**Fred M'membe and Bright Mwape v. Attorney-General,**

**Godfrey Miyanda v. The High Court** (1984) ZR 62

**Golder v. United Kingdom,** Series A No. 18 1975 1  
EHRR 524

**In Re Alice Lenshina Mulenga** (1973) ZR 243

**In Re Kapwepwe and Kaenga** (1972) ZR 248

**In Re Seegers** (1976) ZR 117

**In Re Thomas Cain** (1974) ZR 71

**Josephat Mlewa v. Eric Wightman**, SCZ Judgment No. 1 of  
1996 (unreported)

**Joyce Banda v. Attorney-General**, (1978) ZR 233.

**Kawimbe v. Attorney-General**, (1974) ZR 244.

**Marbury v. Madison**, Crauch 137 (US 1803).

**Michael Chilufya Sata v. Post Newspapers Limited**,  
1992/HP/1395, 1992/HP/1804 and 1993/HP/821  
(all unreported).

**Miyanda v. Raymond Handahu**, SCZ Judgment No. 6 of  
1994 (unreported).

**Munalula and Others v. Attorney-General** (1979) ZR 154

**Nkumbula v. Attorney-General** (1972) ZR 111.

**Nottebohm Case: Liechtenstein v. Guatamala**,  
International Court of Justice Reports, 1955, p. 4

**Patel v. Attorney-General**, (1968) ZR 99

**Paton v. Attorney-General**, (1968) ZR 185

**Peter Chiko Bwalya v Zambia** Human Rights Law Journal  
Vol. 16 No. 10-12 (1995).

**R v. Chibabe Hangumba**, Z & NRLR, 1963-64, p. 54

**R v. Joseph Chilemba**, Z & NRLR, 1963-64, p. 116

**Remmy Mushota and Patrick Katyoka v. Kenneth  
Kaunda**, 1997/HN/357 (unreported)

**Rex v. Chona**, 1962 & N.L.R., 344

**Rex v. De Jager**, N.R.L.R., 1931-37 p. 23

**Rex v. Kabunda and Five Others**, N.R.L.R., 1945-48 p. 38

**Rhodesia Broken Hill Development Company Ltd v.  
Jacob Mwengwe**, Northern Rhodesia Law Reports,  
1945-48, p. 41

**Rosalyn Thandiwe Zulu v. The People**, 1981 ZR 341.

**Rupiah Bwezani Banda and Steven Phaniso Chinombo  
Moyo v. The Attorney-General**, 1993/HP/19 and  
1994/HP/279 (unreported)

**Sara H. Longwe v. Inter-Continental Hotel**,  
1991/HP/765 (unreported).

**Sebastian Saizi Zulu and Rodger Masauso Alivas  
Chongwe v. Attorney-General and Nikuv  
Computers** SCZ No. 8/775 of 1996.

**Seegers v. Attorney-General** (1976) ZR 117.

**Seven Bishops Case** (1688) 12 State Tr 183 (Eng.).

**Simon Kapwepwe v Zambia Publishing Company  
Limited**, (1978) ZR 15.

**Sirros v. Moore** (1974) 3 WLR 459.

**Sosala Kayela v. Willem Jacobus Botes**, N.R.L.R.,  
1945-48 p.183.

**S. Ncube and Others**, 1988(2) SA 792, Supreme  
Court of Zimbabwe.

**Times Newspapers Zambia Ltd v Kapwepwe**,  
(1973) ZR 292.

**The People v. Alexander Kamalondo**, 1992/HNA/36  
(unreported).

**The People v. Augastine Mtonga**, 1991/E1/226  
Chililabombwe (unreported).

**The People v. Bright Mwape and Fred M'membe**,  
Supreme Court Appeal Nos. 87 and 107 of 1995  
(unreported).

**The People v. Chiwele Maimisa and 20 Others**,  
1992/SXD/3 Chadiza.

**The People v. Kambarage Mpundu Kaunda,**

1990/HP/119 (unreported).

**Thomas v. The People (1984 ) ZR 38**

**William Banda v. Attorney-General, 1992/HP/1005**

(unreported)

**William Banda v. Chief Immigration Officer and**

**Attorney-General, 1991/HJ/12 (unreported)**

**William David Wise Carlisle v. Attorney-General,**

1989/HP/668, (unreported)

**William Steven Banda v. Attorney-General, Supreme**

**Court Judgment No. 16 of 1994 (unreported).**

**Zambia National Holdings Limited and UNIP v. The**

**Attorney-General, Supreme Court Judgment No. 3 of**

**1994 (unreported)**

**Zambia Publishing Co Ltd v. Kapwepwe, (1974) ZR 294**

## BIBLIOGRAPHY

### A. Books

Anyangwe C., **The Camerounian Judicial System**,  
Publishing and Production Centre, Yaonde, 1987

Barker, Ernest., **Principle of Social and Political  
Theory**, Oxford University Press, London 1951.

Barker, Ernest., **Essay on Government**, Claredon  
Press, Oxford, 1951.

Basson, Dion and Viljoen, Henning., **South African  
Constitutional Law**, Juta, Cape Town, 1988.

Benn, S.I. and Peters, R.S., **Social Principles and the  
Democratic State**, George Allen and Unwin Ltd.,  
London, 1959.

Brown, Latham., **Public International Law**, Sweet &  
Maxwell, London, 1970.



Brookings Institution, **Human Rights in Africa: Cross Cultural Perspectives**, Washington DC, 1990.

Care, R.G. and Fluck, D.W., **Civil Procedure in the High court for Zambia**, Kenneth Kaunda Foundation, Lusaka, 1986.

Cotran, Eugene and herif, Omar (eds.), **The Role of The Judiciary in the Protection of Human Rights**, Cimel and Kluwer Law International, The Hague, 1997.

Council of Europe Press, **Human Rights International law**, 1992.

Davidson, Scott, **Human Rights**, open University Press, Buckingham, 1993.

Denning, Lord, **What Next In the law**, Butterworths, London, 1982.

Denning, Lord, **Landmarks in the Law**, Butterworths, London, 1984.

Denning , Sir Alfred . , **The Road to Justice**, Steven & Sons Ltd . , England , 1955.

de Smith, S.A . , **Constitutional and And Administrative law**, Penguin Books Ltd . , England , 1971.

Dlamini , C.R.M. , **Human Rights in Africa: Which way South Africa?** Butterworths , Durban , 1995.

Elkins, Stanley M . , **Slavery: A Problem in American Institutional and intellectual Life**, The University Library , Crosset Dunlap , New York 1963.

Evans , Malcom , D . , (ed.) **Blacktone's International Law Documents**, Blackstone Press , London, 1991.

Feldman , David . , **Civil Liberties and Human Rights in england and Wales** , Clarendon Press, Oxford, 1993.

Hailey , Lord . , **An African Survey : A study of Problems Arising in Africa South of the Sahara**, Oxford University Press , London, 1956.

Harris . , J.W . , **Legal Philosophies**, Butterworths , 1980.

Jennings , Sir Ivor . , **The Queen's Government**, Penguin Books England, 1954.

Kiraftly, A.K.R . , (ed.) **Potter's Outlines of English History** , Sweet and Maxwell , London , 1959

Mainga , Mutamba . , **Bulozi Under the Luyana Kings**, Longman , 1973.

McPherson, James , et al . , **Blacks in America** , Anchor Books, New York , 1971.

Meebelo , Henry S. , **African Proletarians and Colonial Capitalism**, Kenneth Kaunda Foundation , Lusaka , 1986.

Milner , Alan (ed. ) , **African Legal systems** ,  
Routledge & Kegan Paul , London , 1969.

Mwanakatwe, J.M . , **End of Kaunda Era**, Multimedia  
Publications , Lusaka 1994.

Ndulo, Muna and Turner, Keya (eds.) , **Civil  
Liberties Cases in Zambia** , The Africa Law  
Reports, Oxford, 1984 .

Ndulo, Muna, (ed.) **Law in Zambia**, East African  
Publishing House, Nairobi, 1984.

Oliver, Toland and Atmore, Antony . . **Africa Since  
1800**, Cambridge University Press , Cambridge  
1972.

Ranger T.O. and Kimambo , Isaria . . **The Historical  
Study of African Religion**, Heinmann, London.  
1972.

Robertson A.H. and, Merrils , J.G . . **Human Rights in  
the World: An Introduction to the Study of**

**the International Protection of Human Rights**, Manchester University Press, 1992.

Rotberg, R.I. , **The Rise of Nationalism in Central Africa: The making of Malawi and Zambia : 1873 - 1964**, Harvard University Press, 1965.

Rubin, Neville and Cotran , Eugene (eds). **Reeadings in African Law**, Africana Publishing Corporation . New York . 1970.

Runciman , W.G. , **Social Science and Political Theory**, The University Press, Cambridge. 1965.

Schapera I. . **A Handbook of Tswana Law and Custom**, Frank Cross & Co. Ltd ., London. 1938.

Schroeder , Richard C. . **An Outline of American Government** , United States Information Agency Washington . ,

Shivji, Issa . **The Concept of Human Rights in Africa**, Codesria Book Series, London. 1989

Sieghart, Paul . , **The International Law of Human Rights**, Clarendon Press, Oxford ,1983.

Snelson P.D . , **Educational Development in Northern Rhodesia , 1833-1945**, NECZAM, 1974.

UN Centre for Human Rights, **Fact Sheets**, 1-22 Lund. Jan. 1995.

ZARD. **An Annotated Bibliography of Research on Zambian Women**, 1985.

**B. Theses, Articles and other Publications**

Afronet, **Zambia Human Rights Report**, 1997.

Aihe, D.O. (Neo-Nigerian, Human Rights in Zambia: A Comparative Study with some countries in Africa and West Indies, **Zambia Law Journal**, 1971 & 1992.

Amnesty International, **Zambia : A Human Rights Review**, March, 1996.

Allot, Anthony, 'Human Rights in Africa and African Legal Systems', paper presented at the 3rd Biennial African Bar Association Conference held in Freetown, Sierra Loena, 1-5 August, 1978.

Anyangwe, C., 'The Whittling Away of African Indigenous Legal and Judicial System', **Zambia Law Journal**, Special Edition, 1998.

Anyangwe, C., 'Human Rights, Holism and Relativity', **Zambia Law Journal**, Vol. 25-28, 1993-96.

Chanda, Alfred W., **Zambia: A Case Study in Human Rights in Commonwealth Africa**, JDS Thesis, Yale Law School, USA, 1992.

Chanda, Alfred W., 'The State of Zambia's Bill of Rights Vis-a-Vis the International Protection of Human Rights Standards', a paper presented to the Human Rights Commission Vision Conference held at Mulungushi Conference Centre, Lusaka, 5-8 October, 1998.

Chanda, Alfred W., 'Human Rights in Zambia's Third Republic: An overview', a paper presented to a Seminar at the Norwegian Institute of Human Rights, Oslo, 8th June, 1995.

Chanda, Alfred W., 'Problems Affecting the Constitutional Protection of Human Rights in Commonwealth Africa', **Legality Magazine**, UNZA School of Law, 1984.



Craig, James T., 'Comment on Cases and Legislation: The Privileges of Parliament and the Constitution'.

**Zambia Law Journal**, Vol 3 & 4, 1971-72

Nos. 1 and 2.

Deng, Francis M., 'A Cultural Approach to Human Rights

Among the Dinka', in "**Human Right in Africa:**

**Cross-Cultural Perspective**", The Brookings

Institution, Washington DC, 1990.

Gluckman, Max. 'The Judicial Process Among the

Barotse of Northern Rhodesia' in **Readings in**

**African Law**, Africana Publishing Corporation.

New York. 1970.

Hansungule, Michelo., 'Report on the Rights of the Child

and Poverty in Zambia' a paper prepared for

**Women for Change, in Zambia**, September,

1996.

Henkin, Louis., 'Rights Here and There', **Columbia Law**

**Review**, Vol. 81, 1981.

Hoover, Piper and Spalding, 'The Evolution of the Zambia Court System', in **Law in Zambia**, Muna Ndulo (ed), East African Publishing House, Nairobi, 1984.

Human Rights Watch, 'Zambia: The Death Penalty', Vol 9, No. 3 (a), July, 1997

Moffat, R.L., 'African Courts and Native Customary Law in Urban Areas of Northern Rhodesia', **Journal of African Administration**, Vol, ix No. 2 April, 1957.

Mwanawasa L.P., 'Should the Death Penalty be Retained in a Humanistic Society?' a paper presented to a Seminar on Law and Development in Zambia held at the Savoy Hotel, Ndola 14th January, 1989.

Nyirenda, Vukani., 'The Changing Status of the Urbanised Women, Implications for Social Service Provision', **Zambia Association for Research and Development (ZARD) Bibliography**, 1985, p. 77.

Odoki, B.J., 'Terms and Conditions of Service of Judges: A Safeguard to the Independence of the Judiciary', a paper presented to a seminar organised by the **International Commission of Jurists** in conjunction with the Law Association of Zambia, Lusaka, November, 1986.

Parpart, J. 'Working Class Wives and Collective Labour Action on the Northern Rhodesia Copperbelt, 1926-64' **ZARD** Publication, 1985, p 79

Robert F. Kennedy Memorial Centre, **Justice Enjoined: The State of the Judiciary in Kenya**, 1992.

Ruedisili, S., 'Zambia's Elusive Search for a Valid Public Order Act: An Appraisal', **Zambia Law Journal**, Vol. 25-28, 1993-96.

Sakala E.L., 'The Role of the Commission for Investigations in Law Development in Zambia' a paper presented to a seminar on Law Development in Zambia, Savoy Hotel, Ndola 14 January, 1989.

**C. Reports**

- 1960: **Advisory Commision on the Review of the Constitution of Rhodesia and Nyasaland**, H.M. Stationery Office, Command 1148, London
- 1973: **Legal Consultative Committee**, India and Oceana Publications, New Delhi.
- 1984: **Proceedings of the Tribunal on the matter of Article 113 of the Constitution and the matter of Justice**, B.S. Mumba Supreme Court, Lusaka
- 1991: **The Mvunga Constitution Review Commission**, Lusaka. N.B. This writer served on this Commission.

- 1992: **Justice Enjoined: The State of the Judiciary in Kenya**, Robert F. Kennedy Memorial Centre for Human Rights.
- 1993: **Special Committee on Delays in the Administration of Justice and Delivery of Judgments**, Supreme Court, Lusaka.
- 1995: **The Munyama Human Rights Commission of Inquiry**, Lusaka.
- 1994: **The Zambia Justice Sytem**, Annie M. Gutierrez, Deputy Public Defender and former Judge, San Diego, California, USA.
- 1995: **The Mwanakatwe Constitutional Review Commission**, Lusaka.

## **D. Legislation**

### **(i) Constitutions:**

The Constitution of Zambia (1996)

The Constitution of Zambia (1991)

The Constitution of Zambia (1973)

The Northern Rhodesia (Constitution)

Order-in-Council (1963)

The Constitution of Namibia

The Constitution of the Republic of South  
Africa (1993)

The Constitution of the Republic of South  
Africa (1996)

### **(ii) Acts of Parliament:**

Commission for Investigations, Chapter 39.

Criminal Procedure Act, Cap. 88.

Defamation Act, Cap. 68.

Electoral Act, Cap.13.

Emergency Powers Act, Cap. 108

Employment Act, Cap. 268

Employment of Young Persons and Children  
Act. Cap. 274.

High Court Act, Cap. 27.

Human Rights Commission Act, No. 39 of  
1996.

Immigration and Deportation Act, Cap. 123.

Industrial and Labour Relations Act, Cap.  
269.

Judicature Administration Act, Cap. 24

Judges (Conditions of Service) Act, Cap.

277, as read with Act No. 14 of 1996

Lands Acquisition Act, Cap. 189

Local Courts Act, Cap. 29.

Narcotic Drugs and Psychotropic Substances  
Act, Cap. 96.

National Assembly (Powers and Privileges)  
Act, Cap. 12.

Parliamentary and Ministerial Code of  
Conduct Act, Cap. 16.

Preservation of Public Security Act,  
Cap. 112.

Penal Code Act, Cap. 87.

Public Order Act, Cap. 113

Societies Act, Cap. 119.

State Proceedings Act, Cap. 71.

State Security Act, Cap. 111

Subordinate Courts Act, Cap 28

Supreme Court Act, Cap. 25.

**(iii) Statutory Instruments**

High Court (Amendment) Regulations,

S.I. No. 71 of 1997.

Industrial Relations Court (Amendment)

Rules, S.I. No. 157 of 1995.

Judges (Salaries and Conditions of Service)

Regulations, S.I. No. 140 of 1996.

Judges (Salaries and Conditions of Service)

Regulations, S.I. No. 67 of 1997.

**E. Human Rights Instruments**

1948      **Universal Declaration of Human**

**Rights**, Adopted by the United

Nations General Assembly,

Resolution 217 A (III) of 10

December 1948.

1948      **American Declaration of the Rights**

**and Duties of Man**, Adopted at

Bogota on 2 May 1948

1948      **Convention on Freedom of**

**Association and Protection of**

**the Right to Organise**. ILO



- 1949      **Convention on the Right to Organise  
and Collective Bargaining.** ILO
- 1950      **European Convention for the  
Protection of Human Rights and  
Fundamental Freedoms,** Adopted  
at Rome on 4 November, 1950
- 1951      **Convention on Equal Remuneration,**  
ILO.
- 1957      **Convention for the Abolition of  
Forced Labour,** ILO
- 1961      **European Social Charter,** Adopted in  
Turin on 18 October, 1961.
- 1964      **Convention on Employment Policy,**  
ILO.
- 1965      **International Convention on the  
Elimination of All Forms of  
Racial Discrimination,** Adopted by  
the General Assembly. Resolution  
2106 A (XX) of 21 December, 1965.
- 1966      **International Covenant on Civil and  
Political Rights (ICCPR),** adopted  
by the General Assembly,  
Resolution 2200A (XXI) of 16  
December, 1966.

- 1966      **International Covenant on Economic,  
Social and Cultural Rights**  
(ICESCR) Adopted by the UN  
General Assembly, Resolution 2200A  
(XXI) of 16 December, 1966
- 1966      **First Optional Protocol to the  
International Covenant of Civil  
and Political Rights**, Adopted by  
General Assembly Resolution  
2200A(XXI) of 16 December, 1966.
- 1969      **American Convention on Human  
Rights**, Pact of San Jose', Costa Rica.
- 1979      **Convention on Elimination of All  
Forms of Discrimination Against  
Women(CEDAW)**, adopted by the  
General Assembly. Resolution  
34/180 of 18 December, 1979.
- 1981      **African Charter on Human and  
People's Rights**, adopted at the  
18th Conference of Heads of State  
and Government in Nairobi, Kenya  
on 27 June, 1981.
- 1984      **Convention Against Torture and  
Other Cruel, Inhuman or**

**Degrading Treatment or Punishment**, adopted by the General Assembly, Resolution 39/46 of 10 December, 1984.

1989 **Convention on the Rights of the Child**, adopted by the General Assembly, Resolution 44/ 25 of 20 November, 1989.

1989 **Second Optional Protocol to the International Covenant on Civil and Political Rights**, adopted by the General Assembly, Resolution 44/128 of 15 December, 1989.

## **Appendices**

- A Constitution of Zambia Part III. Protection of the  
Fundamental Rights and Freedom of the  
Individual.**
- B The Protection of Fundamental Rights and Rules,  
1969 Statutory Instrument No. 156 of 1969.**
- C The Human Rights Commission Act No. 39 of 1996**
- D Judicature Administration Act No. 42 of 1994.**
- E Schedules of Salaries and / or Conditions of Service for  
Judges in Namibia, South Africa, Zambia and  
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PART III

(As enacted by Act No. 1 of 19

PROTECTION OF THE FUNDAMENTAL RIGHTS AND FREEDOMS OF THE  
INDIVIDUAL

Fundamental  
rights and  
freedom

11. It is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, this is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following namely:

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, expression, assembly, movement and association;
- (c) protection of young persons from exploitation;
- (d) protection for the privacy of his home and other property and from deprivation of property without compensation;

and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations for that protection as are contained in this Part, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

12. (1) A person shall not be deprived of his life intentionally except in execution of the sentence of law in force in Zambia of which he has been convicted

Protecti  
of right

(2) A person shall not deprive an unborn child of life by termination of pregnancy except in accordance with the conditions laid down by an Act of Parliament for that purpose.

(3) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases; as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this Article if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case-

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection, mutiny or if he dies as a result of a lawful act of war;
- (d) in order to prevent the commission by that person of a criminal offence.

13. (1) A person shall not be deprived of his personal liberty except as may be authorised by law in any of the following cases:

Protection of  
right to  
personal liberty

- (a) in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence of which he has been convicted;
- (b) in execution of an order of a court of record punishing him for contempt of that court or of a court inferior to it;
- (c) in execution of an order of a court made to secure the fulfillment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of any order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;
- (f) under the order of a court, with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol or a vagrant, for the purpose of his care or treatment or the protection of the community;

(i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted prisoner from one country to another; or

(j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) any person who is arrested or detained-

(a) for the purpose of bringing him before a court in execution of an order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained under paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that the appears at a later date for trial for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

protection  
from slavery  
and forced  
labour

14. (1) A person shall not be held in slavery or servitude.
- (2) A person shall not be required to perform forced labour.
- (3) For the purpose of this Article, the expression "forced labour" does not include-
  - (a) any labour required in consequence of a sentence or order of a court;
  - (b) labour required of any person while he is lawfully detained that, though not required in consequence of a sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
  - (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
  - (d) any labour required during any period when the Republic is at war or a declaration under Article 30 or 31 is in force or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period, or a result of that other emergency or calamity, for the purpose of dealing with that situation; or
  - (e) any labour reasonably required as part of reasonable and normal communal or other like treatment.

15. A person shall not be subjected to torture, or degrading punishment or other like treatment.

**Protection  
from  
inhuman  
treatment**



16 (1) Except as provided in this Article, property of any description shall not be compulsorily taken possession of, and interest in or right over property of any description shall not be compulsorily acquired, unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that such law provides for the taking possession or acquisition of any property or interest therein or right thereover-

- (a) in satisfaction of any tax, rate or due;
- (b) by way of penalty for breach of any law, whether under civil process or after conviction of an offence;
- (c) in execution of judgments or orders of courts;
- (d) upon the attempted removal of the property in question out of or into Zambia in contravention or any law;
- (e) as an incident of contract including a lease tenancy, mortgage, charge, pledge or bill of sale or of a title deed to land;
- (f) for the purpose of its administration, care or custody on behalf of and for the benefit of the person entitled to the beneficial interest therein;
- (g) by way of the vesting of enemy property or for the purpose of the administration of such property;
- (h) for the purpose of-
  - (i) the administration of the property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the benefit of the persons entitled to the beneficial interest therein;

- (ii) the administration of the property of a person adjudged bankrupt or a body corporate in liquidation, for the benefit of the creditors of such bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;
- (iii) the administration of the property of a person who has entered into a deed of arrangement for the benefit of his creditors; or
- (iv) vesting any property subject to a trust in persons appointed as trustees under the instrument creating the trust or by a court or by order of a court, for the purpose of giving effect to the trust;
- (i) in consequence of any law relating to the limitation of actions;
- (f) in terms of any law relating to abandoned, unoccupied unutilised or undeveloped land, as defined in such law;
- (k) in terms of any law relating to absent or non-resident owner, as defined in such law, or any property;
- (l) in terms of any law relating to trusts or settlements;
- (m) by reason of a dangerous state or prejudicial to the health or safety of human beings, animals or plants.
- (n) as a condition in connection with the granting of permission for the utilisation of that or other property in any particular manner;
- (o) for the purpose of or in connection with the prospecting for, or exploitation of, minerals belonging to the Republic on terms which provide for the respective interests of the persons affected;
- (p) in pursuance of a provision for the marketing of property of that description in the common interests of the various persons otherwise entitled to dispose of that property;
- (q) by way of the taking of a sample for the purposes of any law;

- (r) by way of the acquisition of the shares, or class of shares, in a body corporate on terms agreed to by the holders of not less than nine-tenths in value of those shares or that class of shares;
- (s) where the property consists of an animal, upon its being found trespassing or straying;
- (t) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon-
  - (i) of work for the purpose of the conservation of natural resources of any description; or
  - (ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed, to carry out;
- (u) where the property consists of any licence or permit;
- (v) where the property consists of wild animals existing in their natural habitat or the carcasses of wild animals;
- (w) where the property, is held by a body corporate established by law for public purposes and in which no moneys have been invested other than moneys provided by Parliament;
- (x) where the property is any mineral, mineral oils or natural gases or any rights accruing by virtue of any title or licence for the purpose of searching for or mining any mineral, mineral oil or natural gases-
  - (i) upon failure to comply with any provision of such law relating to the title or licence or to the exercise of the rights accruing or to the development or exploitation of any mineral, mineral oil or natural gases; or
  - (ii) terms of any law vesting any such property or rights in the President;
- (y) for the purpose of the administration or disposition of such property or interest or right by the president in implementation of a comprehensive land policy or a policy designed to ensure that the statute

law the Common Law and the doctrines of equity relating to or affecting the interest in or rights over land, or any other interests or rights enjoyed by Chiefs and persons claiming through or under them, shall apply with substantial uniformity throughout Zambia;

(z) in terms of any law providing for the conversion of titles to land from freedom to leasehold and the imposition of any restriction on subdivision, assignment or sub-letting;

(aa) in terms of any law relating to-

(i) the forfeiture or confiscation of the property of a person who has left Zambia for the purpose or apparent purpose, of defeating the ends of justice;

(ii) the imposition of a fine on, and the forfeiture or confiscation of the property of, a person who admits a contravention of any law relating to the imposition or collection of any duty or tax or to the prohibition or control of dealing or transactions in gold, currencies or securities.

(3) An Act of Parliament such as is referred to in clause (1) shall provide that in default of agreement, the amount of compensation shall be determined by a court of competent jurisdiction.

**Protection for  
privacy of  
home and  
other property**

17. (1) Except with his own consent, a person shall not be subjected to the search of his person or his property or the entry by other on his premises.

(2) Nothing contained in or done under the subject of any law shall be held to be inconsistent with or a contravention of this Article to the extent that it is shown that the law in question makes provision-

(a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or in order to secure the development or utilisation of any property for a purpose beneficial to the community;

- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
- (c) that authorises an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government, authority or body corporate, as the case may be; or
- (d) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order;

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

18. (1) if any person charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

**Provision  
to secure  
protection  
of law**

(2) Every person who is charged with a criminal offence-

- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
- (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall unless legal aid is granted to him in accordance with the law enacted by Parliaments for such purpose be permitted to defend himself

before the court in person, or at his own expense, by a legal representative of his own choice;

(e) shall be afforded facilities to examine in person by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge;

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so required and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person or any record of the proceedings made by or on behalf of the court.

(4) A person shall not be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, a penalty shall not be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time it was committed.

(5) A person who is shown that he has been tried by a competent court for a criminal offence and whether convicted or acquitted shall not again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) A person shall not be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) A person who is tried for a criminal offence shall not be compelled to give evidence at the trial.

(8) A person shall not be convicted of a criminal offence unless that offence is defined and the penalty is prescribed in a written law.

Provided that nothing in this clause shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefore is not so prescribed.

(9) Any court or other adjudicating authority prescribed by law for determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in clause (10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority-

(a) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings; or

(b) may be empowered by law to do in the interest of defence, public safety, public order, public morality, the welfare or person under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention-

(a) paragraph (a) of clause (2) to the extent that it is the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) paragraph (d) of clause (2) to the extent that it is shown that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under Zambian customary law, being proceedings against any person who, under that law, is subject to that law;

(c) paragraph (e) of clause (2) to the extent that it is shown that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(d) clause (2) to the extent that it is shown that the law provided that-

(i) where the trial of any person for any offence prescribed by or under the law has been adjourned and the accused, having pleaded to the charge, fails to appear at the time fixed by the court for the resumption of his trial after the adjournment, the proceedings may continue notwithstanding the absence of the accused if the court, being satisfied that, having regard to all the circumstances of the case, it is just and reasonable so to do, so orders; and

(ii) the court shall set aside any conviction or sentence pronounced in the absence of the accused in respect of that offence if the accused satisfies the court without undue delay that the cause of his absence was reasonable and that he had a valid defence to the charge;

(e) clause (2) of the extent that it is shown that the law provides that the trial of a body corporate may take place in the absence of any representative of the body corporate upon a charge in respect of which a plea of not guilty has been entered by the court.

(f) clause (5) to the extent that it is shown that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, clause (1), paragraphs (d) and (e) of clause (2) shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(14) In its application to a body corporate clause (2) shall have effect as if words "in person or" were omitted from paragraph (d) and (e).

(15) In this Article "criminal offence" means a criminal offence under the law in force in Zambia.



**Protection of  
freedom of  
conscience**

19. (1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of conscience, and for the purposes of this Article the said freedom includes freedom of thought and religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent, or, if he is a minor, the consent of his guardian, a person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) A religious community or denomination shall not be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination or from establishing and maintaining institutions to provide social services for such persons.

(4) A person shall not be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article or be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision which is reasonably required—

(a) in the interests of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion;

and except so far as that provision or, the thing done under the authority thereof as the case may be, shown not to be reasonably justifiable in a democratic society.

**Protection of  
freedom of  
expression**

20. (1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.

(2) Subject to the provisions of this Constitution a law shall not make any provision that derogates from freedom of the press.

(3) Nothing contained in or done under the authority or any law shall held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or
- (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or the registration of, or regulating the technical administration or technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television; or
- (c) that imposes restrictions upon public officers;

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.

21. (1) Except with his consent a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.

**Protection  
of freedom  
assembly and  
association**

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision

- (a) that is reasonably required in the interest of defence, public safety, public order, public morality or public health;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
- (c) that imposes restrictions upon public officer; or
- (d) for the registration of political parties or trade unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such a register including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration;

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not be reasonably justifiable in a democratic society.

**Protection of  
freedom of  
movement**

22. (1) Subject to the other provisions of this Article and except in accordance with any written law, a citizen shall not be deprived of his freedom of movement, and for the purposes of this Article freedom of movement means-

- (a) the right to move freely throughout Zambia;
- (b) the right to reside in any part of Zambia; and
- (c) the right to leave Zambia and to return to Zambia.

(2) any restrictions on a person's freedom of movement that relates to his lawful detention shall not be held to be inconsistent with or in contravention of this Article.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision

- (a) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or public health or the imposition of restrictions on the acquisition or use by any person of land or other property in Zambia, and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society;
- (b) for the imposition of restriction on the freedom of movement of any person who is not a citizen of Zambia;
- (c) for the imposition of restrictions upon the movement or residence within Zambia of public officers; or
- (d) for the removal of a person from Zambia to be tried outside Zambia for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

Protection  
from  
discrimination  
on the ground  
of race, etc

23. (1) Subject to clauses (4), (5) and (7), a law shall not make any provision that is discriminatory either of itself or in its effect.

(2) Subject to clauses (6), (7) and (8), a person shall not be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this Article the expression "discriminatory" means affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Clause (1) shall not apply to any law so far as that law makes provision-

- (a) for the appropriation of the general revenues of the Republic;
- (b) with respect to persons who are not citizens of Zambia;
- (c) with respect adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
- (d) for the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or
- (e) whereby persons or any such description as is mentioned in clause (3) may be subjected any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons or any other such description is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

(6) Clause (2) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision or law as is referred to in clause (4) or (5).

(7) Nothing contained in or done under authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision whereby persons of any such description as is mentioned in clause (3) may be subjected to any restriction on the rights and freedoms guaranteed by Articles 17, 19, 20, 21 and 22, being such a restriction as is authorised

by clause (2) of Article 17, clause (5) of Article 19, clause (2) of Article 20, clause (2) of Article 21 or clause (3) of Article 22, as the case may be.

(8) Nothing in clause (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

**Protection of  
young persons  
from**

24. (1) a young person shall not be employed and shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development:

Provided that an Act of Parliament may provide for the employment of a young person for a wage under certain conditions.

(2) All young person shall be protected against physical or mental ill-treatment, all forms of neglect, cruelty or exploitation.

(3) A young person shall not be the subject of traffic in any form.

(4) In this Article "young person" means any person under the age of fifteen years.

**Derogation  
from  
fundamental  
rights and  
detention**

25. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Articles 13,16,17,19,20, 21,22,23 or 24 to the extent that it is shown that the law in question authorises the taking, during any period when the Republic is at war or when a declaration under Article 30 is in force, of measures for the purpose of dealing with any situation existing or arising during that period; and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions if it is shown that the measures taken were, having due regard to the circumstances prevailing at the time, reasonably required for the purpose of dealing with the situation in question.

**Provisions  
relating to  
restriction and  
detention**

26. (1) Where a person's freedom of movement is restricted, he is detained, under the authority of any such law as is referred to in Article 22 or 25, as the case may be, the following provisions shall apply-

- (a) he shall, as soon as reasonably practicable and in any case not more than fourteen days after the commencement of his detention or restriction, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is restricted or detained;
  - (b) not more than fourteen days after the commencement of his restriction or detention a notification shall be published in the Gazette stating that he has been restricted or detained and giving particulars of the place of detention and the provision of law under which his restriction or detention is authorised;
  - (c) if he so requests at any time during the period of such restriction or detention not earlier than three months after the commencement thereof or after he last made such a request during that period, as the case may be, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice who is or is qualified to be a judge of the High Court;
  - (d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the authority by which the restriction or detention was ordered or to any tribunal established for the review of his case; and
  - (e) at the hearing of his case by such tribunal he shall be permitted to appear in person or by a legal representative of his own choice.
- (2) on any review by a tribunal under this Article the tribunal shall advise the authority by which it was ordered on the necessity or expediency of continuing his restriction or detention and that authority shall be obliged to act in accordance with any such advice.
- (3) The President may at any time refer to the tribunal the case of any person who has been or is being restricted or detained pursuant to any restriction or detention order.

(4) Nothing contained in paragraph (d) or (e) clause (1) shall be construed as entitling a person to legal representation at the public expense.

(5) Parliament may make or provide for the making of rules to regulate the proceedings of any such tribunal including, but without derogating from the generality of the foregoing, rules as to evidence and the admissibility thereof, the receipt of evidence including written reports in the absence of the restricted or detained person and his legal representative, and the exclusion of the public from the whole or any portion of the proceedings.

(6) Clauses (11) and (12) of Article 18 shall be read and construed subject to the provisions of this Article.

**27. (1) Whenever**

**Reference of  
certain matters  
to special  
tribunal**

(a) a request is made in accordance with clause (2) for a report on a bill or statutory instrument; or

(b) the Chief Justice considers it necessary for the purpose of determining claims for legal aid in respect of proceedings under Article 30 or 31;

the Chief Justice shall appoint a tribunal which shall consist of two persons selected by him from amongst persons who hold or have held the office of a judge of the Supreme Court or the High Court.

(2) A request for a report on a bill or a statutory instrument may be made by not less than thirty members of the National Assembly by notice in writing delivered-

(a) in the case of a bill, to the Speaker within three days after the final reading of the bill in the Assembly;

(b) in the case of statutory instrument, to the authority having power to make the instrument within fourteen days of the publication of the instrument in the Gazette.



(3) Where a tribunal is appointed under this Article for the purpose of reporting on a bill or a statutory instrument, the tribunal shall, within the prescribed period, submit a report to the President and the Speaker of the National Assembly stating-

- (a) in the case of a bill, whether or not in the opinion of the tribunal any, and if so which, provisions of the bill are inconsistent with this Constitution;
- (b) in the case of a statutory instrument, whether or not in the opinion of the tribunal any, and if so which, provisions of the instrument are inconsistent with this Constitution;

and, if the tribunal reports that any provision would be or is inconsistent with this Constitution, the grounds upon which the tribunal has reached that conclusion:

Provided that if the tribunal considers that the request for a report on a bill or statutory instrument is merely frivolous or vexatious, it may so report to the President without entering further upon the question whether the bill or statutory instrument would be or is inconsistent with this Constitution.

(4) in determining any claim for legal aid as referred to in clause (2), the tribunal may grant to any person who satisfies it that-

- (a) he intends to bring or is an applicant in proceedings under clause (1) or (4) of Article 28;
- (b) he has reasonable grounds for bringing the application; and
- (c) he cannot afford to pay for the cost of the application;

a certificate that the application is a proper case to be determined at the public expenses:

Provided that paragraph (c) shall not apply in any case where the application relates to the validity or a provision in respect of which the tribunal has reported that it would be or is inconsistent with this Constitution or where it appears to the tribunal that

issues are or will be raised in the application which are of general public importance.

(5) Where a certificate is granted to any person by the tribunal in clause (4), there shall be paid to that person out of the general revenues of the Republic such amount as the tribunal, when hearing the application, may assess as the costs incurred by that person in connection with the application; and the sums required for making such payment be a charge on the general revenues of the Republic.

(6) For the Purposes of clause (5)-

(a) the costs incurred in an application shall include the cost of obtaining the advice of a legal representative and, if necessary, the cost of representation by a legal representative in any court in steps preliminary or incidental to the application;

(b) in assessment the costs reasonably incurred by a person in an application, regard shall be had to costs awarded against that person or recovered by him in those proceedings.

(7) In this Article, "prescribed period" means-

(a) in relation to a bill, the period commencing from the appointment of the tribunal to report upon the bill and ending thirty days thereafter or if the Speaker, on the application of the tribunal considers that owing to the length or complexity of the bill, ending on such later day as the Speaker may determine;

(b) in relation to a statutory instrument, the period of forty days commencing with the day on which the instrument is published in the Gazette.

(8) Nothing in clause (1), (2) or (3) shall apply to a bill for the appropriation of the general revenues of the Republic or a bill containing only proposal for expressly altering this Constitution or the Constitution of Zambia Act.

28. (1) Subject to clause (3), if any person alleges that any of the provisions of Articles 11 to 26 inclusive has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the High Court which shall-

**Enforcement  
of protective  
provisions**

- (a) hear and determine any such application;
- (b) determine any question arising in the case of any person which is referred to it in pursuance of clause (2);

and which may, make such order issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of Articles 11 to 26 inclusive.

(2) (a) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of Articles 11 to 26 inclusive, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion the raising of the question is merely frivolous or vexatious.

(3) An application shall not be brought under clause (1) on the grounds that the provisions of Articles 11 to 26 (inclusive) are likely to be contravened by reason of proposals contained in any bill which at the date of the application, has not become a law.

(4) Parliament may confer upon the Supreme Court or High Court such jurisdiction or powers in addition to those conferred by this Article as may appear to be necessary or desirable for the purpose of enabling that Court more effectively to exercise the jurisdiction conferred upon it by this Article or of enabling any application for redress to be more speedily determined.

Proclamation  
of war

29. (1) The President may, in consultation with Cabinet, at any time, by Proclamation published in the Gazette declare war.

(2) A declaration made under clause (1) shall continue in force until the cessation of hostilities.

(3) An Act of Parliament shall provide for the conditions and circumstances under which a declaration may be made under clause (1).

Declaration  
of public  
emergency

30. (1) The President may, in consultation with Cabinet, at any time, by Proclamation published in the Gazette declare that a State of public emergency exists.

(2) A declaration made under clause (1) of this Article shall cease to have effect on the expiration of a period of seven days commencing with the day on which the declaration is made unless, before the expiration of such period, it has been approved by a resolution of the National Assembly supported by a majority of all the members thereof not counting the Speaker.

(3) In reckoning any period of seven days for the purposes of clause (2) account shall not be taken of any time during which Parliament is dissolved.

(4) A declaration made under clause (1) may, at any time before it has been approved by a resolution of the National Assembly, be revoked by the President by Proclamation published in the Gazette.

(5) Subject to clause (6) a resolution of the National Assembly under clause (2) will continue in force until the expiration of a period of three months commencing with the date of its being approved or until revoked at such earlier date of its being so approved or until such earlier date as may be specified in the resolution;

Provided that the National Assembly may, by members thereof, not counting the Speaker extend the approval of the declaration for periods of not more than three months at a time.

(6) The National Assembly may, by resolution, at any time revoke a resolution made by it under this Article.

(7) Whenever an election to the office of President results in a change of the holder of that office, any declaration made under this Article and in force immediately before the day on which the President assumes office shall cease to have effect on the expiration of seven days commencing with that day.

(8) The expiration or revocation of any declaration or resolution made under this Article shall not affect the validity or anything previously done in reliance on such declaration.

31. (1) The President may at any time by the Proclamation published in the Gazette declare that a situation exists which, if it is allowed to continue may lead to a state of public emergency.

**Declaration  
relating to  
threatened  
emergency**

(2) A declaration made under clause (1) of Article shall cease to have effect on the expiration of a period of seven days commencing with the day on which the declaration is made unless, before the expiration of such period, it has been approved by a resolution of the National Assembly supported by a majority of all the members thereof not counting the Speaker.

(3) In reckoning any period of seven days for the purposes of clause (2) account shall not be taken of any time during which Parliament is dissolved.

(4) A declaration made under clause (1) may, any time before it has been approved by a resolution of the National Assembly, be revoked by the President by Proclamation published in the Gazette.

(5) Subject to clause (6) a resolution of the National Assembly under clause (2) will continue in force until the expiration of a period of three months commencing with the date of its being approved or until revoked on an earlier date of its being so approved or until such earlier date as may be specified in the resolution.

(6) The National Assembly may by resolution, at any time revoke a resolution made by it under this Article.

(7) Whenever an election to the office of President results in a change of the holder of that office, any declaration made under this Article and in force immediately before the day on which the President assumes office, shall cease to have effect on the expiration of seven days commencing with that day.

(8) The expiration or revocation of any declaration or resolution made under this Article

shall not affect the validity or anything previously done in reliance on such declaration.

Interpretation  
and savings

32. (1) In this Part, unless the context otherwise requires-

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any Court established by a disciplinary law; and in Article 12 and 14 includes a court established by a disciplinary law;

"disciplinary law" means a law regulating the disciplined force;

"disciplined force" means-

- (a) a naval, military or air force;
- (b) the Zambia Police Force; or
- (c) any other force established by or under an Act of Parliament;

"legal representative" means a person entitled to practice in Zambia as an advocate;

"member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force is subject to that discipline.

(2) In relation to any person who is a member of a disciplined force raised under the law of Zambia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Part other than Articles 12, 14 and 15.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Zambia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Part.

**Supplement to the Republic of Zambia Government  
Gazette, dated the 21st February 1969**

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**GOVERNMENT OF ZAMBIA**

**Statutory Instrument No 156 OF 1969.**

**The Zambia Independence Order 1994**  
(Government Notice No. 496 of 1964)

**The Protection of Fundamental Rights Rules 1969.**

IN EXERCISE of the powers conferred by section twenty of the Constitution the High Court Rules Committee makes the following Rules

- |     |   |   |
|-----|---|---|
| 1   | These Rules may be cited as the Protection of Fundamental Rights Rule, 1969   | <b>Title</b>                              |
| 2   | An application under section twenty eight of the Constitution shall be made by petition filed in the Registry of the High Court   | <b>Application to be made by petition</b> |
| 3   | A petition shall set out <ul style="list-style-type: none"> <li>(1) the name and address of the petitioner;</li> <li>(2) the name and address of each person against whom redress is sought;</li> <li>(3) the grounds upon which redress is sought and particulars of the facts but not the evidence to prove such facts relied on;</li> <li>(4) the nature of the redress sought.</li> </ul> | <b>Contents of petition</b>               |
| 4   | (1) A copy of the petition shall be served by or on behalf of the petitioner on each person against whom redress is sought.   | <b>Service of petition</b>                |
| (2) | Where redress is sought against the Government a copy of the petition shall be served by or on behalf of the petitioner on the Attorney General   |   |
| (3) | Where redress is sought against a Minister or Junior Minister or any servant of the Government in respect of any matter or any servant of the Government in respect of any matter a copy of the petition shall also be served on behalf of the petitioner on the Attorney General   |   |

A copy of this Statutory Instrument can be obtained from the Government Printer P.O. Box 136, Lusaka Price 5n each.

21st February, 1969

(1) The High Court shall set down the petition for hearing as soon as may be convenient after filing and shall notify the date of hearing of the petitioner and to each of the persons upon whom a copy of the petition is required to be served

(2) The petitioner and any person on whom a copy of the petition is required to be served may appear either in person or by a legal practitioner at the hearing of the petition and may adduce evidence.

6. The High Court, may, in its discretion, receive evidence by affidavit in addition to or in substitution for oral evidence.

Made at Lusaka this sixth day of February, 1969.

J. R. BLAGDEN,  
Chief Justice (Chairman)

I. M. EVANS,  
Judge (Member)

A. O. R. MITCHLEY, Esq.,  
(Member)

J. A. HADDEN, Esq.,  
(Member)



## THE HUMAN RIGHTS COMMISSION ACT, 1996

## ARRANGEMENT OF SECTIONS

## PART I

## PRELIMINARY

1. Short title and commencement
2. Interpretation

## PART II

## THE HUMAN RIGHTS COMMISSION

3. Extent of Commission's autonomy
4. Seal of Commission
5. Composition of Commission
6. Oath on appointment
7. Tenure of office and vacancy
8. Filling of casual vacancy
9. Functions of Commission
10. Powers of Commission
11. Complaints
12. Sittings of Commission to be public
13. Recommendation by Commission
14. Proceedings of Commission
15. Committees
16. Disclosure of interest
17. Prohibition of disclosure of information to unauthorised persons

## PART III

## DIRECTORATE OF THE COMMISSION

18. Director, Deputy Director and other staff
19. Prohibition of disclosure of information by staff to unauthorised persons
20. Immunity of Commissioners and staff
21. Offences

PART IV

FINANCIAL AND OTHER PROVISIONS

- 22. Funds of Commission
- 23. Financial year
- 24. Accounts
- 25. Annual report
- 26. Rules
- 27. Regulations

## GOVERNMENT OF ZAMBIA

## ACT

No. 39 of 1996

Date of Assent: 20th November, 1996

An Act to provide for the functions and powers of the Human Rights Commission; to provide for its composition and to provide for matters connected with or incidental to the foregoing.

[12th December, 1996]

ENACTED by the Parliament of Zambia.

Enactment

PART I  
PRELIMINARY

1. This Act may be cited as the Human Rights Commission Act, 1996, and shall come into operation on such date as the President may, by statutory instrument, appoint.

Short title  
and  
commence-  
ment

2. In this Act unless the context otherwise requires—

Interpreta-  
tion

"appropriate authority" means the authority to whom a recommendation is made by the Commission under section *thirteen*;

"appointed date" means such date as the President may appoint under section *one*;

"Chairperson" means the person appointed as Chairperson under section *five*;

"Commission" means the Human Rights Commission established under the Constitution;

"Commissioner" means a person appointed Commissioner under section *fourteen*;

"Deputy Director" means a person appointed as Deputy Director under section *eighteen*;

"Director" means the person appointed as Director under section *eighteen*;

"Secretary" means the Secretary to the Commission referred to in section *eighteen*;

"Staff" means the staff of the Commission appointed under section *eighteen*; and

"Vice-Chairperson" means the person appointed as Vice-Chairperson under section *five*.

## PART II

## THE HUMAN RIGHTS COMMISSION

Extent of  
Commission's  
autonomy

3. The Commission shall not, in the performance of its duties, be subject to the direction or control of any person or authority.

Seal of  
Commission

4. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and any other person authorised in that behalf by a resolution of the Commission.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

Composition  
of Commis-  
sion

5. (T) The Commission shall consist of the following Commissioners:

(a) the Chairperson;

(b) the Vice-Chairperson; and

(c) not more than five other Commissioners.

(2) The Commissioners shall be appointed by the President, subject to ratification by the National Assembly.

(3) The Chairperson and Vice-Chairperson shall be persons who have held, or are qualified to hold, high judicial office.

Oath on  
appointment

6. (1) Every Commissioner shall, on appointment affirm or take an oath in Form 1 as set out in Part I of the Schedule, and such oath shall be administered by the President.

(2) The Secretary and other members of staff shall on appointment, affirm or take an oath in Form 2 as set out in Part II of the Schedule and such oath shall be administered by a Commissioner or Oaths.

Tenure of  
office and  
vacancy

7. (1) A Commissioner referred to in subsection (1) of section five shall be appointed for a term not exceeding three years, subject to renewal:

Provided that the first Commissioners shall be appointed for periods ranging from one to three years in order to facilitate retirement by rotation.

(2) A Commissioner may be removed from office for inability to perform the functions of the Commissioner's office, whether arising from infirmity of body or mind, incompetence or for misbehaviour.

(3) A Commissioner may resign upon giving one month's notice in writing to the President.

(4) The office of a Commissioner shall become vacant—

(a) if the Commissioner is absent without reasonable excuse from three consecutive meetings of the Commission of which the Commissioner has had notice;

(b) if the Commissioner is an declared bankrupt; or

(c) upon the Commissioner's death.

8. If the office of a Commissioner becomes vacant before the expiry of the term of office, the President, may, subject to ratification by the National Assembly, appoint another person to be a Commissioner, for the unexpired term, in place of the Commissioner who vacates the office.

Filling of  
casual  
vacancy

9. The functions of the Commission shall be to—

Functions of  
Commission

(a) investigate human rights violations;

(b) investigate any maladministration of justice;

(c) propose effective measures to prevent human rights abuse;

(d) visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the persons held in such places and make recommendations to redress existing problems;

(e) establish a continuing programme of research, education, information and rehabilitation of victims of human rights abuse to enhance the respect for and protection of human rights;

(f) do all such things as are incidental or conducive to the attainment of the functions of the Commission.

10. (1) The Commission shall have powers to investigate any human rights abuses—

Powers of  
Commission

(a) on its own initiative; or

(b) on receipt of a complaint or allegation under this Act by—

(i) an aggrieved person acting in such person's own interest;

(ii) an association acting in the interest of its members;

(iii) a person acting on behalf of an aggrieved person; or

(iv) a person acting on behalf of and in the interest of a group or class of persons.

(2) The Commission shall have powers to—

(a) issue summons or orders requiring the attendance of any authority before the Commission and the production of

document or record relevant to any investigation by the Commission;

(3) to identify any person in respect of any subject matter under investigation before the Commission;

(4) to require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission; and

(5) to recommend the punishment of any officer found by the Commission to have perpetrated an abuse of human rights.

(6) A witness summoned under subsection (2), shall be examined under oath and such oath shall be administered by the Commission.

(7) Subject to subsection 5, the Commission may where it considers it necessary recommend—

(a) the release of a person from detention;

(b) the payment of compensation to a victim of human rights abuse, or to such victim's family;

(c) that an aggrieved person seek redress in a court of law; or

(d) such other action as it considers necessary to remedy the infringement of a right.

(5) Notwithstanding subsection 4, the Commission shall not have powers where a matter is pending before a court.

11. (1) A complaint or allegation referred to in paragraph (b) of subsection (1) of section *ten* may be made orally or in writing and shall be addressed to the Secretary who shall, in the case of an oral complaint or allegation, reduce the same to writing.

(2) Every complaint or allegation shall—

(a) be signed or thumb-printed by the person making it; and

(b) bear the complainant's name and address.

(3) A complaint or allegation shall not be received by the Commission unless it is made within a period of two years from the date on which the facts giving rise to any such complaint or allegation become known to the person making the complaint or the allegation.

(4) The Commission may refuse to conduct, or may decide to discontinue an investigation where it is satisfied that the complaint or allegation is malicious, frivolous, vexatious or the particulars accompanying it are insufficient to allow a proper investigation to be conducted, and shall indicate accordingly in the report.

(5) The Commission shall, in any case in which it decides not to conduct an investigation, or decides to discontinue an investigation inform the complainant in writing accordingly, and give reasons therefor.

(6) The Commission may in any inquiry make such orders and give such directions as it may consider necessary for the purpose of conducting any investigation.

12. The Commission shall—

(a) conduct all its sittings in public;

Provided that the Commission may hold its sittings in camera when the Commission considers it necessary; and

(b) make all its reports in respect of such sittings public.

13. (1) The Commission shall—

(a) send written reports of its findings to the parties concerned; and

(b) dependant on the findings made, make such recommendation as it considers necessary to the appropriate authority.

(2) The appropriate authority shall, within thirty days from the date of such recommendation make a report to the Commission, on any action taken by such authority to redress any human rights violation

(3) Any person who contravenes the provisions of subsection (2) shall be guilty of an offence, and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units, or to imprisonment for a term not exceeding three years, or to both.

(4) For the purposes of subsection (3), where an offence is committed by—

(a) a body corporate, every director or similar officer of the body shall be guilty of the offence;

(b) a partnership, every partner shall be guilty of the offence; and

(c) a public authority, the officer or officers charged with the responsibility of acting on a recommendation and making a report on such recommendation shall be guilty of the offence.

Sittings of  
the Commis-  
sion

Recommen-  
dation by  
Commission

(5) A person shall not be guilty of an offence under subsection (3) if such person proves to the satisfaction of the court that—

- (a) the act constituting the offence was done without the knowledge, consent or connivance of such person; or
- (b) such person attempted to prevent the commission of the offence having regard to all the circumstances of the case.

14. (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

(2) The Commission shall meet for the transaction of business at least once every three months at such places and times as the Chairperson may determine.

(3) The Chairperson may at any time call a meeting of the Commission and shall call a special meeting to be held within fourteen days of receipt of a written request addressed to the Chairperson by at least four other Commissioners.

(4) If the urgency of any particular matter does not permit the giving of such notice as is required under subsection (3), a special meeting may be called by the Chairperson, upon giving a shorter notice.

(5) The Chairperson or Vice-Chairperson with four other Commissioners shall constitute a quorum at any meeting of the Commission.

(6) There shall preside any meeting of the Commission—

- (a) the Chairperson;
- (b) in the absence of the Chairperson the Vice-Chairperson; or
- (c) in the absence both the Chairperson and the Vice-Chairperson, such other Commissioner as the Commissioners present may elect for the purpose of that meeting.

(7) A decision of the Commission on any question shall be by a majority of the Commissioners present and voting at the meeting and, in the event of an equality of votes, the Chairperson presiding at the meeting shall have a casting vote, in addition to such Chairperson's deliberative vote.

(8) The Commission may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Commission, but such person shall have no vote.

(9) The validity of any proceedings, acts or decisions of the Commission shall not be affected by any vacancy in the membership of the Commission or by any defect in the appointment of any



Commissioner by reason that any person not entitled to do so, took part in the proceedings.

5. (1) The Commission may, for the purpose of performing its functions under this Act, establish such committees as it considers necessary, and delegate to any of those committees such of its functions as it considers fit. Committees

(2) Subject to subsection (1), the Commission may appoint as members of a committee, persons who are, or are not, Commissioners except that at least one member of a Committee shall be a Commissioner.

A person serving as a member of a committee shall hold office for such period as the Commission may determine.

\*Subject to any specific or general direction of the Commission, a committee may regulate its own procedure.

(1) If any person is present at a meeting of the Commission or a committee at which any matter is the subject of consideration, and that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as practicable after the commencement of the meeting, declare his interest and shall not, unless the Commission or the committee otherwise directs, take part in any consideration or discussion of, or in any question touching such matter. Disclosure of interest

A disclosure of interest made under subsection (1) shall be entered in the minutes of the meeting at which it is made.

Any person who contravenes the provisions of subsection (1) shall be guilty of an offence, and shall be liable, upon conviction, to a fine not exceeding five thousand penalty units.

(1) A person shall not without the consent in writing given on behalf of the Commission, publish or disclose to any person other than in the course of such person's duties, the contents of any documents, communication, or information which has come to such person's knowledge in the course of such person's duties under this Act. Prohibition of disclosure of information to unauthorised persons

Any person who contravenes the provisions of subsection (1) shall be guilty of an offence, and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

(3) If any person, having information which to such person's knowledge has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates any such information to any other person, such person shall be guilty of an offence, and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

### PART III

#### THE DIRECTORATE OF THE COMMISSION

Director,  
Deputy  
Director and  
other staff

18. (1) The Commission shall appoint a Director and a Deputy Director of the Commission.

(2) The Director shall be—

(a) the Secretary to the Commission;

(b) responsible for the management and administration of the Commission;

(c) a qualified advocate;

(d) a full-time officer; and

(e) responsible for the implementation of any matters referred to such Director by the Commission.

(3) The Commission may appoint, on such terms and conditions as it may determine, such other staff as it may consider necessary for the performance of its functions under this Act.

(4) The Public Service Regulations shall apply to the staff appointed by the Commission.

(5) The Commission may engage the services of such advisors and experts as it thinks necessary.

19. Section *seventeen* shall apply, with the necessary modifications, to the staff.

Prohibition  
of disclosure  
of information  
by staff  
to  
unauthorised  
persons

Immunity of  
Commissioners  
and staff

20. (1) No proceedings, civil, or criminal, shall lie against any Commissioner or the staff, for anything done in the exercise of such person's functions under Act.

(2) Subject to the provisions of this Act, a Commissioner or a staff member shall not be called to give evidence before any court or tribunal in respect of anything coming to such person's knowledge in the exercise of such person's functions under this Act.

(3) For the avoidance of any doubts, nothing in this section shall protect any Commissioner or the staff, for anything done outside the functions of such person's office.

21. (1) A person who—

Offences

(a) is a witness before the Commission and without lawful excuse refuses to be sworn or affirmed, or having been sworn or affirmed refuses to answer fully and satisfactorily any question lawfully put to such person;

(b) gives false testimony in any material particular to any matter under investigation;

(c) insults, interrupts or otherwise obstructs any Commissioner or any member of staff in the performance of such person's functions under this Act; or

(d) disobeys any order made under this Act;

shall be guilty of an offence, and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units, or to imprisonment for a term not exceeding three years, or to both.

#### PART IV

##### FINANCIAL AND OTHER PROVISIONS

22: (1) The funds of the Commission shall consist of such moneys as may—

Funds of  
Commission

(a) be appropriated by Parliament for the purposes of this Act;

(b) be paid to the Commission by way of grants or donations; and

(c) vest in or accrue to the Commission.

(2) The Commission may, subject to the approval of the President—

(a) accept money by way of grants or donations from any source; and

(b) raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions.

(3) There shall be paid from the funds of the Commission—

(a) the salaries, allowances, pensions and loans of the Commissioners and staff;

(b) such reasonable travelling, transport and subsistence allowances for the Commissioners and members of any committee of the Commission, when engaged in the business of Commission; and

(c) any other expenses incurred by the Commission in the performance of its functions.

(4) A person summoned as a witness under this Act, may on the order of the Commission be paid such allowances as may be prescribed by the Commission.

Financial  
year

23. The financial year of the Commission shall be the period of twelve months ending on 31st December in each year.

Accounts

24. (1) The Commission shall cause to be kept proper books of account and other records relating to its accounts.

(2) The accounts of the Commission shall be audited annually by independent auditors appointed by the Commission.

(3) The auditors' fees shall be paid by the Commission.

Annual  
report

25. (1) As soon as is practicable, but not later than ninety days after the end of the financial year, the Commission shall submit to the President a report concerning its activities during the financial year. — —

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report—

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the President may require.

(3) The President shall not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay the report before the National Assembly.

Rules

26. The Commission may, by statutory instrument, make rules for the—

(a) appointment, including the power to confirm appointments of persons, to any office in respect of which it is charged with responsibility under this Act;

(b) disciplinary control of persons holding or acting in such offices;

(c) termination of appointments and the removal of such persons from office;

(d) practice and procedure of the Commission in the exercise, of its functions under this Act; and

(e) delegation of its functions or powers.

27. The Commission may, by statutory instrument, make regulations for the better carrying out of the purposes of this Act. Regulations

## SCHEDULE

Form 1

PART I  
(Section (6) (1))

## OATH OF HUMAN RIGHTS COMMISSION

I, ..... having been appointed as Chairperson/Commissioner of the Human Rights Commission will, discharge the functions of the office of Chairperson/Commissioner of the Human Rights Commission and that I will not, directly or indirectly, reveal any matters relating to such functions to any unauthorised persons or otherwise than in the course of duty.

So HELP ME GOD

Sworn/Affirmed before me this ..... day of.....

19 .....

.....  
President

## SCHEDULE

Form 2

PART II  
(Section (6) (2))

## OATH OF SECRETARY OR STAFF OF COMMISSION

I, ..... having been appointed to exercise the functions of Secretary of the Commission/a member of the staff of the Commission, do swear/affirm that I will not, directly or indirectly, reveal to any unauthorised person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of my duties as such.

So HELP ME GOD

Sworn/Affirmed before me this ..... day of.....

19 .....

.....  
Commissioner for Oaths

## JUDICATURE ADMINISTRATION ACT, 1994

## ARRANGEMENT OF SECTIONS

PART I  
PRELIMINARY*Section*

1. Short title and commencement
2. Interpretation

PART II  
ADMINISTRATION OF JUDICATURE

3. Chief Administrator
4. Appointment of certain members of Judicature and its staff
5. Exercise by Commission of its disciplinary powers
6. Funds of Judicature
7. Financial year of Judicature
8. Accounts of Judicature
9. Annual report of Judicature

PART III  
MISCELLANEOUS

10. Allocation of High Court work
11. Judicial precedence
12. Capital expenditure on property and buildings
13. Establishment of committees
14. Regulations
15. Funding of Judicature pending due appropriation
16. Transitional arrangements for staff

## GOVERNMENT OF ZAMBIA

## ACT

No. 42 of 1994

Date of Assent: 31st December, 1994

An Act to provide for the administration of the courts; to confer on the Judicial Service Commission power to appoint staff of the Judicature; and to provide for matters connected with or incidental to the foregoing.

[31st December, 1994]

ENACTED by the Parliament of Zambia.

Enactment

## PART I

## PRELIMINARY

1. This Act may be cited as the Judicature Administration Act, 1994, and shall come into operation on such date as the Minister may, by statutory order, appoint.

Short title  
and  
commence-  
ment

2. In this Act, unless the context otherwise requires—

Interpreta-  
tion

" Commission " means the Judicial Service Commission referred to in Article *one hundred and nine* of the Constitution;

Cap. 1

" Chief Administrator " means the Chief Administrator of the Judicature appointed under section *three*;

" court " does not include a court-martial;

" court fees " means any fees, commissions or charges payable under any law in connection with the lodgement, service, execution or administrative processing of any writ, application or other legal process, and includes sheriff's fees and any commission, late fees or other charges so payable;

" Judicature " means the Supreme Court, the High Court, the Industrial Relations Court, the subordinate courts, local courts and any other courts established by an Act of parliament;

" member of the Judicature " means—

- (a) the Chief Justice, Deputy Chief Justice or any judge of the Supreme Court or High Court;
- (b) the Chairman and any Deputy Chairman or member of the Industrial Relations Court;
- (c) a magistrate or local court justice; and
- (d) any officer having power to hold or exercise, in open court, the judicial powers of any court;

" staff of the Judicature " means—

- (a) the Chief Administrator;
- (b) any sheriff or other officer or person appointed under subsection (1) of section *four*, other than a member of the Judicature; and
- (c) any person appointed under subsection (2) of section *four*.

## PART II

### ADMINISTRATION OF JUDICATURE

Chief Administrator

3. (1) There shall be a Chief Administrator of the Judicature who shall be appointed by the President on the recommendation of the Commission.

(2) The Chief Administrator—

- (a) shall be responsible for the day-to-day administration of the Judicature and for the implementation of resolutions of the Commission in respect of that administration;
- (b) shall have and may exercise and perform such other powers and functions as may be conferred on him by or under this or any other Act; and
- (c) shall, in relation to the expenditure of the Judicature, be deemed to be the controlling officer within the meaning of the Finance (Control and Management) Act.

(3) The Chief Administrator shall hold office on such terms and conditions as the Commission may determine with the approval of the President.

4. (1) The holders of the following offices shall be appointed by the Commission:

- (a) Registrar, Deputy Registrar, Assistant Registrar, District Registrar or other like functionary of any court;
- (b) Master, Deputy Master and Assistant Master of the Supreme Court;
- (c) principal resident magistrate, senior resident magistrate, resident magistrate, magistrate and clerk of a subordinate court;

Cap. 600

Appointment of certain members of Judicature and its staff



(d) Senior Presiding Justice and Presiding Justice of a local court;

(e) Director of Local Courts, Deputy Director of Local Courts, provincial local courts officer and local courts officer;

(f) Sheriff, Deputy Sheriff and Assistant Sheriff;

(g) such other officers of any court, required for the purposes of any written law, as the Commission may, by regulation, prescribe; and

(h) court reporters, interpreters and such other staff of any court as the Commission may, by regulation, prescribe.

(2) Subject to the approval of the President as to numbers, the Commission shall appoint such other staff as may be necessary to assist the Chief Administrator in the performance of his functions.

(3) A person appointed under this section shall, subject to this Act, hold office on such terms and conditions as the Commission may determine with the approval of the President.

5. (1) In connection with the dismissal, disciplinary action or termination of appointment of any officer holding an office to which the Commission appointed him, the Commission shall exercise its powers in that behalf in accordance with regulations made by the Commission with the approval of the President.

Exercise by  
Commission  
of its  
disciplinary  
powers

(2). The Commission shall, at the request of the Chief Administrator, hear him personally in connection with the exercise by the Commission of the powers referred to in this section.

6. (1) The funds of the Judicature shall consist of such moneys as may—

Funds of  
Judicature

(a) be appropriated by Parliament for the purposes of the Judicature;

(b) be paid to the Judicature by way of court fees or by way of such grants as the Chief Administrator may accept; or

(c) vest in or accrue to the Judicature.

(2) The Chief Administrator may accept money by way of grants, whether or not subject to conditions, for the benefit of any activity, function, fund or asset of the Judicature or any part thereof.

(3) There shall be paid out of the funds of the Judicature—

(a) the salaries and allowances of members of the Judicature, in accordance with the Constitutional Offices Emoluments Act, 1985;

Act No. 31  
of 1985

(b) the loans of members of the Judicature;

(c) the salaries, allowances and loans of the staff of the Judicature;

(d) such travelling, transport and subsistence allowances for staff of the Judicature as may be determined by the Commission with the approval of the President; and

(e) any other expenses incurred by the Judicature in the exercise and performance of its powers and functions, other than capital expenditure chargeable to the Government under section twelve.

Financial  
year of  
Judicature

7. The financial year of the Judicature shall be the period of twelve months ending on 31st December in each year.

Accounts of  
Judicature

8. The Chief Administrator shall cause to be kept proper books of account and other records relating to the accounts of the Judicature which shall be audited by the Auditor-General.

Annual  
report of  
Judicature

9. (1) As soon as practicable, but not later than six months after the expiry of the financial year, the Chief Administrator shall submit to the President a report concerning the activities of the Judicature during that financial year.

(2) The report shall include information on the financial affairs of the Judicature and there shall be appended to the report—

(a) audited balance sheets;

(b) audited statements of income and expenditure; and

(c) such other information as the President may require.

(3) The President shall, not later than the end of the first session of the National Assembly that begins after the receipt of the report, cause it to be laid before the National Assembly.

### PART III

#### MISCELLANEOUS

Allocation of  
High Court  
work

10. The Chief Justice shall designate, in respect of each place where the High Court is held, a judge who shall be responsible for allocation of the court's professional work.

Judicial  
precedence

11. (1) Judges of the Supreme Court, other than the Chief Justice and Deputy Chief Justice, shall rank according to the date on which they were appointed as judges of the Court.

(2) Judges of any other court who hold equal office shall rank according to the date on which their names were entered on the roll of practitioners kept for the purposes of the Legal Practitioners Act.

Cap. 48

Capital  
expenditure  
on property  
and  
buildings

12. The Government shall provide, equip and maintain such courthouses, offices, judges' lodges and other buildings as may be necessary for the purposes of the Judicature.

Establish-  
ment of  
committees

13. (1) The Chief Justice may constitute, on a permanent or temporary basis, one or more advisory committees, consisting of judges or others having knowledge of the work of the courts and prevailing social conditions, to advise him on such matters relating to the Judicature as he may from time to time consider necessary.

(2) Any such committee may, subject to any directions of the Chief Justice, regulate its own procedure, and its members shall hold office on such terms as the Chief Justice may determine.

14. (1) The Commission may, by statutory instrument made with the approval of the President, make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or expedient to be prescribed for carrying out or giving effect to this Act. Regulations

(2) Without limiting the generality of subsection (1), regulations under this section may be made for or with respect to—

- (a) the appointment to office, including the power to confirm appointments, of the staff of the Judicature and such of the members of the Judicature as are appointed by the Commission;
- (b) promotions to such offices;
- (c) the disciplinary control of persons holding or acting in such offices;
- (d) the termination of appointments and the removal of such persons from office;
- (e) prescribing the qualifications for appointment or promotion to any post;
- (f) the transfer or secondment of any person holding any such office; and
- (g) such training courses as may be considered necessary for promoting or maintaining efficiency.

(3) Regulations under this section may make different provisions for different categories of officers and may authorise the Commission to delegate any of its powers to the Chief Administrator or a member of staff of the Commission.

15. Until such time as due appropriation is made for the purposes of section six, appropriation and expenditure in respect of the Judicature shall be effected and dealt with in the same manner as before the commencement of this Act.

Funding of  
Judicature  
pending due  
appropriation

16. A person who, immediately before the commencement of this Act, was employed, whether on permanent and pensionable establishment or on secondment, as a sheriff, court reporter, court interpreter or other officer or functionary in connection with the operation or administration of any court or courts, shall be deemed, on the commencement of this Act, to be a member of the staff of the Judicature for a period of not more than eighteen months, unless—

Transitional  
arrange-  
ments for  
staff

- (a) the Commission, by notice in writing to the person so employed, determines that he shall not be a member of such staff; or

(b) the person so employed, by notice in writing to the Commission, states his intention not to be a member of such staff.

(2) At any time within the period of eighteen months referred to in subsection (1), the Commission may, under section *four*, appoint any person affected by that subsection as a member of staff of the Judicature.

(3) A person who—

(a) gives or is given a notice under subsection (1); or

(b) at the expiry of the period of eighteen months referred to in subsection (1), has not been appointed under section *four* as a member of staff of the Judicature;

shall be redeployed in the civil service or may, in the public interest, be retired therefrom, with entitlement to be paid all his terminal benefits.

(4) Nothing in this section—

(a) affects any power of the Commission under any law to create, or to employ any person in, a temporary position; or

(b) precludes the making of arrangements for the secondment or further secondment of any officer to any position.

Supplement to the Republic of Zambia Government  
Gazette dated the 30th May 1997

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## GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT No. 67 OF 1997

**The Judges (Conditions of Service) Act**  
(Laws, Volume 15, Cap. 277)

**The Judges (Salaries and Conditions of Service)  
(Amendment) Regulations, 1997**

IN EXERCISE of the powers contained in sections *three* and *twelve* of the Judges (Conditions of Service) Act, the following Regulations are hereby made:

1. These Regulations may be cited as the Judges (Salaries and Conditions of Service) (Amendment) Regulations, 1997, and shall be read as one with the Judges (Salaries and Conditions of Service) Regulations, 1996, in these Regulations referred to as the principal Regulations.

Title

S.I. No. 440  
of 1996

2. The principal Regulations are amended by the revocation of the First Schedule and the substitution therefor of the First Schedule set out in the Appendix to these Regulations.

Revocation  
and  
replacement  
of First  
Schedule

APPENDIX  
(Regulation 2)

FIRST SCHEDULE  
(Regulation 2)

| Office                                      | Salary      |
|---|-------------|
| Chief Justice                               | K20,000,004 |
| Deputy Chief Justice                        | K18,000,000 |
| Supreme Court Judge                         | K16,000,020 |
| Chairman, Industrial Relations Court        | K15,000,000 |
| High Court Judge                            | K14,000,004 |
| Deputy Chairman, Industrial Relations Court | K14,000,004 |

LUSAKA  
28th May, 1997  
[co.101/21/10]

FREDERICK J. T. CHILUBA,  
President

Copies of this Statutory Instrument can be obtained from the Government Printer,  
P.O. Box 30136, 10100 Lusaka. Price K500 each.

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 140 OF 1996

**The Judges (Conditions of Service) Act  
(Act No. 14 of 1996)**

**The Judges (Salaries and Conditions of Service)  
Regulations 1996**

IN EXERCISE of the powers contained in section *twelve* of the Judges (Conditions of Service) Act, 1996, the following Regulations are hereby made:

**PART I**

**PRELIMINARY**

1. These Regulations may be cited as the Judges (Salaries, and Conditions of Service) Regulations, 1996.

Title

**PART II**

**CONDITIONS OF SERVICE**

2. There shall be paid to a Judge the salary set out in the First Schedule.

Salary of  
Judge

3. There shall be paid to a Judge the allowances set out in the Second Schedule.

Allowances  
for Judges

4. Every allowance payable under these Regulations shall be exempt from payment of income tax and any other tax.

Exemption  
of allow-  
ances from  
tax

5. (1) A Judge shall be entitled to a rent-free fully furnished residence and shall be entitled to purchase the furniture at depreciative book value on vacating office.

Housing

(2) Where a Judge lives in the Judge's own house, the Government shall pay municipal rates for that house.

*Copies of this Statutory Instrument can be obtained from the Government Printer,  
P.O. Box 30136, 10100, Lusaka. Price K1,500 each.*

## Security

6. There shall be provided to a Judge an armed guard for twenty-four hours, to be based at the Judge's residence.

## Personal workers for Judges

7. A Judge be entitled to the workers set out in the Third Schedule.

## Travel on duty

8. (1) A Judge shall, when travelling on duty by air, be entitled to—

(a) in the case of the Chief Justice, first class travel; and

(b) in the case of any other Judge, business class travel.

(2) Where air travel is not available and a Judge travels by road, the Judge shall be entitled to travel in a chauffeur-driven official vehicle.

## Diplomatic passport

9. A Judge shall be entitled to a diplomatic passport.

## Official vehicle

10. A Judge shall—

(a) be entitled to a personal-to-holder vehicle and a driver, and the vehicle shall—

(i) be maintained at the Judiciary's expense; and

(ii) be replaced by the Government every five years, if funds are available; and

(b) on retirement, be entitled to purchase the personal-to-holder vehicle at book value, less depreciation:

Provided that if a Judge dies before retirement, the spouse of that Judge shall be entitled to purchase the vehicle.

## Telephone, electricity and water Bills

11. The Government shall pay the telephone bills of a Judge for local calls and for international calls, if such international calls are official.

## Medical treatment

12. A Judge, the spouse and children of the Judge shall be entitled to medical treatment at Government expense where such treatment is to be undertaken abroad after due approval of the Ministry responsible for health.

13. A Judge shall be entitled to the loans set out in the Fourth Schedule: Loans

Provided that at no time shall the Judge's salary be less than fifty per centum of the Judge's basic salary, after any payment is effected as a result of any loan obtained by the Judge.

14. (1) A Judge shall: Leave

(a) earn leave at the rate of three and half working days in each calendar month;

(b) be entitled to take local or vocational leave up to a maximum number of leave days accrued;

(2) Where a Judge takes vocational leave, the Government shall pay for leave travel benefits;

Provided that only the Judge, the spouse of the Judge and four children of the Judge shall be entitled to such vacation.

(3) The leave referred to in sub-regulation (1), shall be granted depending on the exigency of the service.

15. The Government shall insure a Judge against personal injury and accident up to a total of five times the basic salary paid to a Judge. Insurance

16. (1) The Government shall meet the following funeral expenses of a Judge, the spouse of the Judge and the children of the Judge: Funeral expenses

(a) coffin;

(b) transport to the place of burial within Zambia;

(c) a cash payment of eighty thousand kwacha as a funeral grant; and

(d) transport to assist in the organisation of the funeral, within the locality of the funeral.

(2) Sub-regulation (1) shall apply to a Judge, whether or not the Judge dies in office.

17. On retirement or death of any Judge, the Judge's effects shall be transported, only once, to any place in Zambia, using appropriate road or water transport. Transportation on retirement



## FIRST SCHEDULE

(Regulation 2)

| <i>Office</i>                               | <i>Salary</i> |
|---|---------------|
| Chief Justice                               | K10,449,312   |
| Deputy Chief Justice                        | K9,404,364    |
| Supreme Court Judge                         | K7,742,916    |
| Commissioner, (Supreme Court Judge)         |               |
| Anti-Corruption Commission                  | K7,742,916    |
| Investigator-General (Supreme Court Judge)  | K7,742,916    |
| Chairman, Industrial Relations Court        | K7,355,772    |
| High Court Judge                            | K7,243,692    |
| Deputy Chairman, Industrial Relations Court | K7,243,692    |

## SECOND SCHEDULE

(Regulation 3)

## ALLOWANCES FOR JUDGES

- (a) A non-private practising allowance of twenty percentum of the basic salary;
- (b) when travelling on duty, locally or abroad, such allowance or special imprest as may be determined by the Government; and
- (c) fuel allowance as may be determined by Government, to run the personal-to-holder vehicle.

## THIRD SCHEDULE

(Regulation 7)

## PERSONAL WORKERS FOR JUDGES

- 1. *Chief Justice*
  - (a) one cook;
  - (b) one house servant;
  - (c) one gardener;
  - (d) one laundry man.
- 2. *Deputy Chief Justice*
  - (a) one cook;
  - (b) one house servant;
  - (c) one gardener.
- 3. *Judge*
  - Supreme Court Judge*
    - (i) one cook;
    - (ii) one house servant;
    - (iii) one gardener.
  - High Court Judge*
    - (i) one cook;
    - (ii) one house servant;
    - (iii) one gardener.

23rd August, 1996

*Statutory Instruments*

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## FOURTH SCHEDULE

*(Regulation 13)*

## LOANS FOR JUDGES

- (a) for loan equivalent to five times the Judge's basic salary or the cost of the car, whichever is the lower;
- (b) for house loan equivalent to ten times the Judge's basic salary or the cost of the house, whichever is the lower.

LUSAKA

21st August, 1996

[JD.977/1]

FREDERICK J. T. CHILUBA,  
*President*

COUNTRY: NAMIBIA

543

## ADJUSTMENT OF JUDGES REMUNERATION WITH EFFECT FROM 1 APRIL 1998:

i) Chief Justice

|                       | <u>Pre-revised remuneration</u> | <u>Revised remuneration</u> |
|-----------------------|---------------------------------|-----------------------------|
| Annual salary         | NS225,000                       | NS290,000                   |
| Non-taxable allowance | NS 17,500                       | NS 17,500                   |
| Housing allowance     | <u>NS 48,000</u>                | <u>NS 60,000</u>            |
| Grand total           | <u>290,500</u>                  | <u>367,500</u>              |

ii) Additional Judge of the Supreme Court

|                       |                  |                  |
|-----------------------|------------------|------------------|
| Annual salary         | NS222,000        | NS287,000        |
| Non-taxable allowance | NS 10,000        | NS 10,000        |
| Housing allowance     | <u>NS 48,000</u> | <u>NS 60,000</u> |
| Grand total           | <u>NS280,000</u> | <u>NS357,000</u> |

iii) Judge President

|                       |                  |                  |
|-----------------------|------------------|------------------|
| Annual salary         | NS220,000        | NS285,000        |
| Non-taxable allowance | NS 15,000        | NS 15,000        |
| Housing allowance     | <u>NS 48,000</u> | <u>NS 60,000</u> |
| Grand total           | <u>NS283,000</u> | <u>NS360,000</u> |

iv) Additional Judge of the High Court

|                       |                  |                  |
|-----------------------|------------------|------------------|
| Annual salary         | NS212,000        | NS277,000        |
| Non-taxable allowance | NS 10,000        | NS 10,000        |
| Housing allowance     | <u>NS 48,000</u> | <u>NS 60,000</u> |
|                       | <u>NS270,000</u> | <u>NS347,000</u> |

Financial implications NS923,125-00  
 Cabinet Decision No 21st/11.08.98/00

From Mr. Justice Annel M. Silungwe, High Court, Windhoek,  
 Namibia.

18th June, 1999

**COUNTRY: SOUTH AFRICA****544**

2. No. 18751

GOVERNMENT GAZETTE, 13 MARCH 1998

**SCHEDULE**

| <b>Designation of office</b>  | <b>Salary per annum</b> |
|---|-------------------------|
| Chief Justice of the High Court of South Africa and President of the Constitutional Court | R412 288                |
| Deputy Chief Justice  | R405 673                |
| Deputy President of the Constitutional Court  | R405 673                |
| Judge of Appeal and Judge of the Constitutional Court                                     | R386 033                |
| Judge President of the High Court   | R383 670                |
| Deputy Judge President of the High Court  | R377 496                |
| Judge of the High Court   | R374 645                |

**From Mr. Justice Ralph H. Zulman: Supreme Court of Appeal  
of South Africa .**

**18th June, 1999**

**APPENDIX E (4)**

18 June 1999

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**COUNTRY:** ZIMBABWE

**SUPERIOR COURT SALARIES AND BENEFITS**

|  | 1.Chief Justice  | 1.Supreme/Appeal Court Judge<br>2.Judge President | High Court Judge                             |
|--|--|---|--|
| Salary<br>(Indicate in US \$)            | Yes \$8 895 p.a.   | Yes \$8 659 p.a.                                  | Yes \$8 327 p.a.                             |
| Housing Allowance                        | Yes \$1 263 p.a.   | Yes \$1 263 p.a.                                  | Yes \$1 263 p.a.                             |
| Free Telephone                           | Yes \$190 p.a.<br>Allowance  | Yes \$190 p.a.                                    | Yes \$190 p.a.                               |
| Free Electricity                         | Yes  | No  | No   |
| Housing/Property Loans or Grants         | Yes House  | No  | No   |
| Income Tax Percentage Tax free Allowance | Yes  | Yes   | Yes  |
| Expenses/Cost of living Allowance        | No   | No  | No   |
| 1.Car Allowance<br>2.Fuel Allowance      | 1.Yes Mercedes \$320<br>2.For 5000Km per month   | 1.Yes Mercedes E230<br>2.For 5000Km per month     | 1. Yes Mercedes E230<br>2. 5000 Km month     |
| Driver or Driving Allowance              | Yes Driver   | Yes   |  |
| Appeal Allowance                         | No   | No  | No   |
| Inflationary Allowance                   | No   | No  | No   |
| Pension Gratuity                         | Yes Full salary if 60 years old and 20 years service or gratuity of two months salary for each year served | Yes Same as for C.J.                              | Yes Same as for C.J.                         |
| Medical                                  | No   | No  | No   |
| Servant(s)                               | Yes 3  | Yes 2   | Yes  |
| Indicate Number                          |  |   |  |
| Security Arrangments,if. any             | Yes one armed guard  | Yes same as for CJ                                | Yes Same as forCJ                            |
| Cost of Living Index                     | 838 8  | 838 8   | 838 8  |
| Other Benefits                           | Cell phone plus call allowance of \$474 p.a.   | Cell phone plus call allowance of \$474 p.a.      | Cell phone plus call allowance of \$474 p.a. |

Any other relevant information: The Conditions of services of the Judge President of the High Court are the same as those of the Supreme Court Judges.

From: THE HONOURABLE CHIEF JUSTICE A.R. GUBBAY  
CHIEF JUSTICE OF ZIMBABWE

**On advising judges**

Listen to the disputes that come up among your people. Judge every dispute fairly, whether it concerns only your people or involves foreigners who live among you. Show no partiality in your decision judge everyone on the same basis, no matter who he is.

Deuteronomy - Chapter 1 vs 16-17  
Good News Bible  
To-day's English Version