

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**THE ROLE OF INFORMATION TECHNOLOGY IN THE PROMOTION OF
ACCESS OF LEGAL INFORMATION.**

BY

MBALASHI LOMBE .M.

Being a paper submitted in partial fulfilment of the examination requirements for
the degree Bachelor of Laws (LLB) of the University of Zambia.

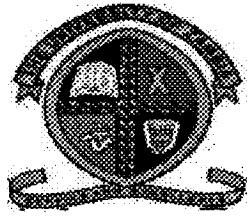
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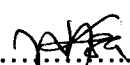
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**THE ROLE OF INFORMATION TECHNOLOGY IN THE PROMOTION OF
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Be accepted for examination. I have checked it carefully, and I am satisfied that it fulfils the requirements relating to format as laid down in the regulations governing directed researches.

Dated..13/12/04

Supervisor.....

Mr. G.M. Kanja

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DECLARATION

I, MBALASHI, LOMBE.M. - COMPUTER No. 99106540 do hereby declare that I am the author of this Directed Research Paper entitled: The Role of Information Technology in The Promotion Of Access Of Legal Information, and confirm that it is my original work. I further declare that due acknowledgement has been given where other scholars' work have been used. I verily believe that this research has not been previously presented in the school for academic purposes.

Students Signature:.....*Omsh*.....

Date:.....*06 - 12 - 2004*.....

DEDICATIONS

My Late Parents

(Simon Mbalashi and Joyce Mbalashi)

It's a pity you are not here with me today to see the person I have become and also to share the joy that I share in reaching this far. I miss you greatly

My Only Brother

(George Mbalashi)

Thanks for understanding me when I didn't know what to do and also when I seemed not to care, I have only you left and I encourage you to reach greater heights.

My Aunties

(Chilufya and Irene)

I thank you both for being so patient with me and encouraging me throughout my life, I no longer doubt that you have faith in me.

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I acknowledge the presence of the Lord throughout my life, without whom I would not live.

It goes without mention that the most influential and helpful person involved in the success of this paper is my Supervisor Mr. George Mpundu Kanja. To him I wish to express my profound gratefulness for the amount of patience, guidance, and understanding throughout my research.

To Aunt Chilufya who in the absence of my late parents has been both a mother and father to me, I thank you so much for you have truly shown me what it is to be independent and also shown me the true value of a sound education without you I would not be writing this paper today.

To Professor Alfred Chanda, Mr. Frederick Mudenda and Ms Precious Mweemba of Law School, I thank you all for having faith in me and bringing out my responsible side you have truly taught me what it is to be trusted and responsible.

My Childhood Friends Baampi, Finzi, Freddo and Twaambo we have come a long way and learnt a lot from each other along the way thanks for the lessons and may we share this friendship even longer.

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My gratitude is also extended to Cuthbert Tembo and Augustine Hamweela with whom I have shared both good times and bad times, thank God we have ended the journey that we started together, Bokani, Don, Marshal, Kaluba, Susan and the rest of my class mates I wish you the greatest success in this world we are about to enter. Thank you all for the impact on my life this far, I am truly grateful

TABLE OF ACRONYMS

CAZ	Communications Authority of Zambia
CD	Compact Disk
IBA	Independent Broadcasting Authority
ICT	Information and Communications Technology
PTC	Posts and Telecommunications Corporation
WWW	World Wide Web
ZAMLII	Zambia Legal Information Institute
ZAMTEL	Zambia Telecommunications Limited
ZAMPOST	Zambia Postal Services Corporation

TABLE OF STATUTES

General Assembly of the United Nations resolution A/RES/51/162 dated 30th January, 1997

Okinawa Charter on Global Information Society, Information, and Communications Technologies

The Constitution of the Republic of Zambia Chapter One of the Laws of Zambia

The Council of Law Reporting Act Chapter 46 of the Laws of Zambia.

The Kenya Information Technology Act 2002

The Telecommunications Act Chapter 469 of the Laws of Zambia

PREFACE

This paper has been written in order to provide an insight of the role of the modern trend of information communication technology in promoting the access to information with a larger bias to access to legal information in Zambia. It will try and show how the proper adoption of information and communication technology can help improve people's access to information.

This paper is divided into four chapters. The first Chapter mainly dwells on the relevance of information and a discussion on what exactly information technology is. The chapter also dwells on the impact of information technology in the access to information in comparison to the vehicles present before the advent of information technology. The Chapter further discusses the role information technology has played in promoting the already existent access to information in comparison to the earlier methods of accessing information.

The second chapter tries to discuss the present legislation related to the subject of discussion as well as a discussion on the regulatory measures relating to use of information technology.

The actual problems on the ground faced in the access to legal information especially with the collapse of the law reporting system in Zambia and the inadequacies of supply of relevant literature for the legal fraternity shall be dealt with in Chapter Three.

The last Chapter shall be dedicated to conclusions of the study that will include a critic as well as advance suggestions on the existent legislation governing information and provide an analysis as to whether they adequately provide for information technology as a means of acquiring information better. The chapter will also try and show why indeed information technology can act as the ideal method of accessing information. It shall also discuss the current Draft National Policy on Information and communication Technology

CHAPTER ONE:

1.0 INTRODUCTION

Information, Knowledge, and technology are increasingly being recognised as major drivers of social and economic development- factors of production alongside land, labour and capital and critical to economic growth and sustainable development. It has often been said that information is power, without which decisions are untimely, irrational, and misdirected. It makes it possible to link producers and consumers to the markets as well as teachers and students to the much sought out knowledge. Availability of information enables the public to participate meaningfully in governance issues, promotes transparency and accountability in the management of national affairs.

If any meaningful programmes are to succeed, information has to be availed to people at all levels in Zambia in order to increase opportunities for wealth creation as well as guarantee active participation in the very programmes they want information in.

1.1 INFORMATION

Information is a word basically employed to refer to facts or details about a specific subject,¹ Information is intelligence or knowledge that contributes to the socio-economic, cultural and political well being of society irrespective of the form it is encrypted in (text, figures, diagrams etc) irrespective also of the mode of dissemination (oral, written etc).² Information involves the transfer of knowledge from one person to another with the aim of enlightening one another so as to ensure the well being of all.

The relevance of information can thus in no way be ignored as it is through information on many aspects of life that development has been achieved from time immemorial. The need for information is ubiquitous, meaning there is no sector or economic activity that can function effectively without information. This information must however be timely and reliable in order to support reliable forecasting in socio-economic development planning as well as the other core tenants of life.³

The role that information plays as an essential ingredient in the socio-economic development process of any society is now accepted in the developed as well as the developing countries. However, for information to be useful in this context, it has to be systematically captured, recorded,

¹ Oxford Advanced Learners Dictionary.

² Pan African Development Information systems. 1998.

³ Neelameghan, 1981.

processed, and organized to ensure timely access to relevant and reliable information by decision makers, planners, managers, researchers, and people at the grass roots alike.

1.2 INFORMATION TECHNOLOGY

Over the last two decades, the advances made in the in Information Communication Technology and the telecommunications, media, computing and broadcasting technologies have made it much easier and faster to process, distribute or access diverse information across a variety of platforms (Radio, TV, Computers, Phones etc.). The way information is now transmitted, accessed and used around the world, has fundamentally altered the way societies communicate, conduct business, educate, entertain as well as organise and govern them. Today, the use of Information and Communications Technology (ICT's) goes beyond data/information processing to support organisational operations, processes, and activities. ICT is now considered key to accelerating the social and economic development agenda in a number of countries. In fact, ICT's form the backbone of industries such as global financial services, travel and tourism, distance learning and are increasingly becoming a value-adding component in everyday life events such as education, health, security, entertainment, law and communication. ICT's are also a critical component for accelerating innovation, business competitiveness, promoting efficiencies in

delivery of services, democratic governance, human development, and economic growth.

The extent to which Zambia can benefit from this revolution largely depends on the strategies and actions for development of its “information infrastructure” – the increasing integrated mix of telecommunication networks, computing hardware and software, and value-added services required for the efficient collection, processing, storage and transmission of information, together with legal and institutional framework.

Generally information technology (I.T) embraces the use of computers, telecommunications and office systems technologies for the collection, processing, storing, packaging, and dissemination of information⁴, it is sometimes also called Information and Communications Technology (ICT), a generic term used to express the convergence of telecommunications, computing, broadcasting, and communications. One prominent example is the Internet.⁵ These term(s) are used to describe technologies that help produce, manipulate, store, communicate, or disseminate information.⁶ It encompasses all forms of technology used to create, store, exchange, and use information in its various forms (business data, voice conversations, still images, motion pictures, multimedia presentations,) and other forms, including those not yet conceived.

⁴ First Draft National Information and Communication Technology Policy. Ministry of Communication and Transport.

⁵ First Draft National Information and Communication Technology Policy. Ministry of Communication and Transport

⁶ www.idonline.com/ Zambia's readiness for ICT's

IT is the technology that is driving what has often been called "the information revolution." IT includes matters concerned with furthering computer science and technology, design, development, installation, and implementation of information systems and applications. It is also concerned with all aspects of managing and processing information, on databases or in libraries, especially within large organizations. According to the Okinawa Charter on Global Information Society, Information and Communications Technologies (*ICT's*) are one of the most potent forces in shaping the twenty-first century. Their revolutionary impact affect the way people live, learn and work and the way government interacts with civil society. *ICT's* are fast becoming a vital engine of growth for the world economy. They are also enabling many enterprising individuals, firms, and communities, in all parts of the globe, to address economic and social challenges with greater efficiency and imagination. Enormous opportunities are there to be seized and shared by us all.

Advances in Information Technology (IT) have dramatically transformed the way in which people live, work, learn, communicate, and conduct business. The Continuously expanding applications of information and communication technologies (ICT) are transforming local, national, regional, and international economies throughout the world. Just as electricity, the telephone, railroad and automobile each provided a major stimulus to economic growth and a significant restructuring of most economies and societies during the 20th century, so the ICT

revolution is in the process of creating another "paradigm shift" for the 21st century.

Access to information offers the best chance yet for developing countries especially to take their rightful place in global economy. And so it must be the mission of society especially that of developing countries to ensure access to information as widely as possible.

Today's society is powered by the access to information in what has come to be known as the information society which work towards developing new and better theories, techniques, and technologies of improving access to information and of late has been characterized by the prevalence of Information and Communication Technologies (ICT's) which are impacting every facet of people's daily lives.

The continuing rapid advances of information technology have made access to knowledge and communications easier around the world. Developing countries like Zambia stand a chance to benefit from a growing diffusion of information and communication technologies. However the application of ICT's for social and economic development is confronted by a number of factors – ranging from the availability of human resources to enabling environment for the participation of the private sector and civil society in the provision of ICT services to the population.

Prior to the advent of information technology, the prevalent medium of accessing or transferring information was achieved at a rather slow pace, much reliance

was placed on the postal services and the expensive medium of telecommunications which in this paper refers to telephone as well as facsimile facilities. It must however be acknowledged that information technology has merely come in to improve the access to information that was already existent before its advent. Even though the number of people with access to telecommunications has increased mainly due to the introduction of mobile phones on the market subsequently enhancing the way private and corporate business is conducted, the expansion of ICT products and services as well as cost reduction can make it even better. One argument is that access of information is fine merely by use of the now must have mobile phones, but the question is, how many countries especially developing countries, can sustain the daunting task of rolling out a national telecoms network where there was none before?

1.3 INTERNET

Information and Communication Technologies, (ICT's) present Zambia with a vehicle for leapfrogging the development process. ICT's enable people to do things better and faster than has been possible before. Through technology, Zambia can achieve rapid industrialization, economic development, and progress. When properly harnessed, ICT's can result in greater efficiency and optimum utilization of time and resources; the two cardinal factors in the access to information at any level. It used to take months to send a message from one end of the world to another. Today, by the touch of a button, a message may be disseminated to all corners of the world in milliseconds. Companies and

governments used to spend billions of dollars on meetings and conferences. Today, video-conferencing with anyone, in any part of the globe, is becoming more and more prevalent. It is no longer necessary to go to a physical classroom for lessons or to go to a library to read cases; one can simply receive notes through the Internet and also view lectures on the Internet.⁷ Remote communities can be networked to be in constant communication, and therefore having access to the latest information. With ICT's, the possibilities are limitless. ICT's have reduced the cost and increased the speed of communications across the globe, abolishing pre-existing barriers of time and space, and as a consequence, affecting all areas of social and economic life.

What then is the Internet? The Internet can simply be described as a computer-based global information system composed of many interconnected computer networks. Each network may link tens, hundreds, or even thousands of computers, enabling them to share information with one another and to share computational resources such as powerful supercomputers and databases of information⁸. The Internet has made it possible for people all over the world to communicate with one another effectively and inexpensively. Unlike traditional broadcasting media, such as radio and television, the Internet does not have a centralized distribution system. Instead, an individual who has Internet access can communicate directly with anyone else on the Internet, make information

⁷ Today Lecture notes at the University Of Zambia School Of Law can be accessed via internet.

⁸ Microsoft Encarta Encyclopaedia 2004.

available to others, find information provided by others, or sell products with a minimum overhead cost. Penelope Lawrence says of the Internet, "it is a network of computers that communicate with each other through the telephone system."⁹ This form of information technology has changed the life of many in that it allows for the immediate exchange of information between anyone with a computer and a telephone line anywhere in the world.

The internet provides the biggest or rather largest encyclopaedia the world has ever seen in form of what is called the world wide web (WWW), it provides all sorts of information ranging from shopping malls, maps, people, music, movies and most important of all any form of information that one wishes to find and all this is just a click of a button away.

Surveys have been conducted which have projected that the Internet has doubled in size every 9 to 14 months since it began in the late 1970s. In 1981 only 213 computers were connected to the Internet. By 2000 the number had grown to more than 100 million. The current number of people who use the Internet can only be estimated. One survey found that there were 61 million Internet users worldwide at the end of 1996, 148 million at the end of 1998, and 407 million by the end of 2000. Some analysts said that the number of users was expected to have doubled again by the end of 2002.¹⁰

⁹ Penelope Lawrence, Law on The Internet, A practical Guide. P 5

¹⁰ supra note 8

However, to take advantage of the Internet, it is necessary to examine its potential and the array of new opportunities it brings with it, and then to work towards the realisation of the goals that are most attractive. The focus must thus be on the opportunities the Internet and information technology opens for promoting access to information especially for non-commercial purposes.

1.4 CONCLUSION:

Technology is no longer the limiting factor when it comes to rolling out Information and Communication technologies to the general population in Africa. The trick is to get the right people together, co-operating for the general development of Zambia and towards greater opportunities for all.

The potential of information technology to improve access to information can in no way be underrated. Though coming to add on to the already existent paper based method of information provision, information technology has brought with it new limitless frontiers that enhance the already existent access to information, today access to information technology means that there exists much faster access and high speed searches of massive databases. It requires less space, both in terms of storage methods - (CD ROMS, hard disks), and in terms of the internet being all pervasive. Aspects of Online Publishing ensure the provision of media content by traditional media houses using ICT tools such as the Internet such that currently, the major daily newspapers are all published on the Internet and are accessed by anyone, anytime and anywhere in the world. There is no degradation of the original text, publication is instantaneous, and

updating immediate. A single published copy is available worldwide and is available in an unlimited number of copies to an unlimited number of users.

What greater way to disseminate information at a faster and larger scale?

CHAPTER TWO:

2.0 INTRODUCTION:

Information Communication Technology is more than just computers and the Internet; it includes all types of electronic communication. Over the last two decades, the advances made in the telecommunications industry and the convergence with computing and broadcasting technologies have made it much easier and faster to process, distribute, or access information. The way information is now accessed and transmitted around the world for example through the Internet helps significantly in how societies organize and govern themselves. Today, ICT's form the backbone of industries such as global financial industry, Education and of course the Legal industry and are increasingly becoming a value adding component to the above mentioned fields.

ICT's are also a crucial component for accelerating Innovation, promoting efficiencies in delivery of services, democratic governance, human development, and economic growth. However the extent to which Zambia can benefit from this revolution largely depends on strategies and actions for development of its information infrastructure-the increasing integrated mix of communication networks, computing hardware and software and value-added services required for the efficient collection, processing, storage and transmission of information, together with the legal and institutional frameworks.

2.1 THE LAW ON INFORMATION TECHNOLOGY:

Societies have attempted to regulate the modes of communication through customs and laws since ancient times, hence the development of such things as Censorship. Today many societies regard freedom of communication as a basic human right and have enacted laws to protect this right. In the United States for instance, freedom of verbal speech and print communication is protected by the 1st Amendment to the Constitution. The government may only censor material that constitutes libel, slander, obscenity, perjury, sedition, or criminal conduct. In Zambia, while the law does not specifically provide for the freedom of communication, Article 20 of the Zambian constitution provides for the freedom of expression under which, the Article provides that

*"Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive 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."*¹¹

The arrival of modern ICT services in a country brings up a number of legal issues regarding the use of electronic information. While enabling many organizations and people to collect, organize, and sell information about other

¹¹ Article 20 (1) of The Constitution of the Republic of Zambia.

people and organizations, both quickly and cheaply have also brought about many other factors that need to be addressed by the law. The easy availability of personal information makes banking, education, health care, and sales much more convenient for both consumers and sellers. Companies maintain huge mailing lists of customers that record not only their names, addresses, and phone numbers, but also major recent purchases, credit ratings, and demographic information (such as sex, age, income, and educational level) that helps the companies identify target markets for specific products.

However, there is a negative side to all this shared information as there is little control over who sees or uses this personal information. Medical records are shared not only by doctors' offices and hospitals but are regularly made available to insurance companies as well. Credit report errors occur often and can be very damaging to a person's financial situation. All this information brings about a risk to the protection of the right to privacy guaranteed by Article 11 of the Zambian constitution. This entails therefore that there should be some form of regulation to ensure that both the freedom of expression is protected while ensuring that the right to privacy is not violated. There is also an inherent risk of fraud with that the most serious threats to the integrity and authenticity of computer information coming from those who have been entrusted with usage privileges and yet commit computer fraud. For example, authorized persons may secretly transfer money in financial networks, alter credit histories, sabotage information, or commit bill payment or payroll fraud. Modifying, removing, or

misrepresenting existing data threatens the integrity and authenticity of computer information. For example, omitting sections of a bad credit history so that only the good credit history remains violates the integrity of the document. Entering false data to complete a fraudulent transfer or withdrawal of money violates the authenticity of banking information. These crimes to be prevented must have some form of regulatory frameworks and legislation to protect the victims as well as deter those likely to engage in such vices.

Presently, there exists no legislation that governs and regulates the use of information technology in Zambia. This is largely due to the fact that exposure to information technology is still in its infancy even though Zambia was the first country to adopt the trend of the Internet in Africa; the country only has five Internet service providers (ISP's) as compared to Zimbabwe, which currently has Twenty Four Internet service providers.¹² Despite the lack of any legislation specifically relating to information technology, the Zambian Government has tried to provide for regulators of ICT's, these are the Communications Authority of Zambia (CAZ) and the Independent Broadcasting Authority (IBA). The Jurisdiction of the Communications Authority is mainly in the telecommunications industry. The Authority regulates the licensing and use of

¹² Times of Zambia, E-brain sets debates on Information Technology in Zambia. Mildred Mpundu.

radio frequency spectrum in the broadcasting industry for both radio and TV transmission.

The independent broadcasting authority on the other hand was created by an Act of Parliament to regulate the operations in the broadcasting industry.

In 1994, an Act of Parliament specifically the Telecommunications Act Chapter 469 of the Laws of Zambia was passed that effectively liberalised the information and communications sector. It saw among other things the disbanding of The Posts and Telecommunications Corporation (PTC) into ZAMTEL and ZAMPOST. The liberalisation also saw the entry into the market of Internet Service Providers, Mobile Telephone Providers and generally various initiatives were launched in the sector. The Passing of this Act while liberalising this sector also brought with it major challenges in the way investment and generally access to information were to be regulated. The major challenge that came with liberalisation of the telecommunications sector includes coordination of various activities in the sector, drafting of appropriate regulations to deal with issues of technology assisted fraud, computer misuse and crimes, and also the development of incentives to encourage the private sector to invest in the rural and underserved areas and lack of a national strategy on ICT's and their role in Development. Based on the fact that there are no laws regulating information technology, the government has embarked on a number of programmes to facilitate for the establishment of some form of regulatory legislation. The

Computer Misuse and Crimes Bill of 2004 is one of these efforts and also the intended adoption of a policy on information and communications technology.

These moves have been undertaken pursuant to the realisation that the only way to implement a well-organised and legitimate adoption of information technology would be through ensuring that there is an effective regulatory framework on the use of ICT'S as they are the ones that determine the growth and performance of the ICT sector. Along side regulatory measures as regards ICT'S the law should also enable the easy access to computer, Internet and other information technology components to ensure an effective use of this vehicle towards promoting the access to information.

2.2 THE TELECOMMUNICATIONS ACT

Telecommunications generally refers to the devices and systems that transmit electronic or optical signals across long distances. Telecommunications enables people around the world to contact one another, to access information instantly, and to communicate from remote areas. Telecommunications usually involves a sender of information and one or more recipients linked by a technology, such as a telephone system, that transmits information from one place to another. It also provides the key medium for delivering news, data, information, and entertainment.

In 1994, the Telecommunications Act¹³ was enacted to regulate the provision of telecommunication services to, from, and within Zambia. Under the Act, telecommunication is used to mean the transmission of-

- (a) Speech, music or other sounds;
- (b) Visual images;
- (c) Electronic or other data,
- (d) Signals capable of being interpreted as or converted to sounds, images or data; or
- (e) Signals for the actuation or control of machinery or apparatus;

Unfortunately, the Telecommunications Act does not specifically address the aspect of information technology as a means of communication. The Communications Authority created under this Act also does not address information technology and thus even though the transmission of information via information technology like the internet is a form of telecommunication the Zambian statutes still do not specifically address the issue of information technology in full.

2.3 SECURITY IN THE INFORMATION AGE

In general, one of the greatest concerns in “connected” societies is security of information passing through networks and systems such as computers, financial transactions, health records etc. As Zambia embraces ICT’s, more concerns shall arise. Already, Zambia has experienced cases of misuse of ICT’s especially with

¹³ Chapter 469 of the Laws of Zambia

respect to “corrupting” website content. The proliferation of Internet and other ICT applications will create opportunities for misuse. However, with measures such as implementing security policies, laws and technology solutions aimed at securing information, networks and systems, the impact can be mitigated. Therefore, every effort must be made to ensure that as the country adopts, implement and uses ICT’s in all spheres of life, security measures are put in place to minimize negative impacts of ICT’s on society at large. Specific concerns include:

- (a) Security of government, public and private networks and communications systems in general; and in particular those systems carrying sensitive and critical data/information of great value to the Government, businesses and individuals;
- (b) Protection of networks and information systems to guard against various types of malicious crimes and unauthorised access; safeguarding against undermining consumer confidence in online services including those based on e-commerce, e-government and e-health systems;
- (c) Privacy of individuals, businesses and Government arising from connectivity to local, national and global networks.

2.4 CONCLUSION

The fact that Zambia does not have legislation specifically governing the use of information technology does not in any way take away the advantage that information technology has over the traditional methods of information transfer. However, to accrue the full benefit of access to information via information

technology it is of urgent and cardinal importance that information technology gets legal recognition in form of governing and regulatory legislation. In Kenya for example, there exists what is called Information Act, which regulates the use of information technology to transfer information as well as conduct business. The statute is structured under the specifications of the General Assembly of the United Nations resolution A/RES/51/162 dated 30th January, 1997 which recommends inter alia that all states give favourable consideration to the said Model Law when they enact or revise their laws. The Kenya Information Technology Act provides for the protection of personal information as a safeguard to the right to privacy, and also sets out the specific offences that come with the use of information technology as a medium of information transfer. The Act also establishes the national information and communications technology Authority.

This paper thus proposes that an Act of parliament specifically governing the aspect of information technology be enacted, while the current move to enact the computer crimes and misuse Act is a welcome move, a more specific act like that in Kenya is necessary. It is also important that an independent regulatory authority besides the communications Authority that has general application be established based on the intended policy on information and communication technology.

CHAPTER THREE

3.0 INTRODUCTION:

Since many legal norms do not operate through citizen self application, the quality of communication within the structure of government is vitally important to how law is carried out.

As Marc Galanter observed, the law "usually works not by exercise of force but by information transfer, by communication of what's expected, what forbidden, what allowable, what are the consequences of acting in certain ways." Galanter points out how such notions as "deterrence," "bargaining in the shadow of the law," and "legal socialization" assumes an information flow.¹⁴

Better access and improved communication have been consistent targets throughout the history of law. This is evidenced by such maxims as "*ignorantia juris quod quisque scire tentur scire tentur non excusat*"¹⁵ which translates ignorance of the law is no excuse," and also the early 19th century statutes that required judges to write out their decisions so that accurate copies might be distributed in print, goes to show that indeed the law to be effective must be effectively distributed to be effectively accessed. That is to say whatever aims the law is seeking and through whatever intermediate means, the prime instrument is

¹⁴ (Marc Galanter, "The Legal Malaise: Or, Justice Observed," 19 Law and Society Review 537, 545 (1985).)

¹⁵ Osborn's Concise Law Dictionary. P 198

communication. Efforts to make law more accessible, more understandable, more clearly expressed are ultimately efforts to make law more effective and in a democracy, more accountable.

Those who apply the law (judges and administrators) are in one sense held to the same standard, for to the extent their work is subject to review by higher authority, their interpretation or application or knowledge about the law can be upset without pause or deference.

3.1 BACKGROUND TO ACCESS TO LEGAL INFORMATION IN ZAMBIA

The assumption that access to legal information has always been erratic and inefficient would be a fallacy at its greatest height. There was a time when indeed the access to information was so up to date that court judgments, and of course statutes were accessible the moment they were delivered or passed respectively. One of the earliest steps taken to ensure an efficient access to legal information was the creation of The Council of Law Reporting under an Act of Parliament. The council bore the responsibility of organizing, regulating, and controlling the reporting of decisions of the courts, tribunals, and inquiries.¹⁶ The council was also charged with the arranging for the production, publication, and distribution, whether by sale or otherwise, of the Zambia Law Reports at such regular periods of time as it determined¹⁷. This Act ensured that most of the legal information required was easily and speedily accessed by those who wanted to access it.

¹⁶ Section 5 (a) of Chapter 46 of the Laws of Zambia.

¹⁷ Section 5 (b) of Chapter 46 of the Laws of Zambia.

The composition of the council was also an added advantage in ensuring speedy access to legal information because the council consisted of those who played an active part in the judicial process and in certain instances those that were actually passing the judgments. Despite the Council still being in existence even today by provision of Chapter 46 of the Laws of Zambia, the traditional methods of access to information previously employed can no longer cope with the demand for information in this knowledge hungry generation.

The lack of funding and also the mere loss of morale in most sectors of the nation have subsequently led to the collapse of the once efficient law reporting system.

3.2 THE DECLINE IN EFFICIENT ACCESS TO LEGAL INFORMATION

Consider what it would mean for any legal system if the decisions of the Supreme Court were not widely available for years, and legislative acts were available only at a limited number of libraries, chronologically stored, and poorly indexed. Imagine further that policies statutory instruments and individual determinations by government agencies were available only in the offices of the agencies themselves with whatever degree of order or user assistance they managed to achieve? That would no doubt be the most ignorant, uninformed and subsequently unfair legal system that ever existed. Unfortunately, one does not have to think back or investigate very far in history to find a legal system that bears a strong resemblance to this picture or today journey far around the globe to discover such a scenario.

Most of the developing countries, Zambia inclusive are currently a decade or more in arrears as regards effective distribution of both high court and Supreme Court decisions. This is largely as a result of the inefficient method of reporting prevalent in our legal system today. In Tanzania, for example, with financing from the World Bank, the Faculty of Law at Dar es Salaam was in 1995 undertaking publication of the nation's Law Reports for the period 1983-1992 suggesting therefore that the law reporting system was about a decade behind¹⁸, how then were people expected to know the law as decided by the courts? How were the lawyers to know when the courts moved away from their earlier decision or even when they chose to vary the interpretation of a specific statutory provision? How were the citizens supposed to know whether their treatment from law enforcers and an employer was lawful?

In Zambia, the situation is pretty much the same; there is limited or inefficient access to legal information due to two basic reasons. Firstly, because the University library and other law libraries in Zambia provide little assistance for those researchers trying to find a complete and current collection of Zambian and foreign decisions, statutes, statutory instruments, parliamentary debates or government Gazettes. At present the University Library, which is probably, the biggest Law library in Zambia has its latest law reports dating as far back as 1985 in terms of foreign law reports. As regards Zambian law reports one would be lucky if they found a bound law report from the early 1990's.

¹⁸ Supra note 14

While the fault lies partially with the libraries themselves, which have misplaced or lost copies of these documents or suffer from insufficient funds to purchase the information; they are not wholly to blame. The real and second problem lies with each of the organizations in Zambia responsible for the distribution of legal information, from Government printers to the Ministry of legal affairs and also to the editorial board of the Zambia Law Reports, which have failed over the years to ensure the efficient and speedy publication and printing of Zambian Law Reports and consistently make available to the public all current legal information.

By law, the Zambian Supreme Court has an unmistakable preference for its own precedents; it also has a unique position of access to its decision. As the Court decides, on average, no more than Twenty five (25) or so matters with full opinion a year¹⁹, it is not difficult for members of the Court, in general, and the Chief Justice in particular to recall a prior decision bearing on a current dispute and retrieve it from the file. But since 1985 there has been no systematic distribution of the Court's decisions to lower courts, the bar, or the nation's one law school. This is not by design but due to collapse of the prior arrangements for publication, a consequence of severe national economic duress, (Very few books of any kind were printed within Zambia between 1985 and 1996) and other

¹⁹ Baseline study on the Zambian Judiciary 2004, Development Services, and Initiatives Lusaka.

uses of very limited foreign exchange have taken priority over the acquisition of legal materials from outside the country.)²⁰

In the School of Law at the University of Zambia, a class of 96 has to share among themselves on average 20 books in most courses. The few books that are supplied for sale cost between K 300,000 and K450, 000 which is approximately 3 times more than the government allocation for books to each student. As for practicing lawyers, the only source of court decisions is a visit to the High court Library in the major towns where they might find one archival copy of the decisions held there. But what of the lawyer who is based in the Northern Province, which only has a circuit High Court? Where is the Magistrate expected to find the decision or indeed the amendment to a statute or a new statute all together?

These precedents would not be available to guide both the courts and counsel in an identical or similar case arising earlier, until and unless the case reaches the Supreme Court.

Further still the many amendments that occur as regards Zambian statute for the benefit and safety of clients demand that they reach counsel on time, for in an instance where counsel misleads the court, it will surely cost the clients case. The fact that Acts of Parliament are all printed upon being passed by the Government

²⁰ Peter W. Martin, Digital Technology, Access to Legal Information, and Dispute Resolution - Viewed from a Developing Country - NCAIR Conference - May 22, 1996

Printing Office entails that access to Acts of Parliament is severely limited. It would be of no shock therefore that counsel would argue a legal point based on the countries newly passed or amended legislation before a judge who would be unaware that it had been passed. Mostly All acts are printed once, that is when they are just passed, but once the initial stock has been depleted there seems be no regular program of reprinting. A good example can be drawn from the fact that if anybody walked into the Government printing department to obtain a copy of the 1964 Zambian Constitution, they would definitely not find it. This indeed would be sufficient evidence to show that there is prevalent a serious case of poor information availability and flow.

3.4 CONCLUSION

The downfall of the traditional print form of access to legal information should in no way hinder the progression of access to legal information and of course the progression of an efficient legal system. This is so because today there exists a new frontier that should be grasped and developed to the fullest in the shortest period of time. The Answers that accrue from the use of Information communication technology can in no way be ignored, as they have proved important in many other fields. While we must not forget our past, we must also not linger too much in history for by the time we realize where we stand we will once again be decades behind, a situation the Zambian legal system finds itself in today.

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CHAPTER FOUR

4.1 INTRODUCTION

The deployment and exploitation of Information Communication Technology to support rural development, community based initiatives and projects is crucial in Zambia's developmental effort. It is acknowledged that the development of the Information Society will depend on the widespread deployment, utilisation and access to ICT resources and services within the communities at large. Efforts will have to be directed at promoting the use of ICT's in rural, urban and underserved communities thus ensuring that the net effects of the developmental gains resulting from ICT's do have a widespread community impact.

It is thus encouraging to finally see that the Zambian Government seems to realize the importance of information communication technology and the benefits that accrue from properly embracing this sector. The recent move by the government to draft a national information communication technology policy signifies that they are indeed ready to take advantage of the opportunities coming forthwith. African countries, Zambia inclusive need, as a matter of priority, to upgrade their capabilities through the improvement of their telecommunication infrastructures as well as formulate the necessary laws and regulations to enable the efficient, effective and lawful use of information

technology to improve not only the access to legal information, but to the development of the continent as a whole.

4.2 THE DRAFT NATIONAL POLICY.

It is an undisputed fact that ICT is crosscutting in all sectors and also that the only way to integrate and use ICT in a holistic manner requires a sound National policy framework. In Zambia, the lack of an integrated ICT policy and coordinated institutional framework in the introduction and deployment of ICT's has resulted in among other things fragmented government efforts in the sector resulting in (with many units active, and sometimes competing, in provision of ICT related donor assistance), duplication of efforts, inadequate and incompatible solutions and missed opportunities in the attracting investment to Zambia. It has also led to Governments inability to optimize the use of its available resources for ICT's and also poorly coordinated approach in receiving mechanism.

Perhaps this is as a result of the underlying assumption that ICT development or the lack of it is indeed a concern of the state, and that the state ought to set things right. Zambia's Draft ICT Policy document follows a similar format as ICT policy documents from several other countries in the region. A policy document must, be based on a realistic view of what the state can do on its own and in relation to the private sector. The Government has two separate roles with regard to ICT. One is a duty to regulate and intervene in the ICT market in those cases where market forces provide unfavourable conditions for consumers. The other is to

determine the priorities for investments in ICT facilities for the Government's own uses.²¹ Unfortunately the Zambian version of the draft document is somewhat unclear in its treatment of the separation of these two roles. The main ICT issue in Zambia is access to ICT resources. Zambia does not have enough of them, i.e. communication facilities, computers, software, and manpower. Demand outstrips supply in all areas, and as a consequence prices are high. The question therefore is what sort of policy the country should adopt to improve the situation.

A policy in its natural sense is an attempt to steer a process in a desired direction. In the case of an ICT policy one can see two different parts of the society as beneficiaries of this steering: The nation and the general public on one hand, and the Government on the other.

For a nation to benefit from ICT connectivity is a must and gladly Zambia has taken greater steps in this direction. Being the first country to go online in Africa was perhaps the greatest leap in the future of ICT's. However it was unfortunate and still is that upon being the pioneer's, the drive to improve infrastructure died.

Not wanting to be sidelined in this modern trend, the legal fraternity was among the first industries along side the telecommunications sector to embrace ICT's in Zambia. Today, I.C.T is gradually taking over the role of the traditional methods of access to information in the legal fraternity and though not fully supported

²¹ The first draft National ICT policy for Zambia

and understood, it is so evident that even the government has taken steps towards enacting laws to regulate the use of ICT's, as is evident by the current proposal to enact the computer crimes and misuse Act of 2004.

4.3 THE ZAMBIA LEGAL INFORMATION INSTITUTE.

The Zambia Legal Information Institute (ZamLII) was established by the Law School of the University of Zambia in 1996, in partnership with Zamnet. It received important start-up assistance from the Legal Information Institute of Cornell Law School. The Institute is aimed at improving access to judgments, statutes and other legal materials of the Republic of Zambia both within Zambia and elsewhere and to connect lawyers, judges, academics, students and others within Zambia with the growing collection of legal information available around the globe via the Internet.

The institute is perhaps the greatest and undoubtedly the pioneer effort by the legal fraternity to embrace the benefits of the modern trend of ICT's. The Zambia Legal Information Institute (ZamLII) created a law server, which has been in operation since February 1996 making it the first of its kind in Africa.²² The server contains an ever-growing database of Zambian law, including the Zambian Constitution, Zambian statutes, Zambian Supreme Court, High Court, Industrial Relation court, and the Lands and Revenue Appeals tribunal's decisions. It also contains legal commentary on Zambian law under the Zambia Law journal as well as a menu of international legal web sites available through

²² Jeffrey I. Ryen, Access to Legal information. Zambia Law Journal Vol 25-28 1993-96 P.66

the Internet. The inter link between the Zambian law server and the other Law servers world wide makes available the most convenient and widely accessed library in the world. The fact that the site²³ is interlinked with many other legal sites around the globe achieves much more than any book Library would and all this information is just a touch of a button away. ZamLII was created to be at the centre of the Zambian legal communities' transition into the digital age and luckily it has achieved just that though unfortunately it has not been fully embraced by those it is intended for.

A survey carried out on the training needs of the judiciary for instance showed that computer literacy was less than twenty percent of the entire judiciary workforce in the country.²⁴ Currently the School of Law at the University of Zambia runs ZamLII and is a non-profit making venture running through grants from donors. The Institute has been able to bring the Zambian legal system up to date in terms of availability of legal information moving away from a time where it was almost a decade behind. In the year 2000, the University Of Zambia School Of Law with the assistance of USAID embarked on a complete digitalization of legal material to be put onto the website at a cost of about \$38,000. This saw the transformation of the site from a static one to a more interactive one and is now hosted and mirrored around the globe by Zamnet. The site is visited on a monthly average of about 4000 people²⁵ since 2001 and this number is gradually

²³ www.zamlil.ac.zm

²⁴ Judiciary Training needs assessment survey 2004, Development Studies and Initiatives Southern Africa.

²⁵ Zamlil Yearly review report 2002

rising as more and more people are being sensitized and are coming to appreciate the benefits of this branch of information technology.

4.4 KAS/JUTASTAT LAW REPORTS, AND THE LAWS OF ZAMBIA.

The rapid adoption of the modern trend of information technology by the legal fraternity in Zambia has not only ended with the setting up of the Law server. Apart from the embracing and using the biggest worldwide library in form of the World Wide Web, the legal fraternity has also embraced the use of perhaps the cheapest and most convenient form of data storage, the CD-ROM. This form of storage is the cheapest that one can get especially where the access to Internet connectivity is expensive and where they are seeking to store vast amounts of Data. A CD is capable of storing vast amounts of information, having a capacity of 650 megabytes, which is equivalent to approximately 450 high-density Floppy disks or about 22 000 single spaced typewritten pages of text. All this information can be searched almost instantly with the use of Folio views and retrieval software.

How does this promote the access to legal information? The CD-ROM basically provides solutions to four major problems that face publishers and users of legal information, namely:

- The space required to store a comprehensive conventional collection of reference material; i.e. Yearly Law reports or Statute volumes of which Zambia has 26

- The need to insert numerous replacement pages into existing material in order to keep it up to date; amendments to legislation are almost inevitable especially that the law is responsive to the changes of society,
- The need to retain repealed legislation and include legislation promulgated but not yet in force- these repealed and pending pieces of legislation are required for litigation and research purposes and should form part of a complete set of statutes; and
- The time it takes to find and search through a large body of information from various legal sources.

This undoubtedly provides better access to legal information than traditional print media thus showing the benefits of ICT's in the promotion of access to legal information.

The Zambian legal system through independent bodies is today gifted with the ability to possess all the Zambian Law reports dating as far back as 1963 provided by Jutastat and KAS electronic publishers and the 1995 version of the Laws of Zambia on C.D which makes them more portable and easier to use based on their ability to locate a statute or case by merely typing in the case or statute name or topic of law that one would love to research.

4.5 ZAMTEL:

Zamtel is a vital issue for the future of ICT in Zambia. The company is in financial and managerial crisis, and its privatization is overdue thus resulting in investments being kept back for a decade. The large ICT capacity of Zamtel being

such an important one especially for future of ICT in Zambia needs to be in the service of Zambia's ICT development. The current governance structure with a board dominated by politicians and higher civil servants is not ideal for its future role. The risk of continued political interference in the running of Zamtel discourages external investors and lowers the market value of the organization. There are two major investment areas ahead for the Government of Zambia. One has to do with communication between all the Government offices across the country. Electronic communication is very cost- and time effective. When office in Mwinilunga can send for information for another department in Lusaka or Ndola, and receive comments back the same day, without having to travel or spend on allowances and fuels, then Zambia will have taken a great step forward in effective governance and organisation. To accomplish this, large investments are needed, in computers, networks, software, and training. It will take many years, and in the meantime issues with telecom capacity, costs, and technology will have changed many times over. This must however not mean that the prospects should completely be ignored, it all goes to the government setting the right priorities on what they need to improve there governance.

4.6 RECOMMENDATIONS:

It would be criminal, unethical, and backward to underscore the importance of ICT's not only to the legal fraternity and to the access to information but to the development of the world at large. It is now that governments especially those of developing countries must exploit the prospects of bettering their nations via the

use of ICT's. As regards the Zambian legal system and the potential benefits that can accrue from effectively exploiting information technology, a number of recommendations must be made and preferably be adopted if we are to progress in bright and promising future.

The philosophy of the current draft policy is excellent but needs the statistics and targets to measure progress during implementation. There is also a need for the ICT industry association to create a single and formidable voice for lobbying at various levels, as this is very important for the growth of the ICT sector.

The affordability of ICT's is also a critical aspect if society is to benefit from them, there is thus a need to bring down the costs of ICT's through tax rebates and a general reduction of taxes on ICT's such as computers and other relevant equipment as happened in the transport sectors as this would kick-start the appreciation of the benefits of ICT's. While there exists a current reduction of duty on computers, this should be extended to include all ICT equipment. It is also important that there be a public-private partnership in promoting ICT as this holds the key to the successful use of ICT for development as a whole. There is also an urgent need to establish a clear regulatory framework focusing on creating standards and confidence in the market, as this would ensure that competition flourishes. The regulator should be both combined (converged) and independent. The government should also make efforts to relax or amend the prohibition of satellite broadcasting, as it is this that contributes to the low quality of service due to "forced use" of repeater stations.

Currently the Zambian legal system has no legislation to regulate the use of ICT's which bring with them issues of privacy, copyright, fraud and crime in general, the government should thus work towards finding legislation that would protect the use of ICT's.

Government must also see to it that the freedom of information bill should also include provisions relating to ICT's seeing that both the Telecommunications Act and the Broadcasting Act do not address this very important aspect.

The government must together with the private sector share the costs of ICT infrastructure as is done in countries such as Zimbabwe which have state run ISP's. This public –private partnership must work towards Facilitating access to the Internet for instance. The improvement in the conditions for access to the Internet must involve a lowering of charges, the introduction of new means for access, and the development of competition. This includes the spread of high-speed Internet access and also improving the network's user-friendliness as well as enrichment of site content, all this must be done without compromising the principles underlying the legal regime governing intellectual property rights, limited adjustments are indispensable so as to make access easy and also to protect author's rights.

An appropriate and dynamic legal/regulatory framework is mandatory to act as the foundation for the development of the ICT sector. The rapid technological advances in telecommunications, information technology, broadcasting and media as well as the convergence of technologies, services and delivery

platforms has made it necessary for countries in both the developed and developing world to create and operate in an open, dynamic and responsive legal and regulatory framework for supporting the development of ICT's. Therefore, this scenario has created great challenges to regulators especially in telecommunications and broadcasting sub-sectors. Market players perceive the current legal and regulatory framework as managing the transition from *monopoly* to a *regulated monopoly* market. Therefore, periodic review of the operations, provisions and directives making up the legal and regulatory framework to accommodate rapid changes including convergence in the industry is key to achieving positive ICT reforms.

4.7 CONCLUSION:

Information technology provides new ways of exchanging information, and transacting business. The world is rapidly moving towards knowledge-based economic structures and information societies, which comprise networks of individuals, firms, and countries linked electronically in an interdependent and interactive relationship. Information technology thus offers great hopes to leapfrog decades of development. In fields where Africa faces difficult obstacles, information technology holds a large potential as a rapid and relatively inexpensive means of surmounting them. The best way to illustrate this would be a look at the education systems in many African countries which suffer from serious shortcomings, including low teacher-student ratios; limited availability of instructional materials; and, poor quality of education. Many of these problems

are related to inadequate funding and inefficient use of available resources. Information technology offers a range of low-cost possibilities. For instance, information technology could be used to promote distance education in Africa to help realize the objective of seeing every young child completing primary school. Information technology has also the potential for connecting African educational institutions continent-wide and linking them with international universities, hence facilitating research and the exchange of ideas. Access to data and educational materials would also be simplified.

The prerequisite for the creation of an information-based economy is the existence of an efficient telecommunications infrastructure. The poor state of telecommunications in our continent is presently the main constraint on the accessibility of many African countries to the global information infrastructure. Though most countries in Africa have established Internet links, access is mostly restricted to the major cities and it is quite expensive, mainly because of the inefficiency of telephone services. Fortunately, as a result of the quantum jump in technology, the inadequate state of telecommunications in many of our countries can be transformed into an advantage, if properly managed. The fact that the telecommunications sector in Africa is lacking in both coverage and density means also that the continent is not burdened with extensive networks, built on obsolete technology. Countries with extensive networks built on pre-digital technology, with little connectivity between broadcasting, wireless, and point-to-

point communications, would require an evolutionary process to update their telecommunication technologies. In contrast, African countries can push to the cutting edge by ensuring that new infrastructure is based on the latest technology. The continent could, thus, leapfrog decades of development in telecommunications and information technology.

The possibilities ensuing from remote rural libraries using a one-meter dish to access world libraries are a revolutionary phenomenon that is going to profoundly transform both the availability and quality of information.

The high cost of computers and software represents another serious impediment to Africa's access to the world of information technology. And though they are relatively high priced products, the designed capacity and capability of computers and software are not fully utilized by most users - even at top professional levels. Experts in the field suggest that bare-bone computers and stripped-down software - perfectly serviceable for Internet connections, word processing, and graphics - can be built for a price, which is many times lower than current prices. And one way to induce producers to comply with such requirements is "bulk-purchasing". Computer suppliers would be more inclined to meet required specifications at sharply reduced prices if there is a commitment to purchase large quantities.

The future of ICT in Zambia depends on the stakeholder's who largely are the government and the private sector; it is only through them that the full benefits of information technology can be embraced especially as regards access to information.

It is ironic that even as this paper is being typed, it is information technology at work, even though it will be eventually printed, it stands a better chance of lasting stored on the tools of ICT and also it will prove more portable stored in ICT form, thus it must be realised and not ignored that information technology provides such great benefits to many sectors of life, if they can only be adequately provided for and used.

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