UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

OBLIGATORY ESSAY

ON

"ZAMBIA'S CRIMINAL JUSTICE SYSTEM AND ITS IMPACT ON HUMAN RIGHTS"

BY

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I recommend that the Obligatory Essay prepared under my supervision by Iduma Ikechukwu entitled:

"ZAMBIA'S CRIMINAL JUSTICE SYSTEM AND ITS IMPACT ON HUMAN RIGHTS"

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 obligatory essays.

Judge K.C. Chanda RTD, LLM (ZAMBIA)  
(Supervisor)  
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LLB (ZAMBIA)  
AHCZ  

Date
DECLARATION

I, IDUMA IKECHUKWU, DO HEREBY declare that his obligatory essay is my own work and to the best of my knowledge, no similar piece of work has previously been produced at the University of Zambia or any other institution for the award of a degree qualification.

All other people's work consulted have been duly acknowledged. The preparation of this obligatory essay was coordinated by Mr. Justice K.C. Chanda (Rtd).

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IDUMA IKECHUKWU
Authors Signature
DECEMBER 2004.
DEDICATION

This paper is dedicated to my dear mother for her constant love, comfort and support. Mum you begun it all
AKNOWLEDGEMENTS

Thanks be to Jehovah Jah God for being with me all the days of my study period and making it possible for me to finish this work. May your mercies father God continue upon my life.

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I would also like to thank my mum G.M Linyandi for the encouragement that she continuously gave me whilst at the University of Zambia. To my sister Inutu Himanje and Mwangala and big bro Emeka Nawa Iduma I say big up to you guys for the support. Auntie Angela am so very much grateful to you and a million thanks for seeing the potential and believing in me.

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A million thanks to Fridah Chambeshi from Unzes Business Center for the patience exercised in typing my work.
INTRODUCTION

This essay endeavours to look at the impact that the criminal justice system has had on the Human Rights of individual beings in Zambia. The study stems from the way the police have been carrying out their duties as regards procedure for arrest, respecting the fundamental rights that an individual has at the time of his arrest and the bringing of suspects before the courts of Law. It is important to state that the police is an institution dressed with a lot of power in order to enable it carry out its functions of protecting the citizens. In Zambia, the police have failed to uphold the fundamental rights of individual beings and it is seen as one of the perpetrators of Human Rights abuse. This is so because the police do not follow procedure in effecting arrests and they beat suspects even when it is not required that reasonable force be used to effect the arrest. The police take away people’s personal liberty even where one has not committed an offence. This usually happens in situations in which a criminal suspect runs away and the police detain one of that suspects relatives for a crime which themselves have created and is not found in the penal laws of Zambia known as detention to help the police with further investigations. Even where the suspect has not run away, the police would still detain someone with a view that he would be released after the other person hands himself over to the police. The police have continued to abuse people’s rights by torturing them in order to obtain evidence. This illegal method of obtaining evidence is contrary to the provisions of the constitution, which requires that no human being should be subjected to torture. People are continuously arrested for offences that don’t border on the criminal aspect of the law but are purely civil.
To correct this, the courts however have been using certain remedies such as the granting of damages as compensation for the injury that one might have suffered. The courts would also accord the accused person a Habeas Corpus hearing at the end of which the detaining authorities would be compelled to bring the person to court or release him if it is proved that he has been incarcerated for a long time without trial.

Chapter one of this essay looks at the rights that an individual accused of an offence is entitled to.

The second chapter looks at the institution of the police, its conduct in carrying out its duties and the impact that this has had on Human Rights.

The third chapter looks at the role the courts have been playing in Zambia’s criminal justice system with particular focus on its protective role of the fundamental rights of an accused person.

The fourth chapter concludes the essay and therein are the recommendations that should be followed if there is to be a proper criminal justice system.
CHAPTER 1

RIGHTS OF AN ACCUSED PERSON

1.1 INTRODUCTION

The concept of human rights has drawn a lot of attention from different scholars as a result of which no universal definition has been agreed upon. However, in the most general sense, human rights are understood as rights, which belong to any individual as a consequence of being born human independent of acts of the law.¹ Suffice to note therefore that every individual human being whether free or incarcerated is entitled to Human Rights.

"The essence of any criminal justice system is the protection of property and persons against malicious damage and injury from persons purported to indulge in criminal behavior thus causing harm to society. The system is the states reaction to crime commission in fulfillment of its duty to protect its citizens".² It includes the operation of the police, courts and prisons with regard to the offender or individual suspected of an offence. The system starts with the way the police effect an arrest, the trial proceedings of a criminally accused person and the prison conditions in which the accused is held.

¹ Chinamasa P. “The protection of human rights in criminal Justice proceedings for African Jurists.pg. 20
² Ibid pg. 28
All the institutions entrusted with the responsibility of administering justice are governed by the law and are concerned with human rights in one way or the other. The police, for instance, are given powers which in some cases negatively impact on an individual's human rights i.e. the powers of arrest and detention in certain circumstances such as those in a State of Emergency. Suffice to note therefore that a criminal justice system can act as a forum where the rights of individual human beings are violated or if properly administered, it can act as a vanguard for the protection of human rights. This is all dependent on whether the persons provided with an opportunity of administering the system act within the ambit of the law.

1.2 RIGHTS OF AN ACCUSED PERSON

In Zambia most of the provisions relating to rights of the accused person are found in the constitution, which is the supreme law of the land. Particularly the "provisions of Article 18 of the Zambian Constitution which provides for secure protection of the law are aimed at ensuring the proper administration of justice and to this effect uphold a series of individual rights such as equality before the court and tribunals and the right to a fair and public hearing by a competent, independent and partial tribunal established by law."³

Article 13 of the Zambian Constitution though not directly relating to an accused person is also important because this is one of the fundamental rights that is constantly violated by the institution of the police when they step outside the powers that they are entrusted with. Article 13 provides that no individual can be arbitrarily arrested unless he has committed a cognizable offence, which can warrant a conviction in a court of law of

³ Ibid pg 33
competent jurisdiction. People can thus not be deprived of their rights to liberty by being arrested without committing any offence. One’s liberty can only be taken away in situations that are clearly established and recognized by the law. If one has therefore committed an offence, which is not so recognized and established by the law, his personal liberty cannot be taken away from him. More so, Article 18(8) requires that accused persons should be tried in accordance with the law. “No person shall be convicted of a criminal offence unless that offence is defined and the penalty is prescribed in a written law”.  

Any person accused of a criminal offence has got the right to be told at the time of his arrest what he is entitled to. The officer affecting the arrest must inform the accused that he is entitled to remain silent and that he also has a right not to be interrogated in the absence of his lawyer, if he has a lawyer or intimates that he wishes to hire a lawyer. More so, he has to be informed of his entitlement to at least make a call.

An accused person has got a right to be informed in a language he understands of the charges against him or her. This must be done as soon as is reasonably practicable, promptly and as soon as the charge is first made by a competent authority. The law also requires that people that are arrested be brought before any court of competent jurisdiction as soon as possible. This is basically meant to provide accused persons with a speedy but fair trial. It follows therefore that regardless of whether one has carried out a misdemeanor or felony, it is the requirement of the law that he makes his appearance before a judge quickly. “The right to a speedy trial applies not only to the time by which

\[4\] Constitution of Zambia, Chapter one
a trial should commence, but also to the time by which it should end and judgment rendered. All stages should take place without any undue delay”. To further buttress this right, the accused person has got a right to apply for a Writ of Habeas Corpus hearing in which the detaining authorities are compelled to show cause why an accused person is being detained and as practicable as possible to present that person before the courts of law or release him.

The case of *Patrick Mainza, George Mudenda and Lameck Kamanga v. The People (1981)Z.R 146(HC)* illustrates this point clearly. In this case, the issue in contention was whether a person in custody by the order of a competent court and on committal to the high court could seek for his release from custody, on grounds of unreasonable delay of the trial by way of Writ of Habeas corpus. It was held by the trial judge that detention pending trial is justifiable only if a prisoner is brought to trial as quickly as possible and that the principle of Habeas Corpus requires that an accused person should not be held in detention for unlimited period of time without trial and without remedy. The accused persons were therefore held to be entitled to a speedy trial failure to which detaining authorities were to discharge them. Their applications for the issue of a Writ of Habeas Corpus ad subjiciendum was also held to be in line with the law.

An accused person should also be given adequate opportunity and all the necessary facilities that he would need to prepare his own defense. “The facilities that one would need to be availed with includes the documents and other evidence which the accused requires to prepare his case as well as the opportunity to engage and communicate with
his counsel."\(^5\) Above all, the accused apart from being availed with the necessary
documentation and time to prepare his defense, he has the right to defend himself.

In instances where one cannot defend himself but is capable of engaging counsel of his
own choice, the law grants such an accused person the liberty to do so.

However, where one is unable to engage counsel, he is entitled to legal aid. The lawyer
maybe made available by the government's legal aid department. The law also guarantees
an accused person the right not to remain silent.

The accused should be given an opportunity to give evidence to defend his side of the
story, one cannot be convicted without being given chance to call upon witnesses
supporting his case and examine other witnesses testifying on behalf of the prosecution.

It must also be noted that, "the accused cannot have evidence obtained from him by way
of extortion or any other method that would violate his rights."\(^6\)

Confessions that are obtained under duress are unacceptable. In short, the accused also
has a right to remain silent. He can decide to remain silent during the whole trial period
and decide not to call upon any witnesses. The presumption of innocence is another right
that the law guarantees to an accused person. Anyone thus accused of a criminal offence
should be presumed to be innocent and should be so treated unless the contrary is proved.

No accused person should be condemned before he is even tried by a court of competent

\(^5\) Op.cite pg 16
\(^6\) Ibid pg 27
jurisdiction. The onus of proving whether one is guilty lies on the prosecution who must prove their case beyond any reasonable doubt.

An accused person also has a right not to be detained for a period exceeding 48 hours without being given a charge. If the accused is taken into police custody and detained for days on end without being charged, then he has to be released unconditionally for failure by the police to avail him with a charge.

Article 15 of the Zambian constitution provides that a person shall not be subjected to torture, or to inhuman or degrading punishment or other like treatments.\footnote{Ibid pg 21}

This applies to all persons inclusive of those in detention. Accused persons therefore, have got a right not to be subjected to any inhuman treatment. This applies to the condition of the places in which they are detained i.e. prison and police cells. "There should not be massive overcrowding, decaying physical infrastructure, inadequate sanitation, lack of medical care"\footnote{Kambi kambi Y. “Prisons: Places with no Rights,” Human Rights Review. Issue No. 11. 2003} and guard abuse in these places lest this would amount to inhuman treatment. More so, Article 10 (1) of the International Covenant on Civil and Political Rights an international human rights instrument which Zambia has ratified also recognizes the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person. Suffice to note that this is a non-derogable right. It is absolute and it cannot be derogated from even in times of a state of emergency.
Article 18 (2) (f) of the Constitution provides that an accused person 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. This basically entails that an accused person has got a right to an interpreter if he/she does not understand the language that is being used at the trial. This is said to apply to both aliens and nationals. Failure to understand may well constitute a major obstacle to the right of defense.

Trial of any individual criminally liable should be conducted by an independent and impartial court established by law. Any tribunal or body that is not so established by the law cannot purport to try an accused person.

An accused person has got a right to be given a copy of any record with regard to the proceedings made by the court within a reasonable time after judgment is delivered for his personal use. This is usually done after the payment of a reasonable fee prescribed by the court.

Article 18 (8) provides that every person is protected from the retrospective application of the law. No one can be held guilty of an offence in respect of an act, which did not constitute an offence at the time of its commission. More so, the penalty that is imposed for any criminal offence on an accused person shall not be greater in degree or in description than the maximum penalty that might have been imposed for that offence at the time it was committed.
CHAPTER 2

IMPACT OF POLICE POWERS ON HUMAN RIGHTS IN ZAMBIA'S CRIMINAL JUSTICE SYSTEM

2.1 INTRODUCTION

The institution of the Police is one that is established by law. Article 103(1) of the constitution provides for the establishment of a Police force whose functions include "the protection of life and property, preservation of law and order, detection and prevention of crime."9 Furthermore, the police is mandated to "co-operate with the civilian authority and other security organs established under the constitution and with the Zambian population generally."10 The Police simply are individuals mandated and entrusted with the responsibility of maintaining public order and enforcement of the law, and hence are commonly referred to as the law enforcement agents."11 The police though owing their allegiance to the government of the day are expected to be impartial and striving to "respect and protect human dignity, maintaining and upholding the human rights of all persons."12 This is simply because the Police, like the citizenry are also the defenders of fundamental human rights.

2.2 POWERS OF THE POLICE;

9 Constitution of Zambia, Chapter 1
10 Ibid
11 Zambia’s Human Rights Report, 2000 pg 14
12 Ibid pg 17
In order to effectively carry out their functions, the police have been given powers under various Acts of Parliament which include inter-alia power of arrest, seizure and search of property. These powers are wide and they generally tend to affect the fundamental rights of an individual being. Thus depending on how they are used, these powers may tend to negatively impact on an accused’s rights. It is therefore important to outline some of these powers before we endeavour to show how they have been handled by the police and their effects on human rights.

2.3 ARREST

"An arrest has been defined as the deprivation of an individual’s liberty by some lawful authority, for the purpose of compelling his appearance to answer a criminal charge, or as a method of execution."\(^{13}\) This entails that the police being an authority mandated to detect and prevent crime can deprive an individual of his liberty in order to compel that person to appear before the courts of law to answer a criminal charge that might have been made against him. Suffice to note however that an arrest can also be effected by a private citizen through a citizen’s arrest. The police can arrest an individual either by way of a warrant which maybe obtained from a magistrate or without a warrant. Section 26 of the criminal procedure code provides that; “any police officer may, without an order from a magistrate and without a warrant arrest: -

(a) Any person whom he suspects, upon reasonable grounds, of having committed a cognisable offence.

(b) Any person who commits a breach of peace in his presence.

(c) Any person who obstructs a police officer while in the execution of his duty.

(d) Any person in whose possession anything is found which may reasonably be suspected of having committed an offence with reference to such a thing."\(^{14}\) In effecting an arrest, the police officer is merely required to touch the person to be arrested or to place a person under actual restraint. The person to be arrested can also voluntarily submit himself to the custody and control of the person making the arrest. There should not be excessive force used when arresting an accused. Only reasonable force is to be used and this should only be resorted to when the person being arrested is resisting arrest. What is reasonable force is also dependant on the circumstances of each case.

2.4 **DETENTION;**

The police are also given the power to detain a person that they have arrested. Detention simply defined is “the confinement of a person’s body. Detention is therefore the keeping or remand of a person who is suspected or has committed a cognisable offence in police custody or at a police station before being charged.”\(^{15}\) This is usually subject to abuse by the police as most detainees are kept in police custody; most detainees are kept in police custody prior to being charged longer than is required by the law. Section 33(i) of the criminal procedure code provides that “when any person has been taken into custody without a warrant for an offence punishable with death, the officer in charge of the police station to which such person shall be brought may, in any case, and shall, if it

\(^{14}\) Criminal Procedure code, CAP 88

\(^{15}\) Longmans Dictionary pg 31
does not appear practicable to bring such a person before an appropriate competent court within twenty four hours after he has been taken into custody, inquire into the case, and unless the offence appears to the officer to be of a serious nature, release the person, on his executing a bond, with or without sureties, for a reasonable amount, to appear before a competent court.....but where any person is retained in custody, he shall be brought before a competent court as soon as is practicable."16 The police can therefore detain an accused person for a period not exceeding 24 hours without a charge. Any detention that goes beyond 24 hours without a suspect being availed a charge is unlawful and therefore illegal. Grounds for detaining a person should exist at the time of detention lest the detention would be unlawful ab-initio. In the case of Shipanga v A. G it was stated obita dicta that a person physically in Zambia or under territorial jurisdiction may be deprived of his liberty only if that deprivation is sanctioned by law, in the absence of some legal justification for the deprivation of a person’s liberty, whether legislative or under common law, that deprivation is unlawful.

2.5 **INTERROGATION**

The police are also given the power to interrogate a person arrested for an offence and under their custody. The essence of interrogation is basically to obtain information that would enable them prefer an appropriate charge against a person suspected of committing a criminal offence or to obtain information that would assist them have sufficient evidence necessary to have the accused person convicted. The person that is being interrogated has the right not to answer. He

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16 Op cit
can remain silent with impunity as the police are not allowed to use any force to obtain information out of a suspect. "More so, the law albeit uncertain in scope allows the police to query persons including persons who may become suspects in order to determine whether there is reasonable ground to suspect any person or persons of complicity." \(^{17}\) It follows therefore that any person even on mere suspicion of having committed a crime who has not yet been charged can be interrogated by the police. "The police interrogating suspects are supposed to follow certain guidelines laid down under the judges rules which in effect provide safeguards for the suspect so that his minimum rights can be protected."\(^{18}\)

In Zambia, as has been shown, police officers have been availed with wide powers that would generally affect one’s enjoyment of fundamental rights as laid down by part three of the Zambian constitution. "The powers that they are given do not accord with the kind of training they undergo,"\(^{19}\) as a result of which these powers are subject to abuse and thus their negative impact on Human Rights. This part endeavours to show how the role of the police as an institution in the criminal justice system has had a negative impact on the accused person’s rights.

2.6 TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT

\(^{17}\) 1999 Human Rights Report, Country Reports on Human Rights Practices in Zambia, USA Department of State, 1997 pg 40


Article 15 of the Zambian constitution provides that no person should be subjected to torture, or to inhuman and degrading treatment or other like treatment. This is a non-derogable right entailing that it cannot be suspended or derogated from even in an emergency situation. Furthermore, the Convention Against Torture (CAT) an international human rights instrument which Zambia has ratified also prohibits torture.” However, police in Zambia grossly abuse this fundamental right as they regularly use excessive force when apprehending, interrogating and detaining criminal suspects or illegal aliens. In most such instances detaining officers beat suspects,”¹² in order to enable them get the information that they need. The commonest type of torture that is used is what is referred to as the “Kampelwa” (swing). This is a method of torture where a suspect is suspended on a metal rod between two tables and their soles and buttocks are hit with wooden or metal objects. Others include beating, burning, electric shocks on sensitive parts of the body, threats of disappearance and mock executions.”²⁰ Despite numerous reports of these cases, the police officers accused of such offences would be dealt with but to no avail. Some of the senior police officers accused of torturing the suspects of the 1997 failed coup attempts led by captain Jack Chiti since deceased and captain Steven Lungu were let scot free and even received appointments to very senior positions in government. Some of the reported cases on torture and inhuman and degrading treatment include the following:

²⁰ Opcite pg 37
TABLE OF CASES

2.7 MAY, CHIBOLYA POLICE POST:

Richard Kachulu of New Chobolya township was in May subjected to torture by four police officers. The police used the “Kampelwa” and Richard Kachulu sustained injuries to the hands and most of his body. On May 1, Richard Kachulu was approached by plain-clothes policemen seeking to know where he was going. Before he could respond the policemen started beating him. In the struggle that ensued, Richard Kachulu managed to grab a gun from one of them, and decided to take the armed man to police on Los Angeles police post, they met a police officer who ordered Richard Kachulu to give his friend back his gun. Richard Kachulu was arrested and detained at Los Angeles Police Post. The next day Richard was taken to Chobolya police post where he was subjected to the Kampelwa. During his detention Richard Kachulu was not allowed any visitors.

UNZA 2000

Many students of the University of Zambia allegedly arrested for a riotous behaviour in 2000 were made to roll in dirty water by the police. Others were dragged from the shower rooms naked and were made to stand before their friends in a naked state. Many who attempted to run away were brutally beaten by the police and they ended up sustaining grievous injuries.

MARCH, MATERO POLICE:

In March, a drunken Matero police officer, named Ngela, subjected Leonard Zimba to torture. Leonard Zimba was handcuffed, and put on the Kampelwa and

21 Op.cite pg 50
beaten using a syambok. Leonard Zimba sustained a deep cut on the hand and on the head, and swollen arms and feet. He was not taken to the hospital and was only released on bond after 16 days after contracting malaria. Leonard Zimba, an employee of G3 Security Company, was on March 1 together with a work mate taken to Matero Police Station, after their superior suspected them of having stolen two road construction machines from J. J. Lowe.

**AUGUST, AIRPORT POLICE POST - MONGU**

Mukata, a mentally deranged person, died on September 4 of internal injuries after being beaten by a policeman at Mongu’s Airport Police Post on August 17. Mukata was accused of picking and consuming two packets of vanilla biscuits worth K3,000 from a makeshift store. The owner of the store took Mukata to the Airport Police Post, where a constable Kapokoso ordered him to pay for the biscuits. Mukata failed to pay, and was beaten and detained, until the next day. He had sustained injuries to the legs, hands and head, and had chest pains. Mukata died on September, 4 at Lewanika General Hospital. A post-mortem report showed that Mukata died of some impact on his head and left side of the hand. His lungs and part of his chest were also filled with blood. The police denied the family access to the report.
SANGALALA/BALMORA POLICE – CHILANGA

Costa Shimanika (40) was allegedly tortured over a period of 20 days between September and October by policemen in Chilanga on suspicion that he had stolen an electric cable and a horse pipe from Makeni in Lusaka.

1997 COUP ATTEMPT

The most prominent case of torture was that on the soldiers and politicians arrested after the failed 1997 coup. Most of the detainees claim to have been tortured at the instruction of the highest command of the police service including the then Inspector General Francis Ndhlovu. Almost all the detainees were tortured at Police Headquarters. They narrated how they were frogmarched or made to crawl from room to room and floor-to-floor, blind folded and subjected to long hours of interrogations by rotating investigating teams in various modes. It did not matter whether they died in the process as they would probably.

From the above-illustrated cases, it can clearly be stated that the institution of the police has failed to perform its role of a protector of Human Rights. Almost all the cases of torture are attributed to the Police Service. The police have consistently violated this right despite the numerous calls from members of the public and other pressure groups that advocate for Human Rights. The dignity of the suspects that are taken into custody is not respected as they are subjected to inhuman and degrading treatment. Most of the suspects because of the severe beatings that they are subjected to come out of custody not as normal as they go
in. An example of this, is the case of Princess Nakatindi Wina who complained after being released from police custody that she had a miscarriage and attributed her failure to walk properly due to the disturbance of the spinal code to the torture that she had undergone at the hands of the Zambia police. This was after being arrested for allegedly masterminding the failed October 1997 coup attempt.

2.8 ARBITRARY ARREST AND DETENTION

Article 13 of the Zambian Constitution guarantees the right to Liberty. It protects individuals from being deprived of their liberty except in situations provided for by the law. A person may only be apprehended upon reasonable suspicion of his having committed a crime or being about to commit a criminal offence under the law in force in Zambia. It follows therefore that one cannot be deprived of his personal liberty if he is accused of committing an offence which is not defined as a criminal offence under the laws currently applying in Zambia. Article 13 (3) of the constitution requires that any person arrested or charged with an offence should be tried by a court without undue delay. The criminal procedure code requires suspects arrested without a warrant to be taken to court within 24 hours of arrest. This entails that persons accused of criminal offences who have since been charged are entitled to a speedy trial. They should be brought before a court of competent jurisdiction as soon as is practicable. More so the detention of a person arrested without a warrant and who has not been charged for a period
exceeding 24 hours is illegal. Any person arrested for a criminal offence should be availed with a charge within 24 hours or be released.

This has not however been the case in Zambia’s criminal justice system. The institution of the police has constantly ignored the law resulting in gross abuse of the fundamental rights of individuals. Criminal suspects are often arrested on the basis of flimsy evidence or uncorroborated accusations. Others are arrested on matters that border on the civil aspect of the law, such as debt or failure to maintain one’s family. This usually happens when police officers are hired at a fee to help one who is being owed money to recover his debt. In certain instances, the police detain for days on end relatives of persons suspected of an offence on the ground that they assist the police with investigations. This is apparently done to compel the person so accused to present himself before the police. The police have further continued to detain people during the night in the present situation when there is no curfew imposed restricting peoples movements and later release them in the morning upon payment of K20,000 guilty admission fee. This is a gross abuse of one’s right to liberty and freedom of movement as it is not provided anywhere under the penal laws of Zambia that anyone moving at night is committing a criminal offence save when there is a curfew or when one is

loitering. The police also detain people without being charged for many days which later turn into weeks and months. This usually happens in cases where an
accused person does not have a lawyer to push the police around so that the case can be brought forth quickly before the court.

The police in some cases refused to release suspects on police bond, even for minor offences. Under listed are some of the cases reported on the way the police have handled cases relating to detention and liberty and their impact on this fundamental right.

2.9 **TABLE OF CASES**

**CASE NO. 1**

During the month of February 2002, Chibolya Police denied persons freedom of movement when they restricted movement of residents from 20.00 hours onwards. Residents complained that the police officers usually moved in a minibus arresting any person they found outside even if one was merely going to the toilet, as they have outdoor toilets. The police officers beat those alleged to have broken the curfew and detained them overnight at Chibolya Police Post, and are alleged to have solicited for money in order to have someone released,

**CASE NO. 2**

Earlier this year a maid to Mr X Chungu the former Director of the Zambia Intelligence Service who is accused of plundering the national resources was detained immediately after Mr. Chungu’s disappearance. Her arrest was apparently to help the police with

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22 Zambia Human Right Report, Afronet Publication pg 52
investigations relating to Mr. Chungu's whereabouts. She was later released without being charged.

**CASE NO. 3**

A Lusaka footballer named Mubanga was illegally detained by the Chilenje Police upon visiting a nephew of his who had been apparently accused of stealing a T.V. set and other household goods by the neighbour.

**CASE NO. 4**

In April, Alinet Mwanza and her five-month-old baby were detained at Matero Police Station in order for her to reveal the whereabouts of her husband, who is believed to have committed a crime at Mazembe, where he worked. It is believed that he committed an offence and he ran away. The police were then sent to his house and because he was not home they picked up the wife and child instead. The police believed that she knew where her husband was and she did not want to disclose this information to the police. They detained her for two weeks.

**CASE NO. 5**

On 17th March, Kennedy Kongwe, a businessman based in Garden Compound received a call out from Mumbwa Police Station which he heeded. When he got to Mumbwa Police he was thrown into the cells. He was told that it had been reported that he had threatened riouna. He was released unconditionally after being detained for two months. He was not furnished with a warn and caution statement prior to his arrest.
It can be stated therefore that the police have failed to play an important role of protecting this fundamental right of freedom from arbitrary arrest and detention. In fact this provision of the law has been seriously violated with the police observing it more in breach than in conformity. Many suspects as has been indicated stayed in police custody for weeks or months without even appearing before a magistrate or a judge. Many others were detained on flimsy grounds bordering on the civil aspect of the law.

The police have also repeatedly failed to inform suspects brought before them of the charges that they prefer against them within a reasonable time. Suspects are detained in police cells for days on end without being charged. Others are detained and later let free because the police would not find an appropriate charge against them.

The procedure of informing one, in a language that he understands, what he is being charged with only happens when one has hired a lawyer. However the majority of the people accused of criminal offences are poor and cannot afford the exorbitant legal fees.

Police brutality is a common feature when a criminal suspect is being arrested. Even when the suspect has not offered any resistance, the police continuously butter such persons because they normally consider them to be criminals even before they are tried by a court of competent jurisdiction.

It usually takes a lot of time for criminal suspects to be brought before a court of law. Many of them spend so many days in police custody before they can make their first
appearance before a judge or magistrate. The police in some instances have refused to
give police bond to criminal suspects on cases that are not heinous and are regarded as
bailable by the law. This has negatively impacted on the rights of an accused person as-
many of them are made to stay in police cells for many days awaiting their first
appearance in a court of law.

CONCLUSION

In conclusion, it can be stated that the institution of the police has grossly abused the
powers that it has been endowed with and this has had a grave effect on the fundamental
rights of accused persons. The large section of the police have been operating
unreasonably and their treatment of these accused persons has severely limited their
enjoyment of rights. Torture has continued to prevail in police stations despite numerous
calls to end this practice. Suspects that are taken into police custody are not charged
within the requisite period of 24 hours and many of them are not told of their entitlement
at the time of arrest.
CHAPTER 3

THE ROLE PLAYED BY THE COURTS IN THE PROTECTION OF HUMAN RIGHTS IN ZAMBIA'S CRIMINAL JUSTICE SYSTEM

3.1 INTRODUCTION.

The government is an institution, which is charged with three basic responsibilities of protecting its citizens, making and interpreting the law. In order to carry out its responsibilities effectively, the government is divided into three different organs which are independent of one another namely the judiciary, executive and the legislature. In Zambia like many other countries, the judiciary has been bestowed with an enormous responsibility of interpreting the law and with this task comes the duty of trying both civil and criminal cases. To ensure therefore that justice is administered fairly and without any interference from one organ of the government, the judiciary is given a sense of independence through certain statutory and constitutional provisions. "As a result of this, criminal courts are said to play an important role in the protection of individual human rights." It is within a criminal court that the interpretation of rights maybe made and their exercise permitted or limited. It is within the functioning of the criminal court that the interpretation by the police of an individuals rights may be questioned. Protective procedures exist within the courts operations that ensure that an individual's human rights as enunciated under the bill of rights are upheld. This chapter looks at the role of the courts in Zambia's criminal justice system and how these courts have fared in the protection of fundamental rights in criminal proceedings.

23 Chinamasa, P. "The Protection of Human Rights in Criminal justice proceedings for African jurists" pg 39
24 Ibid, pg 41
3.2 THE JUDICIARY

In Zambia, all courts fall under the Judiciary. Article 91 of the constitution establishes the judicature of the Republic and provides that the judicature of the Republic shall consist of;

i) The Supreme Court of Zambia.

ii) The High Court for Zambia.

iii) The industrial Relations Courts

iv) The Subordinate Court.

v) The Local Courts and;

vi) Such other lower Courts as maybe prescribed by an Act of Parliament"25.

The Local Courts constitute the base of the country’s judicial hierarchy. As such, they adjudicate upon disputes between individuals or groups of individuals especially in the area of African customary law.26 They exercise whatever limited jurisdiction is granted to them over numerous minor but quite significant criminal offences. They adjudicate over many cases, which involve Human Rights violations at the lowest stratum of society although the local court judges do not realize that they do deal with Human Rights issues as well.27 " The subordinate court handles the bulk of criminal trials. However most serious criminal cases such as homicide, treason, armed robbery and infanticide are referred to the High court"28. These cases are however handled by the magistrates in their preliminary stages before reference to the High court. Suffice to note therefore that in respect of Justice system in Zambia visa-vis delay in bringing an accused person criminal matters, the subordinate courts have jurisdiction to try any offence under any written law

25 Constitution of Zambia, Chapter 1
26 Sakala, J Role of the Judiciary in The Interpretation of Human Rights, PhD Thesis 2000 pg 464
27 Ibid pg 464
28 Munkombwe, D Administration of the Criminal to trial.oblig 2000
in Zambia. However, if any issue arises that borders on an individual's Human Rights in the course of a trial in the subordinate court such a case has to be referred to the High court for determination, on that aspect that borders on the Human Rights. "The High court for Zambia is a court of first instance which has original and unlimited jurisdiction"\textsuperscript{30} to deal with serious criminal matters. "The Industrial relations court is confined only to matters involving industrial relations such as trade union issues."\textsuperscript{31} The Supreme Court on the other hand is Zambia's final court of appeal and so a superior court of record which has appellate jurisdiction\textsuperscript{32}.

The courts through their interpretative role play a pivotal role in the protection of individual’s Rights\textsuperscript{32} as enshrined in the national constitution. The judiciary in Zambia has thus not failed to live up to the challenge of judicial activism in the area of Human Rights Protection. "Article 28 (1) of the Constitution provides that subject to clause (5), 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 (a) hear and determine any such application: (b) determine any question arising in the case of any person which is referred to in pursuance of clause(2) and which may, make such order, issue 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 Article 11 to 26 inclusive\textsuperscript{33}. This is an

\textsuperscript{30} High Court Act, CAP 27
\textsuperscript{31} The Industrial and Labour Relations Act, CAP 269
\textsuperscript{32} The Constitution of Zambia, CAP 1
\textsuperscript{33} Chinamasa P, The Protection of Human Rights in Criminal Justice Proceedings for African Jurists
\textsuperscript{33} Op cit, Article 18
important provision that clothes legal Authority on the High Court to take appropriate measures for the purpose of protecting or enforcing Human rights in the Bill of Rights. The court may thus make any order or issue writs for the sole purpose of protecting Human Rights.

3.3 PERSONAL LIBERTY

The right to personal liberty is an important individual Right that is highly protected by the constitution. Part III of the constitution requires that no one person should be deprived of this personal Liberty unless the deprivation to authorized by law."34 Suffice to note however that this is one of the rights that has proved to be at the most risk of abuse especially in Zambia's criminal justice system. The courts however as earlier indicated have been given the mandate to deal with such abuse and ensure that an individual human Rights as enunciated under the bill of rights are protected. The courts would interfere in situations where people are arrested and detained without breecching the law or where they due process of the law is not favored in detaining them. The remedy of compensation which is provided for by the constitution would thus be given to a person who ha been arrested or detained unlawfully. In the case of Musonda Mofya V.A.G"35 In which case a man had been wrongly suspected of having stolen a motor vehicle. He was badly tortured by the police officers from Kabwata police station, resulting in extensive bruising and other alleged permanent injuries. He was also detained for a period of five days without being brought before a court for trial. The Supreme Court awarded the applicant about K2 million for the false imprisonment and torture, in

34 Ibid Article 13
35 1995 ZR
the case of *Chipango v V.A.G.*" the plaintiff claimed damages for false imprisonment following detention under the preservation of public security regulations. Silungwe, J: in passing judgment stated that the individual's right to personal liberty is one of the pillars of the fundamental rights and freedoms under the constitution. The rights to personal liberty is so fundamental that it should not to be allowed to pass through their fingers like quick silver; it should be jealously guarded against any illegal encroachment from any source no matter how great or powerful. I do feel that any illegal violation of the individual's rights to personal liberty is a serious matter that should be taken seriously. Further, this is desirable to ensure respect for and sanctity of our constitutional principals.

In another case of *Kawimbe v A.G.*" Judge Banda in

Passing judgment reiterated the concept of respecting an individual's right to personal liberty. He stated that the right to liberty is a fundamental Human right and must not be taken from a man without lawful cause, he has the right within the law, to go where he likes and do what he likes, and if he is deprived of his right, then that deprivation attracts compensation quite independently of any anxiety, distress or other loss which follows.

The issue that remained to be determined was the amount of damages. Baron.D.C.J delivering the judgment of the majority further stated that to award K50 as compensation for the deprivation of liberty for two days by confining the person in a prison cell for a period of two days bordered on the contemptuous. He considered it to be completely inadequate as a measure of the value of the precious right to liberty, the right to go where one pleased and do what one pleased. In his view, the lowest award which could not be attacked as being totally inadequate or utterly unreasonable was K200. This amount was therefore awarded as the amount of damages the appellant was entitled to. This case arose

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36 1971 ZR  
37 1974 ZR
after the detention of the appellant under the preservation of Public Security Regulations. The appellant had been detained for 16 days and no statement of the grounds of detention had been furnished as required by article 27 (1) (a) of the constitution within the 14 days specified by that article, or at all, and the statement of claim had pleaded that in the circumstances, the plaintiff had been held in detention illegally for two days and had suffered damage. The Deputy Registrar in the High Court had pointed out that no special damages were proved and that the decision was concerned purely with general damages. He made an award for damages of K50 and thus this appeal. The more recent case of *Musonda Mofya v A.G*\(^{38}\) illustrates that an action for damages may successfully be employed to enforce the provisions of Article 13 and 15 of the Constitution of Zambia. The case involved a man who had been wrongly suspected of having stolen a motor vehicle. He was badly tortured by officers from Kabwata Police Station resulting in extensive bruising and other alleged permanent injuries. He was also detained for about five days. The Supreme Court awarded the applicant about K2 million for the false imprisonment and torture. In *Joyce Banda v. A.G*\(^{39}\) the Supreme Court held inter alia that the obligation to justify a deprivation of personal liberty is a Common Law obligation, which is not affected by statutory inroads into the right to liberty but if properly invoked the statutory inroads constitute justification. The court further stated that the release of the detainee does not exculpate the person responsible for the detention if the lawfulness is challenged. The case arose after the arrest and detention of Joyce Banda under the provisions of the Public Security Regulations. Banda was released before 14 days requisite period and no grounds of detention were availed to her before and after the detention. The Attorney General argued that since she was released before the expire of the stipulated period there was no obligation on the part of the detaining

\(^{38}\) 1995 ZR

\(^{39}\) 1984 ZR
authority to furnish her with written grounds for detention. The Supreme Court found that Banda was falsely imprisoned and sent the matter back to the trial judge for assessment of damages.

The judiciary has an important role to play on the protection and enforcement of the fundamental right to liberty of individual. The case illustrated above clearly point out that an individual who has had his right to personal liberty interfered with can enforce this right by commencing proceedings in which damages can be sought. The courts award damages as a way of not only compensating for the loss of liberty that one suffers but also as a way of ensuring that the same action of unlawful deprivation of people’s personal liberties is not repeated. Despite being under a perpetual state of emergency from 1973 to 1991 when there was a one Party Participatory Democracy, the courts were seemingly ready to uphold the fundamental rights as enunciated under the constitution. The same trend has been seen to continue in the Third Republic.

3.4 HABEAS CORPUS

Article 18 (1) provides that “if any person is 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.” The law entitles an accused person to a speedy and fair trial. The courts have always ensured this by releasing accused persons where the state has failed to show cause why an individual is being held for a long period without being brought before a court of law. This is usually after the application for a writ of habeas corpus, which is meant to compel the detaining authorities to show cause why an accused person is being detained and as practicable as

40 Constitution of Zambia, CAP 1 Article 18
possible to present that person before the court of law or to release him. In the case of *Mainza v A.G.* 41 The High Court stated that it had power to discharge and thereupon release the person charged with a criminal offence on a Habeas Corpus. Application. Caution must however be exercised on reviewing this case as a blanket authority for the proposition that an accused person in a criminal trial has an unqualified right to set the Habeas Corpus machinery into motion. Generally speaking, Habeas Corpus application in these circumstances will only be entertained in exceptional circumstances, which in the Mainza case were the disappearance of the criminal case record. In another case of *Eleftheriadis v. A.G.* 42 in which case an application for a writ of Habeas Corpus was made after the detention of the applicant for an offence believed to be unsustainable in the law, the Chief Justice Doyle as he then was allowed the application for the writ to issue.

In the case of *Re-Chiluba,* 43 the applicant was detained on grounds that he had addressed meetings at certain places where he advocated a change of government in the country. His detention was under the Preservation of Public Security Regulations. The applicant in seeking for a writ of Habeas Corpus challenged his detention stating that the reasons given by the detaining authorities for his detention were mere fabrications. The court on hearing this application held that the applicant did not engage in activities prejudicial to public security. The application sought was thus granted.

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41 1980 ZR
42 1972 ZR
43 1981 ZR
In *Rupiah Banda and Steven Moyo*\(^{44}\) the trial judge upon critical consideration of the facts before him released the two petitioners and held that there were no regulations upon which the two petitioners could be detained lawfully since parliament did not ratify any regulations for their detentions. This case arose after the dual were arrested and detained on suspicion of being party to a plot by the opposition United National Independence Party (UNIP) to overthrow the government. The dual were alleged to have prepared and disseminated to UNIP members a document titled zero option containing details on the overthrow of the government. They petitioned the court for a declaration that the Acts of the state resulting in their continuous detentions without charges or trials were unlawful and were a violation of their rights to personal liberty.

A renowned Zambian lawyer commenting on the ruling in the case of *Dean Namulya Mun’gomba v. A.G.*\(^{45}\) said that the trial judge’s ruling in that case was most unfortunate in that a golden opportunity was missed for the court to assert it’s role in the protection and promotion of Human Rights in the country. Surely it cannot be said to be beyond the jurisdiction of the court to enquire into the validity of a declaration of a State of Emergency if Zambia’s Bill of Rights is to be brought in line with International Human Rights. Mr. Dean Mun’gomba was arrested under the preservation of Public Security Regulations in the aftermath of the failed coup attempt in 1997. He applied for a writ of Habeas Corpus arguing that the president had misused his powers in declaring a state of Emergency since the facts on the ground did not support such a declaration. Mr. Mun’gomba’s application was dismissed by the presiding judge holding that the court had no jurisdiction to inquire into grounds for the declaration of the State of Emergency.

\(^{44}\) 1993 ZR  
\(^{45}\) HP/1998 (un reported)
by the president. One tends to wonder how a court rested with unlimited jurisdiction by Article 94 (1) to hear and determine any matter arising in Zambia coupled with the provision under Article 28(1) which gives the High Court the power to determine any application of infringement of one’s fundamental rights would arrive at such a decision. The courts are expected to take a proactive role in ensuring that the rights that are quarantined by the constitution are upheld. These cases however illustrate the fact that courts in Zambia during criminal proceedings have always tried to uphold people’s personal liberties by granting Habeas Corpus applications where the state has failed to show cause why accused person’s are being detained or where they are not brought before the courts of law for a considerable period.

3.5 **BAIL**

Moreso, to ensure that persons that are arrested or detained are subject to a speedy trial and also that their personal liberty is not taken away from them for a long time before appearing in a court of law, the law requires that such persons be released unconditionally or that conditions be attached which would ensure their appearance before the court. Article 13 (3) (b) of the Zambian constitution provides for constitutional bail. It is enunciated there under that “Any person who is arrested or detained and who is not released, shall be brought without undue delay before a court and if any person detained or arrested under paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that maybe 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 he appears at a later date for trial.

The statutory provision that compliments this constitutional provision is to be found in

the criminal procedure code which provides that an arrested or detained person must be
brought before a court within 24 hours. A police officer may release any arrested person
if the officer has satisfied himself of the identity and residential address of the suspect
and is further of the opinion that the offence charged is not a serious one. The courts have
used these provisions that call for the granting of bail to protect the fundamental rights of
an individual. In one instance, retired judge of the High Court Mr. Justice Kabazo
Chanda released 50 prisoners for failure by the state to bring the detainees before the
courts of law. Some of these detainees had been in detention for a period exceeding one
(1) year without seeing the inside of the court. Such bravery from a High court judge is
clear indication that the courts have always acted as a vanguard for the protection of
Human Rights. This is most especially seen in criminal proceedings which have been said
to be a for where protective procedures that ensure that there is no unjustified interference
in an accuser’s rights without the need for recourse to any other tribunal or form of
proceedings exist. The case of Janu v. The people\footnote{HP /1999 (unreported)} held that the power to admit a
person to bail is clearly discretionary. The courts usually exercise their discretion based
on whether the crime that has been committed is heinous such that one should not be
released or whether it is not a serious offence suffice to note however that the concept of
bail has been used by the courts as one way of protecting the fundamental right to liberty.

3.6 INHUMAN AND DESCADING TREATMENT

As has already been indicated in the preceding chapters, it is a requirement of the law that
no one person should be subjected to inhuman and degrading treatment. This is a non-

\footnote{Constitution of Zambia, CAP 1 Article 13}
derogable right which cannot be taken away even in times of a State of Emergency. The courts in Zambia have stood out as the champions of this fundamental right by awarding damages in instances where this right is abused. In the case of **David Katoba Mwenjeta v. A.G.**, the applicant brought an action by way of an originating motion seeking a declaration among other remedies to the effect that the beating torture he was subjected to by the Zambia police on 23rd December, 1997 was unlawful and a violation of his guaranteed right under Article 15 of the constitution. In this case justice E. Chuulu found that the plaintiff was subjected to brutal and inhuman and degrading treatment. He was whipped repeatedly with a leather whip, on his back and also repeatedly hit on his foot with a club. In the judges view these were very serious aggravating circumstances to be taken into consideration when determining a fair and reasonable award of compensatory damages for the foregoing reasons, the court awarded the plaintiff a sum of K20 million as compensatory damages. In another case of **Re Puta.** an application by way of a petition was brought in terms of the protection of fundamental rights rules 1969 made in accordance with S.28 of the constitution. The petitioner sought inter-alia an award of damages for inhuman and degrading treatment at the hands of the police. Sakala J. in delivery judgment made an award for the inhuman treatment complained of but refused to hold that his detention was unlawful and the petition was dismissed to that extent.

### 3.7 CONCLUSION

A conclusion can be drawn that the courts have always strived to ensure that the rights of an individual as guaranteed under the constitution are protected from abuse. The courts are always ready to award damages in case of breach by the authorities where one is not being availed a speedy trial the courts have always shown that they will compel the authorities holding that person to bring him to courts or to release him.

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48 1982 SCZ Judgment No. 25
CHAPTER 4

CONCLUSION AND RECOMMENDATIONS

4.1 CONCLUSION:

From the foregoing discussion, it can be deduced that the police have failed to uphold human rights of suspects in criminal proceedings. More so, their conduct generally has shown that they have continuously contributed to the gross abuse of the Rights of innocent individual human beings. The protective role of the court has however come to the rescue of most suspects in the criminal justice system.

Chapter one of this essay clearly established the rights that an accused person is entitled to. It was clearly shown that suspects accused of criminal offences should have a fair and expedient hearing. It was also established that criminal suspects are entitled to legal representation and if they are indigent persons incapable of hiring a lawyer of their own, the governments legal Aid Department would come to their rescue. More so, the essay pointed out the fact that criminal suspects need to be availed with the necessary materials to enable them prepare their case. They do not only have the right to defend themselves but they also have a right to call upon witnesses, examine and cross examine them in order to help them consolidate their case.

The chapter also enunciated the fact that suspects should be presumed to be innocent until the courts of law make a pronouncement as to whether they are guilty or not. It has also been observed that suspects are neither to be tortured or subjected to in
human and degrading treatment in accordance with constitutional provisions. The environment in which the suspects are kept should be conducive for human habitation. No form of torture howsoever arising should be used on a suspect. This also applies in a state of emergency when other rights are derogated from. This is so because torture is a non-derogable right. It applies even when a state of emergency is prevalent. The chapter further went on to state that at the time of being arrested, the criminal suspect should be told of his entitlements. A charge should be brought known to him or else he should be released and as practicable as possible the suspect should be brought before the courts of law to answer for the charges that might have been availed against him.

The second chapter looked at the cases that show how the police have performed in the criminal justice system. It pointed out the fact that the police have grossly failed to uphold the constitutional provisions of an accused individual being as clearly written down by the constitution in part3. The chapter brought out the fact that the police handle certain cases that fall on the civil aspect of the law as though they were criminal cases. They arrest and detain people for debts that they owe to others as long as there has been a monetary reward promised. This is so because of the impoverished state in which the police service is. It has also been established by this chapter that the police service has constantly ignored the plea from the civil society to abandon the use of torture or any other means of obtaining evidence that are termed as illegal. As usual this has fallen on deaf ears and the police have persistently used torture as one effective way of forcing evidence out of the suspects. This has been pointed out as a derogation and complete abuse of the personal dignity
of a suspect. Furthermore, the chapter pointed out that the detention of people without pointing to any known principle of the law which is contrary to the requisites of a rule of law have persisted. Decisions to arrest people are arbitrarily made without any reference to a pedigree of the law. It has been observed that people have stayed in police cells days on end without being brought before the courts of law. They have not been availed charges preferred against them for a period exceeding forty-eight hours and the police have always failed to release them.

Chapter three of the essay brought out several points relating to the protective role that the courts have played in the criminal justice system of Zambia. It was clearly enunciated by this chapter that the courts have used the powers invested in them to protect the fundamental human rights as enunciated in chapter three. The courts have used the concept of the writ of Habeas corpus to compel the authorities to bring an accused person before a court of law and to show cause why the detaining authority has been failing to bring the body to court. It looked at the cases that have been decided upon by the courts on Habeas corpus and shown how this concept has been used by the court to protect rights of suspects. This chapter also showed that the court has the power of awarding damages where it has been proved that one has had his rights infringed upon. This is one of the many ways in which the courts protect the rights of an accused person. Cases relating to the award of damages by the courts of law were also looked at.

The chapter further went on to look at the way the court has used Bail as a means of ensuring that the further disturbance of one's right to personal liberty is not
perpetuated. Cases in which the courts have released persons accused of certain offences on bail pending trial were elaborated in this chapter. Having established all these facts and seen how the police as well as the courts have fared in the criminal justice system, it is imperative that recommendations are submitted so as to change the prevailing conditions.

4.2 RECOMMENDATIONS

REFRESHER COURSES OF HUMAN RIGHTS

The police service should be organizing human rights workshops for all police officers though the most concentration should be on junior police officers. This is so because most of the workshops are targeted at senior police officers who are not involved in the criminal justice proceedings save when there is a high profile case like the arrest of politicians or high ranking officials in the government. Almost all the senior police officers are mainly involved in the administration of the service. Any information or knowledge obtained from these workshops is not relayed to the junior police officers who are involved in criminal justice proceedings and this has proved to be detrimental to society as a whole. The civil society should take up this challenge and engage themselves in activities that will impart the police especially those that are based at the grassroots e.g. those based at police posts in urban area as well as in the rural areas with Human Rights related issues so as to keep them abreast with what is happening in the realm of Human Rights.
The curricula at the police training school should also be completely overhauled. A larger component of the course should not aim at equiping the police officers with the physique that they obviously need to carry out their duties but it should be aimed at teaching them Human Rights law, criminal procedure and other laws that are relevant in the carrying out of their duties. The course should run for a period of two years as opposed to the six months in which they do it.

**EXCHANGE PROGRAMMES**

The police service should also engage in partnerships with other police services from nations that are much more developed than Zambia. They must enter into agreements in which police officers are taken to these countries to serve in those country’s police service for a month in order to learn how they carry out their duties and as much as possible avoid on infringing on the suspects rights.

**FUNDING**

Most of the delay by the police in taking criminal suspects to court is attributed to lack of transport. It is imperative therefore that funding to the police service should be improved if we have to see an efficient police service. A lot of new vehicles should be bought for the police service.

**IMPROVEMENT OF WORKING CONDITIONS**

Wages and salaries of the police officers should be revised and improved. This will avert the escalating number of cases of police officers being used by people to help
them obtain debts from those that owe them. More so the physical environment in which the police work should also be improved. This will ensure that the Police officers are not frustrated so as to vent their frustration on criminal suspects.

MORE POLICE CELLS AND RENOVATION OF EXISTING ONES

The sanitary conditions in most of the police posts and police stations leaves much to be desired. It follows therefore that to avoid subjecting criminal suspects to inhuman and degrading treatment, there is a great need for the police service to renovate these police cells. The number of cells is small also leading to a situation in which five hundred suspects are caged in a cell which can only manage to accommodate twenty suspects. There is thus need to build more police cells so as to avert this problem.

STRENGTHENING THE POLICE PUBLICS COMPLAINT AUTHORITIES

The police service in trying to uplift its image and transform itself from a police force to a police service had the police public complaints authority formed. This authority was established mainly to receive complaints against police action and those that result in serious injury or death of a person. The powers of the authority as provided for in section 57 of part X are to investigate all complaints referred to it by aggrieved Persons directly affected by police action, an association acting in the interests of its members and a person acting on behalf of an aggrieved person body or organization. However, much as it is appreciated that an institution to look into the exercise of police powers and to ensure that these officers act within the ambit of the power they were invested with was formed, there is a lot that needs to be done to strengthen the operations of this institution which is seen as a mere reporting unit.
with little or no power at all. The nature of the police has always been to protect their own. Any action commenced against a police officer for a wrong he has committed are always blocked. It is suggested therefore that the final authority to make a decision on the recommendations made by the police public complaints authority should not lie with the inspector general of police who obviously would want to protect his juniors. The authority should be given the mandate not only to find out whether a police officer has committed an offence or not but also to make a decision on the recommendations so made. This will ensure that cases of police abuse presented before the authority will be desposed of to the satisfaction of the complainant because he will look at the decision made as being arrived at by an independent and impartial tribunal made by people who don’t whatsoever have an interest in the case.

The majority of the people in Zambia have to be enlightened on their Human Rights. Most of the people do not know their rights most especially when they are being arrested. To abate Human Rights violation by the police, it is important that people are made to know what they are entitled to. Non governmental organizations have to take a leading role in educating the populous on their civic rights. They need to be told of their entitlements at the time of arrest and all that needs to be availed to them during the trial period. They need to be taught that if an individual fails to pay his debts, such a case does not have to be presented to a police officer but it needs to have an action commenced upon in the civil aspect of the law save when it borders on the criminal aspect of the law. More so, there is need to incorporate Human
Rights into the syllabus and institutions at all the levels. Human Rights materials should also be translated into all languages.

The Non-governmental organizations need to take an active role in the protection of Human Rights. There should be seen at least the emergence of non-governmental organizations that do not take a back role and repeat what other non-governmental organizations are doing. There should be more (N.G.O’s) like the legal resources foundation that will strictly be dealing with the defense of people accused of criminal offences or litigating on behalf of those whose rights have been grossly abused by the police.

There is also a great need to enlighten people on the existence of N.G.O’s like the legal resources foundation and their chambers and about the services that they offer. Institutions of the government like the Legal Aid Department need to be made known to the majority of the people who are ignorant about its operations.

Government institutions like the Legal Aid Department have to be resuscitated so as to see a rise in the number of criminal cases being taken up by Legal Aid Lawyers. Suffice to note that most of the people accused of criminal offences are indigent persons who are unable to afford the exorbitant legal fees that the Zambian lawyers charge. Most of the people thus go unpresented in serious criminal offences. If they are represented, the lawyer who happens to be from the Legal Aid Department will most often seek for adjournments because he has many other cases to handle. This would obviously cause a delay in the disposal of cases brought before the courts of
law. More so, the Directorate does not handle police brutality cases which is more prevalent. It is proposed therefore that funding to this institution should be increased so as to attract a lot of lawyers that will be able to handle the workload. The conditions of service should be attractive so as to entice them not to leave for private practice.

MORE STAFF NEEDED IN COURTS

The courts are also understaffed and this has also contributed to the failure of the judiciary to dispose of cases within a short period of time. The government should consider employing a lot of magistrates and calling senior lawyers to the bar. Their conditions of service should be attractive also.

HUMAN RIGHTS COMMISSION (H.R.C.)

The Human Rights Commission should also be strengthened. It should not just be making recommendations in cases in which an officer accused of Human Rights violation is found wanting. Decisions that are arrived at should have the same effect as a court judgment.
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