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THE PRESERVATION OF PUBLIC SECURITY ACT AND MANDRAX CRIMES - A LEGAL ANALYSIS

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THE PRESERVATION OF PUBLIC SECURITY ACT AND MANDRAK CRIMES -

A LEGAL ANALYSIS

By

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Submitted as a requirement for the award of the degree of Bachelor of Laws.

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DEDICATION

This work is dedicated to my Mother Rosemary who has given me continued guidance and encouragement in both my Social and Academic life. It is also dedicated to my Son Kangwa who apart from being my inspiration is my reason for working hard.
The completion of this work would have been impossible if it wasn't for the continued and tireless assistance and encouragement I received from a lot of people. Unfortunately, I cannot mention all of them and not to mention some of them in the other hand who have played major roles in helping me to complete this work would be doing great injustice.

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INTRODUCTION

The Provisions of the Public Security Act and the Preservation of Public Security Regulations is designed to prevent crimes related to Public Security or what has been termed as "Civil unrest". Under the above act the power of detention without trial is exercised by the state.

Unfortunately the power of detention without trial under the Preservation of Public Security Act has been frequently been used for Crimes which do not fall under the purview of Public Security and are not even proximate to Public Security.

The basic crime which is the concern of this paper is Mandrax trafficking which is a new feature in Zambian Security law and has come to be included under the act as it is seen as a threat to Public Security by the State.

Thus the concern of this paper will be to analyse why the government has seen mandrax trafficking as a threat to public security when there is no evidence that mandrax tablets constitutes a threat to public security.

Furthermore, this paper will discuss the state's justification for resorting to detention without trial in
dealing with mandrax cases instead of using the ordinary criminal law and procedure which should be adequate to meet the situation.

No law existed in relation to mandrax crimes at the time people alleged to be dealing in mandrax were detained. In relation to this we will examine how the state justified this by invoking the Preservation of Public Security Act.

Other writer's have written on the Preservation of Public Security Act like Kaye Turner and Muna Ndulo in relation to fundamental Rights and freedoms in particular - Civil Liberties. I have read and appreciated their work. This essay is a departure from their work in that it discusses mandrax crimes in relation to the Preservation of Public Security Act and why these crimes have come under the Act including economic sabotage. This development has been recent and its only in 1985 that economic sabotage was included under the Preservation of Public Security Act.

**METHODOLOGY**

The present study is based on descriptive analysis by reference to decided cases, most of which are high court decisions. This has been supplemented by conducting a series
of interviews with an ex detainee, a chief drug analyst and an officer from the public complaints and Legal Affairs Department, including Parliamentary debates of 1967.

LIMITATION OF STUDY

This subject is very vast and cannot therefore be exhausted in such a short essay. On the contrary, despite a lot of material existing on the subject in the High Court for instance, access to the material needed is next to impossible. The findings of the tribunal on mandrax trafficking for instance has been in camera including some mandrax cases or trials, and this inhibits one's analysis. Furthermore people who were previously detained for alleged involvement in mandrax trafficking are very uncompromising and unwilling to be interviewed except for one ex-detainee in my case whose views we have reflected elsewhere in this paper.

We have as a result limited ourselves to the Preservation of Public Security Act itself, the Dangerous Drugs Act, the decided cases and interviews with the relevant people.
Chapter I deals with the introductory aspects of the origin of the Preservation of Public Security Act in 1964 and gives reasons for justification at that time.

Chapter II looks at the Preservation of Public Security Act in relation to decided cases and the status justification for arising at these decisions.

Chapter III discusses the Dangerous Drugs Act in relation to mandrax cases and gives an ex-detainee's view in relation to the above.

Chapter IV contains a summary of discussion or rather the conclusion on the Preservation of Public Security Act in relation to mandrax and provides various suggestions aimed at improving the system.
FOOTNOTES

CHAPTER ONE

THE PRESERVATION OF PUBLIC SECURITY ACT DURING THE COLONIAL PERIOD

The Preservation of Public Security Act is one of the statutes which come into operation whenever there is an emergency declaration in existence. This statute empowers the President to make regulations for the preservation of public security and for any other matters incidental thereto. Some of the regulations that the President may make may provide for:

(1) the taking of possession of or control of any property or undertaking and the acquisition of any property other than land.

(2) The control of publications.

(3) Authorise the entering and search of any premises, and

(4) The detention and restrictions of persons.

The Preservation of Public Security Act is invoked when a semi-emergency is declared. Under this Act the President may make regulations to provide for the suspension of the operation of any written law other than the constitution. Thus, the regulations made under the Preservation of Public Security Act are valid even if
they have not been tabled before the National Assembly until the expiration of three months. At the outset, it must be noted that the regulations made under the Preservation of Public Security Act Statute actually overrides any conflicting provisions in any other law with the exception of the Constitution.

For example, Public Security has been widely construed so as to include or encompass in Section 2 "-----the security or safety of persons, the maintenance of supplies and services essential to the life of the community, the prevention and suppression of violence, intimidation, disorder and crime, the prevention and suppression of rebellion and concerted defiance of and disobedience to the law and lawful authority, and the maintenance of administration of justice".

A number of cases have actually discussed the meaning of the expression or term "Public Security". In the case of Mudenda v. The Attorney-General Silungwe CJ, asserted that the definition of Public Security in Section 2 of the Preservation of Public Security Act is not "exhaustive but merely "illustrative". Furthermore, in the case of Chibwe v. Attorney-
General 11 Silungwe CJ, concurred with Judge Sakala's assertion as to the term "public security" being inclusive and not exclusive when he said,

"In my view to conspire to unlawfully externalise three million Kwacha from a country whose economy is experiencing great difficulties in foreign exchange is certainly prejudicial to public security which activity if left uncontrolled would lead to certain economic consequences and hardships on the people of this country".

In this case the applicant had been detained on grounds that he had conspired with two others to externalise unlawfully three million Kwacha.

According to the aforementioned definition, Public Security can thus include many crimes for example the suppression of economic crimes like illegal trafficking in emeralds as was the case in the aforementioned Mudenda v. The Attorney-General's case 12 and illegal externalisation of foreign currency whose connection of course with Public Security is clearly remote.

Cullinan J's definition of "public security" seems to be more practical and substantive in the case of Kaila v. The Attorney General 13 In this case Cullinan J delineated the definition of "public
security" as put down in Section 2 i.e.: 

(1) The Securing of the safety of persons and property; 
(2) The maintenance of supplies and services essential to the life of the community; 
(3) The maintenance of public order; 
(4) The maintenance of the administration of justice; and 
(5) The maintenance of the administration of lawful authority.

All the above 5 according to Cullinan involved the prevention and suppression of particular acts which would well amount to crimes but he was of the view that the only reasonable construction he could place on the definition is that "crime" relates to all crimes in the above i.e. with public security as otherwise defined. I quote, "I do not wish to be taken as suggesting that the regulations or indeed the other regulations made under the act, contain a full code of the crimes indirectly referred to in the definition of "public security" in the Act. It is my view simply that the regulations necessarily contain samples of the type of crimes which the parliamentary draughtsmen had in the said definition. In my judgement it is
only that type of crime which has a connection with the objects contained in the definition and which may in certain circumstances result in detention. I say "in certain circumstances" because the commission of a crime having a connection with public security cannot give rise to the necessity for detention."

In his judgement in Re Kapwepe and Kaenga Cullinan went in to say, "Although the above passage stresses that a person may be detained where he is not even thought to have committed a criminal offence, nonetheless it also demonstrates that he cannot be detained simply because he has committed a criminal offence. It is only where the detaining authority regards and I would add reasonably regards the law as inadequate for example, for reasons stated in the above passage to deal with the situation that the commission of a particular crime in itself may otherwise constitute a threat to public security. For example, the offence of armed robbery is a crime which could be said to have a connection with Public Security. Nonetheless an armed robbery may only be detained where the ordinary
law is inadequate to deal with the situation and where the Commission of the crime actually results in a threat to public security if it were otherwise then the ordinary law would be sufficient and so indeed would be the criminal sanctions to be found in the regulations themselves.

Cullinan J further observed that the Preservation of Public Security Act was a product of the Independence of Public Security of pre Independence legislation and was enacted primarily to prevent civil unrest.

At this point, it is appropriate to examine the origin of the Security Act in order to have a better understanding of its application today. It's thus important for us to consider the extent to which the colonial experience influenced the retention and manner of use of the extensive security powers now currently in use or existence in Zambia (then known as Northern Rhodesia). The Preservation of Public Security Act (then called the Preservation of Public Security Ordinance) was brought into operation on July 27th 1964 by the proclamation of a semi-state of emergency by the Governor of Northern Rhodesia. This proclamation read as follows:-
"whereas by Section 3 of the Preservation of Public Security Act, it is provided that if the governor is satisfied that it is necessary for the preservation of public security to do so he may, by notice in the Gazette declare that the provisions of sub sections (2) and (3) of the said section shall come into operation and thereupon those provisions shall come into operation accordingly".

And whereas I am satisfied that it is necessary for the Preservation of Public Security to declare that the provisions and said sub sections (2) and (3).

The said section shall come into operation now.

"Now, therefore, I EVELYN DENNISON HONE......... Governor of the territory of Northern Rhodesia do hereby declare and proclaim that the provisions of subsections (2) and (3) of Section 3 of the Preservation of Public Security Act shall come into operation on the date hereof".

This was brought about by an uprising of the Lumpa Church of Alice Lenshina Lumpa Church followers were armed and lived in stockaded villages. They did not recognise the authority of the government. Not only did they attack and kill members of the security forces and civilians but they also attacked and burned down police stations and villages.

The rebellion was concentrated predominantly in the Northern and Eastern Province. The army moved into crush the rebellion and dieing the fighting that ensued over 600 people died 16 and some 19,000 Lumpa members fled into the Congo (now called Zaire).

Pursuant to the regulations made under the Preservation of Public Security Ordinance the Government banned meetings and assemblies within the affected areas, movement was generally restricted and controlled and a curfew was imposed and the Lumpa Church was prescribed throughout the
Detention orders were issued in respect of Lenshina and other leaders of the church. On 11th August 1964, after protracted negotiations Lenshina surrendered and the next day publicly appeared to the followers to cease aggressive action and return to their villages.\textsuperscript{17}

National Unity at this stage was vital and the government was desperately trying to stop Lumpa attempt to opt out of the then political system that the government was trying to create just before independence. Thus the need for national unity was inevitable at this crucial time.

From the above it can be deduced that the situation created by the Lenshina uprising was so grave that national security was being seriously threatened. So the measures taken by the government were justifiable in order to prevent further loss of life and property. This state of emergency existing from the time of the Lumpa rebellion existed and continued after Independence.\textsuperscript{18} From thereon it was renewed after every 6 months by successive resolutions passed by the National Assembly\textsuperscript{19} until 1969 when a constitutional amendment disposed with the need for renewals every six months.\textsuperscript{20}
This existence of a state of emergency was challenged strongly in the case of Shamwana v. Attorney-General. The appellant argued that firstly, the Governor's declaration of a grave situation, under section 4 of the Preservation of Public Security Ordinance, made on July 27, 1964, lapsed on October 24, 1964 when Northern Rhodesia became the independent Republic of Zambia. At Independence the regulations under the said ordinance, in particular regulation 31A could only be invoked by complying with the entire provisions of Section 29 of the Constitution of Zambia. As section 29 had since not been complied with all detentions since independence including the detention of the appellant, had been unlawful and unconstitutional. Thus the purported extension by the National Assembly of the declaration under Section 4 of the ordinance had been futile as the Assembly could not extend that which in law was non-existent. Secondly, the applicant argued, Section 29 of the Constitution referred to a "declaration" and not to one that "shall be deemed to be in force" and so a declaration that "shall be deemed to be in force "under the provisions of Section 7 of the Zambia Independence Order was not a declaration in terms of Section 29 of the Constitution.
The Supreme Court held on the first ground that section 2 of the Zambia Independence Act 1964, and Sections 4(1) and 7 of the Zambia Independence Order 1964, contained the necessary saving provisions which kept alive, *inter alia* the Governor's declaration under Section 4 of the ordinance, and it was not necessary for the President to make a fresh declaration for the reason that under *Section 7 of the* Zambia Independence Order, the Governor's declaration had the effect of a declaration under Section 29(1)(b) of the Constitution. As regards the appellant, second ground, the Supreme Court held that the expression "shall be deemed" meant in the context in which it appeared, "shall have the effect of being in force". Because there was in existence the Governor's declaration under Section 4 of the Ordinance, there was then in force, as from the date of independence, a declaration under Section 29 of the Constitution. Therefore a declaration for the purposes of Section 29(1)(b) of the Constitution. And so, it was necessary for the President to make a fresh declaration under the Constitution. From the above, it may be submitted that there is thus no judicial authority that the existing semi state of emergency is valid. The basic justification for the non lifting of the state of emergency centres
in Zambia's geo-political position in Southern Africa. After Independence, Zambia was surrounded by hostile minority regimes. Firstly to the South was Rhodesia (Now Zimbabwe), to the West was Portuguese ruled Angola, and South African controlled Namibia and to the East was Portuguese ruled Mozambique. In November, 1965 the Smith Regime declared UDI in Rhodesia. Due to Zambia's economy being firmly controlled by the Rhodesian and South African economies Zambia became highly vulnerable to blackmail and destabilisation. She besides giving assistance to liberation movements fighting for Independence in Namibia, Angola, Mozambique and Rhodesia. She also provided sanctuary to refugees who were fleeing from those countries. All this posed a great danger to National Security in that:

(1) The refugees represented a danger because some of them might be spies working for foreign powers and others might be criminals.

(2) The freedom fighters who were allowed bases and other logistical facilities posed a threat both because of danger of retaliation by the minority regimes for Zambia's tolerance of their
activities and because they themselves might undermine stability. The situation was further worsened or exacerbated by the presence of a large expatriate community especially on the Copperbelt which was believed to be sympathetic to the minority regimes and which could easily sabotage the country's economy. 22

In the period between 1966 and 1974 Portuguese soldiers frequently made incursions into Zambia in search of freedom fighters. Portuguese military aircraft frequently bombed outlying border areas killing people and destroying property.

Rhodesian and South African military forces on the other hand, frequently raided and bombed Zambia from 1973 to November 1979. Rebel Rhodesian Commandos raided Patriotic Front Camps at Siavonga 23 on the outskirts of Livingstone 24 at Old Mkushi, 25 Kalomo 26 etc. Hundreds of people were killed in these raids and property worth thousands of Kwacha was destroyed. Besides raiding camps the rebels also engaged in wanton destruction of bridges and other
economic installations in an attempt to destroy the Zambian economy. For example, the blowing up of the Mkushi Bridge on November 19, 1979. Thus on November 20, 1979 President Kaunda at a Press Conference disclosed that more than 1000 South African soldiers had invaded Western Province and at the same time a similar number of rebel soldiers had attacked Southern Province. These forces were torturing and murdering hundreds of innocent villagers and raping women. He said some of the destruction to Zambia's property was being perpetrated with the collaboration of rebel sympathisers within the country. Due to all the above factors, the President put the country under a full war alert. He further recalled all officers on vacation, air force and Zambia National Service (ZNS) who had resigned as regular personnel including Form V ZNS graduates except girls for war. A curfew was also imposed in some areas of the country.

Due to the above outlined circumstances it's almost inevitable to assert that National Security was seriously imperilled. Therefore, it was imperative for the executive to assume emergency powers in order
to preserve the nation. Thus to see whether a semi-state of emergency was fully justified in the basis of the above; from when it was fully declared in 1964. It is vital for us to examine situations or circumstances when the existence of an emergency was unjustifiable. Tension between Zambia and Rhodesia through high just after UDI eased considerably till 1978 when again it ruptured. It is then submitted that the use of emergency powers was justified during the first few months after UDI and at the height of the freedom war in Mozambique and Angola till 1974. During the periods of 1978-79 period these powers were also justified, but, however it's questionable to see how the use of these powers could have been justified on other occasions (eg between 1974 and 1978). At present there are only occasional entries into Zambia by South African troops since the Independence of Zimbabwe in 1980 and these could easily be dealt with without necessarily invoking emergency powers. Thus the justification of the emergency on the ground of Zambia's geo-political position, therefore, no longer holds good ground and has lost all its justification.
Apart from the above mentioned justification other reasons to justify the continued existence of the emergency are given. Some of the sub-national threats to unity and security are not only seen as lying in tribalism and other sectional interests but also group loyalties like the Lumpa and Watch tower sects. The Watch tower sect followers were seen as posing a threat to National Security because of their refusal to sing the National Anthem and salute the National Flag and participate in party activities. All this was seen as a threat to National Unity. Furthermore, the Lumpa followers had not been completely subdued.

The power of detention and restriction under the Preservation of Public Security Regulations has been extensively used both to counter threats from minority regimes and of course political opponents for political reasons. For example between March 16, 1971 and February 1972, alone, about 338 people had been detained and about 15 restricted. In the ten-year period between 15 March 1971 and 21 September 1981 about 901 detention orders and restriction orders had been issued.
Most of those detained in 1970 were actually opposition members of Parliament, members of the Lumpa and Watch Tower Sects leaders of the Mine Union of Zambia like Chiluba, Zimba and Sampa and the teachers Union (ZNUT). Other people who have fallen prey to detention laws have included students. For instance in 1976, students at the University of Zambia demonstrated against the government's support of an imperialist backed group, Savimbi's UNITA in the Angolan Civil War. They exhorted the government to recognise the government (i.e. the peoples of Angola) that was set up by MPLA. Here the President acted ruthlessly and quick. He sent para military police to crush the student demonstration and then closed the University. Two Lecturers and 18 students were detained under the Preservation of Public Security Regulations. The Lecturers were later deported.

From the above it is submitted that National Security was in no way endangered. The government desperate, extreme, ruthless reaction clearly indicates the sensitivity of Presidential regimes to National Security. As remarked by Professor Nwabueze that such regimes view any threat to the security of the ruling party and the President's tenure or office as a threat to the security of the Nation.
Apart from the power of detention being used against people suspected of dealing in illegal trafficking of mandrax which is one main concern as will be seen in the preceding Chapters, people suspected in involvement in crimes of violence, illegal and illicit trafficking in emeralds.

In conclusion it can be seen that it is precisely the absence of a clear definition of "Public Security" which has inevitably culminated in the abuse of security powers. In Zambia (and other African countries) National Security has been constituted very widely, and this is evident of Presidential regimes mostly in underdeveloped countries. Of presidential regimes Professor Nwabueze has aptly written:

"It can hardly be disputed that the presidential regimes are more sensitive about National Security than prime ministerial ones. Concentrated power is very sensitive to criticism and very jealous and suspicious of rivals or competition."

Finally, emergency powers have been used for purposes of combating common crime, which in most cases has no bearing in public security as aptly summed up by Haamaundu:-
"The achievement of independence was merely a simplification and consolidation of the then existing colonial powers structure rather than a change in the nature of that power. This meant of course the use of the law of detention and restriction to suppress political opponents who threatened the status quo. The nationalists saw the use under which they could apply the detention and restriction laws to achieve their goals. It is one of the crimes of the struggle for liberty, freedom and human dignity that those who fought and won them use the very methods used against them to perpetuate themselves in power by throwing their opponents into either detention or restriction."
FOOTNOTES

2. ibid, Cap S.3(2)(b); Cap 106 S.3(2)(c)
4. Cap 108 S.3(2)(c); Cap 106 S.3(2)(c).
5. ibid, S.3(2)(a); Cap 106, S.3(3)(a).
7. ibid, S.4(c).
8. ibid, S.3(3).
15. See Government Notice No. 374 of 1964, Also the Proclamation No. 5 of 1964, GN No. 376 of 1964.
20. Constitution Amendment (No. 5) Act No. 35 of 1969, Section 8.
24. ibid, 23rd August, 1979.


27. ibid, 21st November, 1979.


33. Nwabueze, supra.


here the applicant was charged for murder with others he was acquitted then detained by the Supreme Court on the same charges.

35. Mudenda v. The Attorney-General (1979). An applicant was detained on the grounds that she and others had indulged in illegal and illicit trafficking in emeralds.

36. Nwabueze, supra.

CHAPTER TWO

HOW THE PRESERVATION OF PUBLIC SECURITY ACT HAS BEEN USED BY THE STATE AND WHY MANDRAX HAS COME UNDER PUBLIC SECURITY

This Chapter intends to give a historical analysis of the government's concern and that of the International community in the growing menace of mandrax and its effects. It will also examine the state's justification in bringing mandrax cases under the purview of the Preservation of Public Security Act, and why people involved in mandrax crimes cannot be criminally prosecuted. A few cases will also be discussed in order to fully appreciate the basic justifications for making mandrax crimes capable of coming under detention.

The basic reasons the government has put forward for being concerned with the growing menace of mandrax and its effects are that first and foremost mandrax is a health hazard to the public. Furthermore, that since crime is internationalised its vital for the government to help the world control this menace and that Zambia being a member of International Police (INTERPOL) should try at all costs to help other countries that are directly involved. This fight against mandrax trafficking is aimed at controlling the passage of drugs because no use of this drug has been proved as such.
The International Community on the other hand and its specialised agencies has been deeply concerned with drug trafficking and drug abuse and has prompted a range of actions. This is mainly due to the perilous effects of drug abuse in all its forms. For example the Single Convention on Narcotic Drugs (1961), as amended by the 1972 Protocol and the Convention of Psychotropic substances (1971), is aimed at the prevention of narcotic drug and psychotropic substance abuse through efficient national and international control systems aimed at regulating production, distribution and handling in order to restrict these activities exclusively to legitimate medical and scientific purposes.\(^1\)

The control systems already established at enormous political, social and economic cost now threaten to be overwhelmed by the expansion of drug addiction and the exploitation of the problem by organised crime in such a scale that the prosperity and development of several countries are being jeopardized. With their far reaching financial and technical resources, organized crime group are frequently able to bypass or even to penetrate the corrupt systems of regulation. Drug abuse and illicit trafficking today constitute a top priority political problem - naturally regionally, and internationally, and this is the basic reason why the international community
has seen it vital to prevent drug trafficking and drug abuse at national, regional and global levels through the formulation of Conventions. Thus it has become vital for increasing international collaboration between countries in the more efficient prosecution of persons involved in drug trafficking.

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, on the other hand, is another example of the struggle against illicit drug trafficking. It is concerned by the damage which the illicit drug traffic and abuse caused to public health, in particular to the health of young people and to the economic and social development of peoples. This was in 1985. It is also concerned by the ascertained increase in illicit drug traffic reported by many member states. Also considered that the greatest part of the illicit drug traffic is carried on by persons involved in criminal organisations whose activities usually cross national borders, and that such organisations are able to make use of enormous financial means. Noting that the high profits obtained from illicit drug traffic are on the one hand, a constant incentive for criminals to engage in the said traffic and that, on the other hand,
these profits are financial resources which will eventually be used in this, as well as in other illicit activities. Therefore the struggle against illicit drug trafficking traffic could be more effective if, in addition to traditional means of criminal justice, other legal means were introduced in order to prevent the accumulation and reuse of illicit resources, particularly through the forfeiture thereof. Moreover, strengthening the means of investigations in criminal proceedings, as well as the origin, formation and destination of illicit proceeds would be effective. Furthermore that the International character of drug traffic requires the closest co-operation among States in criminal proceedings and that such co-operation should also cover the activities concerning investigations of illicit proceeds, their seizure and forfeiture.

Recalling resolution I (xxx) adopted on 15th February, 1983 by the Commission on Narcotic Drugs, in which it has been recognised, among other things, that depriving criminals of the proceeds from drug trafficking is an effective means of reducing that traffic.

At this stage it is worth noting that although different states differ in the development of their social and judicial
institutions as well as in the standards and norms of their legal systems, other countries unlike Zambia do not resort to detention as a means of punishment for drug trafficking. For example in the United Kingdom, Drugs are classified in 3 types from "A" (most dangerous) to "C" (less dangerous). The severity depends primarily in the mode of prosecution. The legislation for this is the Misuse of Drugs Act, 1971, which was amended in 1979. The main punishment is imprisonment and/or a fine. The term of imprisonment and the account of the fine depending on the type of drug one is found with for example for illicit production of a controlled drug of classes "A" and "B" the punishment is imprisonment for six months or imprisonment for six months and a fine of £2,000.

An analysis of legal texts shows that European countries, in combating drug abuse, are consistently carrying out their international obligations to punish drug abuse. This is particularly true in the case of illegal production and illicit trafficking of drugs. Long term imprisonment is the rule for such criminal acts, although countries vary in the severity of sanctions and in their definition of milder and more serious forms of these criminal acts.
A CASE STUDY OF THE WAY THE PRESERVATION OF PUBLIC
SECURITY ACT HAS BEEN APPLIED IN DIFFERENT REGULATIONS

At this stage it is now vital to examine why Mandrax cases have come under the preview of the Preservation of Public Security Act. Furthermore, why Mandrax crimes cannot be dealt with by substantive law, namely the Dangerous Drugs Act, and why the state has resorted to detaining those involved in Mandrax crimes instead of subjecting them to criminal prosecution.

The above are some of the legal arguments that daunts the legal profession in relation to Mandrax crimes, and these arguments will be discussed by examining a few cases.

A number of cases point to the fact that the President has wide powers to detain a person even where such person can be properly dealt with under any law. The case of Chibwe v. The Attorney-General may throw some light in the subject. The applicant was accused of conspiring to externalise large sums of money out of Zambia. He was detained under the Preservation of Public Security Regulations Sakala J., held that to conspire to externalise funds from a country whose economy is experiencing difficulties in foreign exchange is prejudicial to Public Security.
The question that has to be asked is why was the applicant not charged with an offence under the Exchange Control Regulations? Further conspiracy is a common law offence and is also a penal offence in Zambia. Why then, was the applicant not charged with a criminal offence?

The answer to the above question may be found in the case of Kapwepwe and Kaenga v. The Attorney-General where Baron D.C.J held that

"The machinery of detention or restriction without trial is by definition intended for circumstances where ordinary criminal law procedure is regarded by the detaining authority as inadequate to meet the particular situation".

That the state can detain a person who is accused of a criminal offence instead of prosecuting him cannot be challenged on the ground that the Preservation of Public Security defines public security as follows:-

"Public Security includes the security and safety of persons and property, the maintenance of supplies and services essential to the life of the community the prevention and suppression of violence, intimidation, disorder and crime the prevention and suppression of mutiny, rebellion and concerted defiance or the disobedience of law and lawful authority and the maintenance of the administration of justice."
The above definition was also considered in Museka v. The Attorney-General, where it was held that the term public security is inclusive not exclusive. The aforementioned argument may be supplied to the Mandrax cases. In those cases several people were detained on the ground that they were involved in Mandrax trafficking (the contents of mandrax will be dealt with at a later stage), and Mandrax is a drug which can be brought within the umbrella of dangerous drugs. Why then were these people involved in Mandrax trafficking not prosecuted under the Dangerous Drugs Act? The answer lies in the decision of the Kapwepwe and Kaenga case already cited. In the above case the detention was properly justified, as "where the matter falls within the expression for the purpose of preserving public security (regulation 33(1) there is no legal obligation on the executive to prosecute in the criminal courts".

No doubt this argument in the Kapwepwe case in my opinion was correct upon the face of the grounds which disclosed certain conspiracies that were said to be criminal and amounted to a threat to public security. There were also allegations of conspiracies "to be defiant of and disobedient to the law and lawful authority and to publish------
statements defamatory and contemptuous to the Head of State and the Government, conduct likely to prejudice the Security of the Republic

In that context and those facts, the matter did fall within the purview of the Preservation of Public Security. Furthermore there was no legal obligation to prosecute. It must be noted though that the argument that there is no obligation on the part of the state to prosecute should be construed very carefully because the executive cannot without proper justification or reason decide to prosecute or detain any how.

Detention without trial is only to be applied or used where the ordinary law is viewed by the detaining authority as inadequate to deal with the situation i.e. where certain persons against whom no offence can successfully be proved or against whom it is not in the Public interest to bring a charge.

Thus, the executive should as set out in the Kapwepwe case first satisfy themselves if

(1) There is any reason as to why they should not prosecute

(2) To detain if there exists a positive reason not to prosecute as laid down in Kapwepwe where the executive finds that the ordinary criminal law
and procedure is inadequate to deal with the situation, if not then detention without trial is not applicable to the situation.

(3) The meaning of public security must be properly and carefully considered. Controversy has no doubt existed as to whether the word "Public Security" in Section 2 of the Act has actually made the Section illustrative or exhaustive. In the case of Kaira v. The Attorney-General 13 I.21.

Cullinan J came to the conclusion that the Section was not exhaustive of the meaning of Public Security.

Cullinan further says at p.81. l. 31-5,

"It is only where the detaining authority regards, and, I would add, reasonably regards the law as inadequate, for example for the reasons stated in the above passage" (from Kapwepwe case), "to deal with the situation, that the Commission of a particular crime in itself may otherwise constitute a threat to Public Security.

Cullinan J's comment poses a problem on that it becomes evident that there exists a difficulty in drawing a line between identifying an activity as constituting a threat to public security and the problem of the measures to be taken in dealing with a given situation, because, regardless of the detaining authority regarding the law as inadequate to deal with certain authorities has no connection or proper linkage with whether the crime in question may actually constitute a threat to public security.
Furthermore, as to whether the ordinary criminal law is or is not adequate to deal with a situation it is irrelevant unless the activity in question is a threat to public security. Thus there should exist a link between the crime in question and public security for that crime to amount to a threat to public security.

The case of *Kaira v. The Attorney-General* was a high court decision in which the applicant was detained because he had externalised K500,000 and had attempted to externalise a further K150,000 and future repetition was apprehended. Cullinan J in dealing with the above case saw no relation between the grounds for detention and the Preservation of Public Security. He says

"Hence I think that crime must include any crime related to public security, and not merely those aspects of public security mentioned in Section 2 of the Act. 14"

The similar sentiments were advanced in the case of *Joyce Banda v. The Attorney-General* 15 in which it was held that "A police detention" under 33(6) nor a "Presidential detention" under 33(1) is lawful unless the activity apprehended, notwithstanding that it is a crime, is connected with public security. That the apprehended activity is a crime is not enough.
In line with the aforementioned cases the illegal trafficking in Mandrax may seriously affect the health of people consuming it, but even if the effects would be widely felt and that a link between widespread drug abuse and public security exists, it is not practicable to assert that the fabric of the Zambian Society will be adversely affected. Furthermore in relation to these economic crimes, though the economy of a country may be in chaos the peace and good order and security of a country may still remain intact.

Magnus J in the case of Patel v. The Attorney-General observed that it must be remembered that the Preservation of Public Security Act is a product of pre-independence legislation and was enacted as I see it to primarily deal with or prevent civil on rest. The words "public security" in their ordinary sense surely mean the securing of the safety of all persons and property and to that end the preservation of law and order. It can be said that the last five objects stated in the definition supplement the first object. Thus in order to protect the safety of persons and property it is necessary to maintain supplies and services essential to the life of the community.
to prevent public disorder, or subversive activities or indeed a breakdown of law and order. The emphasis, in my view, is on the Preservation of the safety of the community, rather than on its economic prosperity or otherwise. There may be a nation whose economy is little short of chaotic but the peace and safety of whose citizens is never in doubt.

In the case of Vernon Johnson Mwaanga who was detained under the Preservation of Public Security Regulations for allegedly being involved in trafficking Mandrax tablets. It was submitted by counsel for the applicant that even though the phrase "public security" is given a wide interpretation, no evidence was led by the state suggesting even remotely that Mr. Mwaanga indulged in activities (such as distribution of any dangerous drugs) to thousands and thousands of people in Zambia) which could have undermined or threatened "public security". Therefore, it is submitted that there are no activities of Mr. Mwaanga which could have adversely affected the health of Zambian people and or other people and which could have caused the "fabric" of the Zambian Society to be shattered.
It was further submitted that even if any persons had been detained for allegedly trafficking in mandrax tablets or involving themselves in drug abuse, detention without trial is surely not the fair or just way, of dealing with the problem, especially where no connection is established between such alleged drug abuse and the preservation of public security. That the provisions of the Public Security Act and the Preservation of Public Security Regulations are designed to prevent crimes related to public security. The alleged trafficking in mandrax tablets cannot and does not constitute a threat to public security. The necessity to detain without trial does not arise. To detain persons alleged to be involved in mandrax tablets trafficking is ultra vires the preservation of Public Security Act and ultra vires Article 26 of the Constitution of Zambia. At this stage its worth noting the case of Bhagvatilal Dhyabhai Rao v. The Attorney-General 18 it is an important case to analyse in that an important ruling had been made in which economic sabotage has been put under the preview of public security thus rendering economic crimes as detainable crimes. The facts of the Rao case are that the applicant had been detained by the President under Regulation 33(1) of the Preservation of Public Security Regulations for illegal and illicit trafficking in emeralds. It was submitted on behalf of the applicant
that the activities alleged against him (i.e.: illegal and illicit trafficking in emeralds) cannot be said to involve Public Security as defined in Section 2 of the Preservation of Public Security Act.

Finally, it was submitted that the detention was punitive in that where a crime is alleged to have been committed it ought to be prosecuted and that where there are other alternative remedies under the Law other than detention those other remedies ought to be adopted. In this particular case, the mining areas could have been completely ringed off so that if the applicant is released, he will not be able to get there. Equally, proper surveillance by Customs and Police Officers can stop smuggling. And the applicant being a non-Zambian, he can be deported instead of being detained. In reply on behalf of the State, it was submitted that the courts have no powers to question what remedy is resorted to, the power laid solely with the President. He may detain, prosecute or deport.

On the question, that the grounds of detention do not come within the meaning of Public Security it was no submitted that although in the Kaira case the judge was of the view that economic sabotage or offences under the Foreign Exchange Regulations did not come within
the Public Security, another judge in the case of Silas Chibwe v. The Attorney-General was of the view that those offences fell under the definition of Public Security and that that was the proper approach in that serious economic problems to endanger public security.

It was further submitted by Judge Chirwa that he was aware that in the case of Ngira v. The Attorney-General (already cited), Cullinan J (as he was then) did not agree with the conclusion that the illegal trafficking in emeralds was such a crime as to come near "public security". Cullinan J further said that the crime must be proximate to public security. If the legislature wanted only crimes proximate to the public security to apply in the Act and Regulations it would have said so. In the absence of such restriction, it means any crime that may result in the endangering of public security whether immediate or not, would therefore go by with the reasoning in the Mudenda and Chibwe cases. He further submitted that any economic instability brings in insecurity. It was thus considered that the grounds in which the applicant was detained fell within Section 2 of the Preservation of Public Security Act and that the application was to be dismissed on the ground that the grounds of detention do not fall within the Preservation of Public Security Act. And that the act of detaining him is intended to prevent, and suppress crime.
It was also argued that the action of detaining the applicant is punitive in that the authority could have taken other measures such as prosecuting the applicant; ringing off the emerald areas thereby preventing illegal mining or deporting the applicant who is non Zambian. It was further argued that time and again the decision to prosecute lies in the detaining authority as first stated in the case of Kapwepwe and Kaenga vs. The Attorney-General.

On the totality of the facts and the law in this case, the detention of the applicant was held to be lawful.

In giving a contribution to the cases that have been discussed, a convenient starting point is CJ Barons dictum that is as follows:-

"Where the matter falls within the expression for the purpose of preserving public security, there is no legal obligation in the executive to prosecute, in the criminal courts".

Having in mind CJ Baron's dictum, the mandrax crimes have no proximate bearing in national security. It's certain that the use of mandrax may affect the health of people adversely if they use the drug, but even if this were so on a large scale, and a connection existed between the alleged drug abuse and public security, to actually comprehend or deduce that the fabric of the Zambian Society will be shattered is in no way sensible.
The Preservation of Public Security which is as a matter of public notoriety a product of pre-independence legislation was primarily enacted to prevent civil unrest, with emphasis placed on preservation of the safety of the community than on the economic prosperity, for despite a country's economy being weak; peace and safety of citizens may still prevail. It becomes very difficult for one to comprehend and appreciate how the nation's economy or economic security can be embraced by the definition of public security as it has been recently ruled or laid down in the Supreme Court judgement of the Rao case. Furthermore, it is my contention that if Parliament intended to embrace economic security under the Preservation of Public Security Act or contemplated it they should have made provisions for economic security.

What amounts to Public Security has actually been very loosely construed by different judges which goes to show that the term "public security has no clear cut definition leading to diverse interpretations thus making the law uncertain and very unpredictable and this is contrary to what the purpose of law should be which is to bring about certainty and precision.

Furthermore, where a crime can be dealt with by the substantive law the state should not resort to detention
but prosecute. In the case of the mandrax crimes they should have been dealt with by the Dangerous Drugs Act just as in Mudenda v. The Attorney-General, the state would have easily brought a criminal prosecution against the applicant under Section 321 of the Penal code which makes the unlawful possession of diamonds a criminal offence. As the matter clearly falls under the ambit of the said section resorting to detention is an excessive measure. The Supreme Court in the Rao case should have addressed itself to CJ Baron's statement in Kapwepwe case at page 260:-

"The executive cannot simply please itself, without any particular reason, whether to prosecute or detain. The machinery for detention without trial is intended only where the ordinary law is inadequate".

In my view, as the alleged mandrax crimes do not fall within the ambit of Preservation of Public Security criminal prosecution under the Dangerous Drugs act was the proper way of dealing with the offenders.
FOOTNOTES

1. Henry M. Hanamwiga, Public Complaints and Legal Affairs Officer.

2. ibid.


4. ibid.


6. ibid.

7. ibid.

8. ibid.


12. 1979/HP/97.


14. Section 2 of the Preservation of Public Security Act reads:
   In this Act the expression, "public security" includes the securing of the safety of persons and property, the maintenance of supplies and services essential to the life of the community, the prevention and suppression of violence, intimidation, disorder and crime, the prevention and suppression of mutiny, rebellion and concerted defiance of and disobedience to the law and lawful authority, and the maintenance of the administration of justice".


18. HN/322/1987, Supreme Court Judgement (not yet released unreported.

19. 
CHAPTER THREE

THE DANGEROUS DRUGS ACT IN RELATION TO MANDRAX CASES

This Chapter will mainly focus on the Dangerous Drugs Act and the Statutory Instrument that was passed in 1985 to include mandrax in the Dangerous Drugs Act.

In connection to the aforementioned we will examine the following issues.

(1) The policy behind the enactment i.e. cabinet's intentions.

(2) The imposition of mandrax.

(3) Are there any other drugs in the same category as mandrax which are actually being imported into Zambia today and whether the same measures are applied to these drugs if there are any being imported into Zambia today.

(4) If taken in the right proportions mandrax is dangerous to the health of human beings any more than excessive consumption of alcohol.

Before attempting to discuss these issues let's examine the policy behind the enactment of the Dangerous Drugs Act. The Dangerous Drugs Bill was proposed in 1967. The basic reason behind the enactment were to control the importation, exportation, production, possession, sale, distribution and use psychoactive substances and to limit their use and possession to medical and scientific purposes only.
This controlling of dealings in drugs was in accordance with Zambia's obligations under the single Convention on Narcotic Drugs 1961 of which Zambia is a signatory and being a signatory to this Convention Zambia is required to help control the manufacture, importation, exportation, sale, distribution and use of narcotic drugs. ³

At this stage it is vital to briefly examine the composition of mandrax in order to be able to appreciate the measures the government has taken in relation to the drug.

The ingredient of mandrax are as follows:-

METHAQUALONE

INGREDIENTS:-

(1) Methaqualone 250 mg
(2) Diphendrydramine 25 mg (HCR)

OTHER NAMES:-

(1) Renoval
(2) Mandrax

The basic action this drug has is a hypnotic effect resembling that of an "intermediate acting barbiturate. In therapeutic doses, it has little or no effect on the medullary centres (brain), therefore blood pressure and respiration are
not influenced. 4

There are other intermediate acting barbiturates which are currently in use in the hospitals like

(1) Amylobarbitone,
(2) Butubarbitone
(3) Pentobarbitone
(4) Quinalbarbitone

All these are used to induce sleep, and for pre-operation purposes to induce a quiet and restful condition in the patient. 5

Methaqualone (Mandrax or removal) like all other drugs should be used in accordance with standing dose requirements which can only be adjusted at a Doctor's or Pharmacist's discretion. 6

Overdosage will inevitably lead to chronic or toxic side effects. Like impairment of the excretory system renal failure absorption rate and even drug tolerance even makes it impossible for people to have the same absorption and excretory rate of any one drug.

Patients vary in their individual response to drugs due to diversity of metabolic factors governing independent bodies, but in patients with normal metabolic processes, elimination of all drugs by the renal and other routes is most effective, hence there is little or no risk of toxicating, unless the patient
suffers an impairment of the excretory system.

The hypnotic drugs currently in use are

(A) DALMINE (FLUPAM 15-30 mg)
   Use: Insomnia.

(B) BUTOBARBITONE (ITAVEL 100 mg Tabs)
   Use: Insomnia

(C) GARDENAL (PHENOBARBITONE 15, 30, 60 mg Tabs)
   Use: (Central Nervous System (CNS) Disturbances requiring sedation etc.)
   Including Methaqualine (Mandrax 250 mg) used for insomnia.

Yet the striking thing about mandrax which has the same use as that of the aforementioned drugs namely insomnia, is the only drug which has actually been withdrawn from use without any reasons when it too falls under hypnotics producing the same effect as the other hypnotics already mentioned which have not been withdrawn from use.

It's a matter of public notoriety that the Statutory Instrument which declared mandrax as a prohibited drug in Zambia was gazetted on 4th October 1985 and in this mandrax was included in the Dangerous Drugs List.

The people alleged to have been involved in mandrax trafficking had actually been detained before the Statutory Instrument which declared mandrax as a dangerous drug had been gazetted thus including mandrax in the Dangerous Drugs List. This simply means that at the time these people were
caught and finally detained when there was no law to
deal with them as the time of the detention mandrax
had not become a prohibited drug. It is thus punitive
to use detention without trial. The proper step the
state could have taken was to actually amend the Dangerous
Drugs Act by including mandrax in the Act then, arrest the
offenders. Furthermore to resort to detaining these people
under the Preservation of Public Security Regulations was
in itself an excessive measure in that these crimes do not
at all fall under the ambit of the Preservation of Public
Security Regulations in that these crimes do not pose a
threat to public security, in that although the economy may
be tempered with, the security of a nation may still be
intact.

Furthermore, the ordinary criminal law and criminal
procedure were adequate to meet the situation. In that
these people could have been dealt with through criminal
prosecution, using constitutional provisions i.e. Articles
13, 15(1) and 15(3) which provide the basic corrective
measures. Pursuant to with Cap. 106 of the Criminal
Procedure Code the punishment for mandrax offences would
not have exceeded five months imprisonment or a fine not
exceeding K650.
Thus detention has become unjustifiable and punitive rather than preventive in that had the constitutional provisions namely Article 15(1)(c) been applied the detainees would not have been in detention for longer than they were and as some of the allegations relate to a time when no law relating to mandrax actually existed, the law was applied retroactively.

Thus if the state continues to use the weapon of indiscriminate detention when or where there exists adequate law or ordinary criminal procedure to meet the situation, where ordinary surveillance by the police and customs officials would be adequate to ensure that there would be no repetition of the activities in question and especially where the activities do not pose a threat to the life of the nation or to the Government or to constituted authority then the courts of law will definitely have no role to play and become irrelevant.

Other drugs which are in the same category as mandrax are being imported into the country today like Valium, Coedine, morphine which are included in the poisons list have the same side effects as mandrax and yet it is strange why the same measures are not applied to these drugs.
It has been confirmed that taken in the right proportion, mandrax is dangerous to the life of human beings just as the excessive consumption of alcohol can affect a human being. 11

Thus one might as well say that the fabric of the Zambian society is threatened by alcohol if excessively consumed, thus its unrealistic that supplies of alcohol could be detained as people threatening public security, even if the mere selling of alcohol is not an offence as long as public security is threatened. Although it is true to say that the consumption of mandrax will adversely affect the health of the people consuming it even if the effects were widespread and there could be a link between drug abuse as a large scale and public security on the other, to say that the fabric of Zambian Society is bound, to be shattered is very untrue and not at all practical because the drug is not being widely used in Zambia.

It is also worth noting that some people alleged to have been involved in mandrax have been released while others are still detained despite facing similar charges, especially when some have been found in actual possession of the drug. This indicates great injustice which law ought to avoid.
This leads to a lot of uncertainties in the law making the law uncertain and very unpredictable. Because a lawyer representing his client will not be able to have proper guidelines where diverse judgements are made for the same offence. At this stage it's worth noting a detainee's opinion of detention without trial under the preservation of Public Security Regulations in relation to mandrax crimes apart from the State's reasons which have already been discussed in order to fully appreciate the subject.

One of the detainee's that I had the opportunity to interview 12 (a Prominent Businessman) who was detained without trial from 30th August, 1985 to 4th April, 1986. Due to this detention, he subsequently wrote a book. 13

Mr. Mwaanga denied ever having engaged in mandrax dealings. He contends that mandrax dealings does not offend the Public Security Act in that these crimes (mandrax trafficking) do not come under the ambit of the Preservation of Public Security Act. That mandrax crimes are not connected with public security or what has been called "civil unrest". Furthermore that even if public security were to be given a wide interpretation, there was no proof by the state that he had actually or even remotely indulged in activities like distributing these dangerous drugs to people in Zambia in a large scale thus threatening public security and thus there are no activities that he was engaged
in that could have led to the health of Zambian people being adversely affected or causing the "fabric" of the Zambian Society to be shattered.

It's actually common for developing African States to be strongly sensitive to any kind of opposition and the government does not hesitate to quickly frustrate those individuals it sees as likely to be its opponents. Its likely that Mr. Vernon Mwaanga being very popular intelligent and rich was seen as a threat to the existing government by using his position and so the state had to take necessary steps to silence him by detaining him.

He further contends that Zambia has been mainly used as a transit point for these drugs which are used widely in other countries and in a large scale and that no proof as such exists that mandrax is actually consumed here in Zambia. Thus if this is the case how can Public Security be threatened? He also repeated that the provisions of the Public Security Regulations are designed to prevent crimes related to public security. The alleged trafficking in mandrax tablets cannot and does not constitute a threat to public security and subsequently the necessity to detain does not arise at all. So to continue to detain persons who have been alleged to be involved in mandrax trafficking is ultra vires the Preservation of Public Security Act and ultra
vires Article 20 of the Constitution of Zambia.

According to Mr. Mwaanga those involved in mandrax trafficking could have been criminally prosecuted because to resort to detention was too excessive a measure when there was adequate criminal law and procedure to deal with these people. And that Parliament could have taken decisive steps to stiffen the punishment for people dealing in dangerous and poisonous drugs by way of amendment. He also contends that when the people alleged to have been involved in mandrax trafficking were caught, there was actually no law relating to mandrax that existed at the material time, which indicates that the law is usually applied retroactively. Thus these detentions were unjustifiable.

He further thinks he was actually detained for personal reasons because according to him there was no need for him to be detained. Unfortunately, he did not disclose these reasons. He assets that the law is used by those in power to accommodate our further their desires by will. For example, from the interpretation the courts have given in their diverse Habeas Corpus judgements its clear that grounds of detention need not exist at all at the time of the detention; those can be fabricated or constructed at a later stage to cover the situation. The courts do not even address themselves to the test of reasonableness
and are not concerned with the truth or otherwise of the grounds.

He finally contends that too much power has been concentrated on the hands of the President and due to no checks and balances actually existing as such these powers have been greatly or rather grossly abused. The existence of a state of emergency and other unjust laws which have provided for detention without trial are very much opposed to one democratic principles and totally incompatible and unaccommodating with our National Philosophy of Humanism.
FOOTNOTES

1. Cap. 549.
2. ibid.
5. ibid.
6. ibid.
7. ibid.
8. ibid.
11. Mr. Pillai, Public Analyst, UTH.
12. Mr. Vernon Johnson Mwaanga.
CONCLUSION

In the preceding Chapters we have seen the reasons behind the enactment of the Preservation of Public Security Act, which was basically to deal with matters that posed a threat to natural security. We have also seen the justification of the invocation of a semi state of emergency by the Governor of Northern Rhodesia in 1964 which was to deal with the Lushina uprising which brought about civil unrest and thus posed a threat to the security of the nation.

We also saw how the Preservation of Public Security Act is applied in Chapter Two by the State today and the basic justifications the state has given for including mandrax crimes under the purview of the Preservation of Public Security Act by looking at a few cases.

In Chapter Three, we examined the Statutory Instrument (No. 144 of 1985) which included mandrax in the Dangerous Drugs list and why government took this step at the time it did so. In the same Chapter we also put forward one of the detainee's opinion in detaining people alleged to be involved in Mandrax under the Preservation of Public Security Act, and whether he agrees with the justifications put forward by government in making mandrax crimes detainable or not.
Thus it is our contention that the Preservation of Public Security Act has been very much misunderstood by the executive in terms of its objectives and the intention of the legislature. Thus to say that the legislative then had in mind crimes related to or linked to the economy would be totally absurd. The executive in trafficking an amendment of the Preservation of Public Security Act for the proposed bill to bring economic sabotage and economic crimes like illegal trafficking in mandrax under the purview of the Preservation of Public Security Act had greatly erred.

Courts are not to stipulate what Parliament ought to do. Independence of the judiciary should not exist theoretically but in reality. The judiciary should be independent and impartial in dealing with competing claims of national security and individual liberty in the other hand.

There should exist a clear and distinct link between a person's alleged activities and national security. Detention should not be substituted for adequate criminal laws as the case is now. That is why courts of justice exist, because if detention is resorted to by the state in most cases then the purpose of the courts of law will be defeated. In any Society that claims to be democratic, the executive should in all circumstances enforce the decisions of the judiciary.
Thus the executive in preserving national security should have proper and strict controls in order to avoid its abuse and using the Act as an instrument for oppression and total suppression of individual liberty.

It is also submitted that the existing state of emergency which we have been in since Independence should be only declared in war times, rampant, rioting, mutiny, and should not be allowed to continue beyond the contingency that precipitated it ab initio.

Furthermore, the independent tribunals reviewing detainee cases must have power as in India for example to order the release of detainees. For detention without trial and the excercise of emergency powers by the executive especially the power of preventive detention derogates from the rule of law substantially by imprisoning a man when he has not broken any written law and no proof beyond reasonable doubt exists. A person is thus made to suffer both spiritually and physically for a crime you think he has done or intends to do.

Thus to suspend the rule of law under any circumstance is to lease upon the possibility of gross injustice being perpetrated.
It is finally submitted that the existing law, i.e. the Preservation of Public Security Act be repealed. Furthermore, mandrax offenders should not be detained but dealt with by the existing criminal law and procedure through the courts. The present law should include enactment of new provisions providing for stiffer punishment where the present punishment is inadequate to deal with a particular crime and to thus discourage the mandrax dealers by increasing fines and extending prison sentences.