TITLE

ZAMBIA AND INTERNATIONAL HUMAN RIGHTS CONVENTIONS: AN INADEQUATE REFLECTION OF THE INTERNATIONAL IDEAL.

BY

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INTRODUCTION

Since time immemorial the concept of human rights has been of the greatest importance to the very existence of mankind. For it cannot be over emphasised that without the proper observance of these fundamental human rights and freedoms the very pillars of humanity would tumble and collapse into a sea of human strife and suffering. It is for this reason that a continuous effort must be made in ensuring the promotion and protection of these human rights which are the very essence of human worth and dignity.

It is in this respect that in the International sphere by virtue of the operations of the United Nations Organisation, numerous International human rights conventions have been completed and are open to all member states for ratification. These International treaties are binding commitments of states towards their own citizens, toward one another and towards the community of nations to ensure observance and safeguard of the rights and freedoms which are Today almost Universally acknowledged as being emanations of the human personality."1 Hence, these International Covenants provide the depth of inspiration to all International Co-operative efforts to elevate the material condition of man and to promote his spiritual welfare. For, it is indeed true as China’s then Foreign Minister Wellington Koo asserted at the first General Assembly that," If the world is to enjoy lasting peace, the dignity of man must be respected as the first principle of the new order; and the implementation of this principle will not only strengthen the basis of our civilisation but remove suspicion between nations and thus contribute to the cause of peace."2 Hence there must be International Co-operation and International Co-operation entails an obligation on the part of states to fulfill in good faith the undertakings they have assumed on the basis of the UN Charter and other relevant instruments.
In light of the foregoing this study will examine and discuss the various human rights conventions to which Zambia is party so as to establish whether or not the provisions of International Conventions have in effect been incorporated into Zambian Law. It will further examine the effects and drawbacks of non compliance with internationally set human rights standards.

It can be argued that though Zambia is a signatory to several international human rights conventions this can be of no practical use to Zambia if the said instruments have no legal effect. The argument is logical in the sense that if they have no legal effect, then it logically follows that they cannot be enforced.

It is therefore imperative that once a state has ratified a treaty efforts must be made to incorporate those provisions into local law. For this is one of the ways in which the United Nations Organisation as founder of these conventions, can intervene in defence of these human rights. To illustrate, as Moskowitz States, "There is no way in which the United Nations can intervene constructively in defence of human rights. It cannot tell governments to account for their policies and actions at home without giving offence to their deepest sensibilities or make proposals to fit particular circumstances without violating the principle of sovereign equality." It is therefore, important that member states transform treaty provisions into domestic Law. It is this aspect in the context of Zambian Law that this research will endeavour to determine.

We shall hence examine International conventions and declarations which will include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, The International covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples Rights and many more. The Zambian Law to be examined shall include the national constitution and several statutes such as the Penal Code, the Juveniles Act and the Criminal Procedure Code, to mention but a few. The research shall also include a study of actual cases of Human rights violations in Zambia.
The aforementioned statutes have been chosen because they correlate to the International human rights conventions to which Zambia is a signatory. They must therefore be examined to establish their conformity or non-conformity with International human rights standards.

The data collection of this research is by way of written materials and interviews. It is hoped that the revelations and findings made on the basis of this research will assist in illuminating the fact that human rights can be adequately protected only if there is a competent and legally enforceable mechanism employed. It is hoped that this will contribute to the establishment of an effective and competent human rights protection system in Zambia.
ENDNOTES


2. Ibid, at 82.

3. Ibid, at 102.
'Human Rights cannot be secure without a determination on the part of the Peoples to uphold each other's Rights in full understanding of the just demands of the Individual, the community, the State and International Order.'

- U Thant
CHAPTER 1

THE ORIGINS AND EVOLUTION OF THE CONCEPT OF HUMAN RIGHTS

1. INTRODUCTION

This Chapter defines and discusses the concept of human rights. It then proceeds to examine the historical background of human rights from the period when their protection and promotion became a matter of serious International concern; namely, following the second World War. Finally, it then discusses the concept of human rights within the Zambian context and the progress that Zambia has made as regards the human rights protection and promotion system.

1.1 THE CONCEPT AND NATURE OF HUMAN RIGHTS

Human rights are by definition 'the rights one has simply because one is human.'

Similarity, human rights can be defined as the 'Inherent and inalienable rights that are due to man simply because of being human.' Human rights can also in the simplest terms be defined as 'rights of all individuals in society.' Hence every human being has, or is entitled to have rights, that is, legitimate, valid and justified claims upon his or her society. Namely claims to various benefits simply by virtue of being human. Human rights are therefore those benefits deemed essential for individual well-being, dignity and fulfilment and that 'reflect a common sense of justice, fairness and decency.'

Human rights can hence be regarded in two aspects. In the first instance, human rights may be conceived as 'moral rights.' This means simply that they are rights which are derived from the humanness of every human being and they ensure the dignity and worth of all human
beings. In the second aspect, they refer to legal rights in the sense that they are the legal entitlement of every person. That is, 'the special title one has to an opportunity. Such titles ground special and particularly strong claims against those who would deny the right. '5

Human rights are by their nature Universal. It is, therefore, not coincidental that we have a Universal Declaration of Human Rights. For, human rights are the rights of all men and women. Human rights belong to every human being in every human society. To call them human implies that all human beings have them 'equally and in equal measure by virtue of their humanity regardless of sex, race, age, regardless of high or low birth, social class, origin and ethnic or tribal affiliation. '6

Every society is under an obligation to satisfy the claims which are implied by human rights. The state must therefore develop institutions and procedures, must plan and must mobilise resources as necessary to meet those claims. As Professor Henkin rightly states, 'Political and civil rights require laws, Institutions, procedures and other safeguards against tyranny against corrupt, immoral and inefficient agencies and officials. '7 whereas economic and social rights in modern society require taxation and spending and anetwork of agencies for social welfare. Together the realisation of entitlement and the acceptance of the society to ensure that these rights are protected, enhance the likelihood that the right will be realised and that individuals will actually enjoy the benefits to which they are entitled.

The concept of human rights embodies the view that the human being does not exist for the benefit of the state but that the state exists for the benefit of the human being. Hence the state must protect human rights. In this regard, International human rights declarations provide an adequate starting point. In the words of U Thant in his human rights day message of 10th December 1965. 'The very objective of the maintenance of International peace is directly linked to the assurance of respect of human rights and fundamental freedoms.................
the Universal Declaration is the firm base from which specific action by the United Nations, by governments and by mankind at large must proceed. The state must therefore protect the individual and the individual must in turn fulfill his duties and obligations with regard to the state.

1.2 THE HISTORICAL BACKGROUND OF HUMAN RIGHTS

The mid 1940s' were years which witnessed the development of human rights Law. To understand the institutions and conventions which were subsequently created, It is necessary to recall events during which an estimated 50 million people were killed.

On January 30, 1933 Adolf Hitler assumed the reigns of Power in Germany. According to Burgers, within a very short time millions of Germans were deprived of their elementary rights and liberties and hundreds of thousands of others were forced into exile. Seven years later, the second World War broke out. During this time, totalitarian regimes particularly in Germany and Italy, grossly violated human rights in their own and occupied territories. They were responsible for the elimination of entire groups of people on the basis of their race, religion or nationality. Hitler and his colleagues sought to place Germany in a position of eminence. In their military and political campaigns, the individual was of little or no significance. Burgers further states that there was little interference from the World's other major powers during this period in which Germany carried out atrocities against millions of citizens and nationals of neighbouring countries. Before the war and in its early days when action was still possible, little was done to aid jews trying to escape from Germany and the surrounding countries. Those who were able to flee were denied refuge by allied governments including the United states. During the War, no effort was made to impede the functioning of death camps. To illustrate, the allies did not even attempt to bomb the railway lines that brought millions to the slaughter at Auschwitz. The world watched or rather turned
a blind eye to the genocidal massacre of 'Six million Jews and half a million gypsies and the
deaths of tens of thousands of communists, social democrats, homosexuals, Church activists
and just ordinary decent people who refused complicity in the new policies and technology
of barbarism. '9 Germany argued that treatment of its nationals was not a matter of
International concern, therefore, other governments were reluctant to intervene. As
Weissbrodt rightly states, 'the War and Holocaust demonstrated that unfettered sovereignty
could not exist without untold suffering and ultimately the danger of destroying most human
society. "10"

It hence became evident after the second World War that positive action had to be
taken to promote and protect human rights. 'The horror of Nazi atrocities during the War and
also the Holocaust in which an estimated twelve million people are estimated to have died
clear the need for codification of International standards to protect human rights. "11 The
idea of human thus rights developed as a defence against despotism in the exercise of
government power.

The renewed interest in the old idea of human rights developed as a reaction against
the ideologies and practices of totalitarian regimes that had come to power in several
countries . The idea received a tremendous stimulant after the collapse of the third Reich
when the full scales of horrors perpetrated by the Nazi’s came to light. Professor Lawrence
Shimba observes; 'After the Second World War, many World states men and those
concerned with the restoration of International peace vowed never to allow any chance to
arise for the future occurrence of any such costly disaster as the Second World War. "12 and
'the solution for the general guarantee of future peace and security in the World was therefore
seen as the enthronement of man, to which every government on earth should be made to pay
due respect. "13 It is evident, therefore, that the horrific sequence of events in Germany and
indeed in other states brought home the fact that there are areas beyond which the human conscience cannot permit silence in the face of tyrannical governmental action and that ‘if the survival of the human race ultimately lies in the conscience and responsibility of man to speak the truth as he sees it, silence becomes an International crime. ‘14

In light of the foregoing the founders of the United Nations met at the conference of San Francisco in 1945, where their task was to write the Charter of the New World Organisation. They gave the promotion of human rights an important place among the tasks of the Organisation.

The United Nations Charter sought to ‘reaffirm faith in Fundamental human rights in the dignity and worth of the human person (and) in the equal rights of men and women and of Nations Large and small. ‘15 Article one of the Charter lists among the main purposes of the United Nations the achievement of International co-operation ‘in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. ‘16 Similarly, in accordance with Article fifty-five of the Charter, the United Nations shall promote Universal respect for and observance of human rights and freedoms for all without distinction as to race, sex, language or religion. In article fifty-six all members of the United Nations ‘pledge themselves to take joint and separate action in co-operation with the organisation for the achievement of the purposes set out in article fifty-five. ‘17

The Charter of the United Nations also contains significant grants of power to various organs of the United Nations. For example, under article thirteen the General Assembly is empowered to initiate studies and make recommendations for the purpose of ‘assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. ‘18
The drafters of the Charter's major regional International governmental organisations created at the end of the Second World War also made known their interest in taking positive measures in ensuring the protection and promotion of human rights. To illustrate, article three of the statute of the Council of Europe establishes respect for human rights as a condition for membership. It states in part that, 'Every member of the Council of Europe must accept the principles of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms.' 19 It is also worthy to note that several references to human rights were included in the Charter of the Organisation of American States (OAS), including one that provides that each state has the right to develop its cultural, political and economic life freely and naturally.

The states which have ratified the United Nations Charter, the Charter of the OAS, or the statute of the Council of Europe have hence recognized that human rights are a matter of International concern and have assumed International obligations on them. Leblanc observes that these obligations are, however, vague. To illustrate, he states 'Nowhere do these instruments clearly identify the rights which are to be promoted and respected.' 20 According to him, it is for this reason, therefore, that those who advocated International action on human rights pressed hard in the post War years for the adoption of declarations, covenants and conventions which would give greater meaning to obligations already assumed, or would create new, more meaningful obligations.

Thus on the 10th December 1948 the United Nations General Assembly adopted the Universal Declaration of Human Rights articulating rights which governments agreed to promote and observe. The adoption of this document marked an important point in the human rights awareness era. It is to be considered as H. Danielius does, that this 'simple document of only thirty articles has remained until Today the Foundation for all further UN
activities concerning human rights. 421

Following the adoption of the Universal Declaration of Human Rights the United Nations Commission on Human Rights drafted the remainder of the International Bill of Human rights, namely; the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It was not until 1976 that the two Covenants entered into force. The two covenants interpret provisions of the Universal Declaration in binding treaties and supply implementation procedures of state parties. The two covenants are considered to be vital to the human rights protection system. Their importance is clearly evidenced by the fact that other instruments are inspired by them.

In the regional sphere the Council of Europe in 1950 signed a regional Convention for the protection of human rights and fundamental freedoms. This was modelled on the draft of the Covenant on Civil and Political Rights. Another regional human rights treaty, namely, the American Convention on Human Rights was signed in San Jose in 1969. This was modelled on the European Convention. Lastly, the African Charter on Human and People’s Rights was signed in 1981 in Nairobi under the auspices of the Organisation of African Unity.

The Universal Declaration and the two International Covenants are by no means the only human rights instruments of the United Nations. Under the auspices of the United Nations several instruments have been drawn up on specific areas in the field of human rights. To exemplify, the following declarations have been adopted by the General Assembly:-

The Declaration on the Rights of a Child (1959); the Declaration on the Elimination of all forms of Racial Discrimination (1963); the Declaration on the Elimination of all forms of Discrimination Against Women (1967) and the Declaration on the Elimination
of all forms of Intolerance and of Discrimination based on Religion and Belief. As regards Conventions, they include, the Convention on the Rights of a Child (1989), the Convention Relating to the status of Refugees (1951); the Convention on the Elimination of all Forms of Discrimination against Women (1979) and the Convention on the prevention and punishment of the crime of Genocide.

It is important at this point to briefly cast some light on the distinguishing factor between Conventions and Declarations. It must be noted, however, that even though from a legal point of view declarations and similar instruments are no more than recommendations, their moral political authority can nonetheless be considerable. Therefore, one may in many cases call a government to account by invoking the standards contained in such instruments. It is noteworthy that in particular the Universal Declaration of Human Rights has assumed a far more normative character over the years than was foreseen in 1948. In the final analysis, however, Danelius rightly observes "the protection of human rights benefits more from the conclusion of conventions because these impose obligations of positive law upon states."

Numerous International human rights agencies have also been created. Examples include the United Nations Commission on Human Rights created by the Economic and Social Council in 1946 and the European Commission and Court of Human Rights.

International action on human rights is, however, not limited to either the global or regional levels of international relations, instead, there has occurred a broad attack in defence of human rights on both levels with the activities of various agencies in the United Nations, the Council of Europe, the Organisation of American States and the Organisation of African Unity complementing each other.
1.3 HUMAN RIGHTS AND ZAMBIA

In focusing on a general outlook on human rights practice and observance in Zambia, it is not possible in this limited space to trace human rights practices from the period of Independence. Our discussion shall hence focus on the era of the Third Republic. Of particular interest is the year of 1996 in which numerous events occurred which had a direct impact on human rights practice and observance in Zambia.

Zambia was heralded as a model for human rights and democracy in 1991 after a peaceful transfer of power in which the Movement for Multiparty Democracy (MMD) and its leader Frederick Chiluba gained a landslide victory over the United National Independence Party (UNIP). '24 Although the future seemed promising at the outset, Five years later the period before the multiparty elections Scheduled for November 18, 1996 witnessed a serious deterioration in respect for human rights. This was rather distressing considering the peaceful transition of power and the promises that the new government had initially made.

In the political arena, in particular, human rights in Zambia received a severe blow. The voter registration process witnessed a number of human rights violations. In particular, the right to vote and the freedom of expression. The registration process was marked with irregularities. Human Rights Watch Africa reports that there was evidence that duplicate National Registration cards were issued to some voters and that duplicate names appeared on rolls while others were arbitrarily omitted. '25 Hence some potential voters were clearly denied the right to vote which is rightly theirs by virtue of the fact that they are Zambian citizens.

One of the issues of particular concern was a radical amendment to the 1991 constitution which imposed new requirements on persons seeking to hold the Office of President. These included in article 34 (3) of the 1996 Constitutional Amendment Act that
a person be a Zambian citizen born to parents who are Zambian by birth or descent and that the person be not a tribal chief. This requirement was clearly aimed at barring particular individuals from running for Office. Some of the new restrictions appeared to violate the International Covenant on Civil and Political Rights to which Zambia is a party. Articles 25 and 2 of the covenant guarantee to the citizens the right to be elected at genuine periodic elections without unreasonable restrictions and without distinctions as to birth, National origin, or political opinion. The disqualification of all but second or third generation Zambians from Office was thus a violation of human rights and hence unacceptable.

In all this, the Human Rights Organisations in Zambia did not remain mute. The constitutional amendment 'was rigorously challenged by opposition political parties, civic associations, human rights and Womens groups. '26 This was unfortunately to no avail. The government proceeded with its constitutional amendment.

The efforts of non-governmental organizations were, however, not in vain. This is in view of the fact that they laid bare the fact that all individuals are entitled to their rights regardless of their political affiliation.

It can hence be argued that the state, to all intents and purposes, cannot be the best Institution to champion the quest for and promotion and, to some extent, even protection of human rights. For as B. Musenga rightly observes 'the state is usually the chief perpetrator of human rights abuse through its organs like the police force. '27 Therefore, there is in every state the urgent need for an alternative force to check human rights abuse.

The freedom of expression has over the years been one of the focal points of abuse. The Independent press has often been a target for government intimidation. The Post newspaper, in particular, has often come under severe attack. In February 1996 police arrested three of its editors and banned edition 401 before its distribution because it reported
that the government was secretly planning to hold a referendum on the constitution without giving much advance warning to the public. The days on line edition was also banned making it the first act of censorship on the Internet in Africa.  

The Munyama Human Rights Commission, which had a mandate to investigate and establish reports of human rights abuses, also investigated prison conditions. It illuminated some rather startling and dismaying facts. It found that conditions of prisons were appalling, with food insufficient or unfit for human consumption. Widespread illness, denial of medical treatment and prisoners were being denied basic necessities such as clothing and soap. Professor Urbonya observes 'the Zambia police often apply force or use sleep and food deprivation as a means of compelling suspects to confess.' Five prisoners were reported to have died at Kamfinsa Prison in Kitwe in July 1996. Mr Augustine Phiri, prison service public relations officer admitted that the average death rate of prisoners held by the service was 6.66 per month. He attributed this to overcrowding.

There are, however, some areas in which the government can be commended. One of these areas is with regard to the treatment of refugees. The Human Rights Report prepared by the United States department of state reports that the government has over the years continued to co-operate fully with the United Nations High Commissioner for Refugees. The government continues to provide first asylum to refugees from several countries and allows refugees to settle in Zambia. The United Nations High Commissioner for refugees estimates that there are approximately 120,000 refugees, mainly Angolans residing in Zambia. Further, as regards the human rights protection system the government has set up the Permanent Human Rights Commission to deal with cases of human rights violations and ensure human rights protection and observance.

Although the foregoing is commendable, efforts must be made in other areas so that there is an overall proper human rights protection system. It is not sufficient for there to just be a few areas in which human rights progress is made.
In view of the events that have occurred in Zambia it might well be asked whether the judiciary has remained blind and mute to all these occurrences. For it is the duty of the judiciary to adjudicate and pass judgement on the constitutionality or unconstitutionality of a particular act or statute. The judiciary has in a few cases shown itself capable of acting fairly and impartially. To illustrate in the case of Christine Mulundika and 7 others v the People (1995), the judiciary came under severe attack from government supporters when the supreme court struck down provisions of the Public Order Act. Finding that the provisions requiring people to get police permits to hold meetings were unconstitutional and thus a contravention of the Zambian people's constitutional rights. In particular the supreme court ruled sections 5 (4) and 7 (a) of the Public Order Act unconstitutional. This was a just decision because some provisions of the Act conferred an undue advantage on the ruling party. The decision was nevertheless criticized.

The other question to be asked then, is regarding the impact that the human rights situation in Zambia has had on the International Community. For as Moskowitz rightly stated 'the lesson that the state cannot be left to remain the sole arbiter in deciding the fate of its citizens cannot be ignored.'

As regards the European Union although initially it was reluctant to publicly voice disapproval over Zambia's human rights practices, in May 1996 it issued a demarche to the Zambia government over its constitutional amendment Act. The United States also played a vital role throughout the same year in pressuring the Zambian government to improve its human rights record. Professor K. Urbunya, reports 'In my travels in Zambia, my conversations with police officers, law students, civil rights groups.............revealed that in such an evolving society, the first goal is to establish stability. This goal has, however, often been sabotaged by constant undermining of civil rights ....... Thus the International Community has not remained silent. It has recognised that states must co-operate in ensuring that there is peace an dstability and therefore the hope of better times to come.'
1.4 CONCLUSION

The International Community has ever since the second World War been greatly concerned with promoting the respect for and observance of human rights and fundamental freedoms everywhere in the World. The United Nations has also made a colossal contribution to the promotion and protection of human rights. 'Its achievements in the area of standard setting are without precedent. The conventions established were therefore formed in the hope that nations would abide by them and thereby ensure that man is accorded the dignity and worth entitled to him by birth right. Zambia, being a signatory to many of these conventions is under such an obligation to ensure that the rights of each and every individual on whom the Zambian sun shines are protected and enhanced.

The question to be asked, then is whether indeed she has done so. As illustrated over the past few years Zambia's human rights record has in specific areas been less than sparkling. There is, however, hope that through the proper observance and implementation of the conventions Zambia has ratified there shall be light at the end of the tunnel signifying the hope for a better future. The next chapter shall embark on an in depth analysis of the various International human rights covenants to which Zambia is party so as to better understand these conventions which are aimed at protecting and promoting human rights.
ENDNOTES


4. Ibid.

5. Ibid

6. Ibid, at 3

7. Ibid.


11. Ibid.


13. Ibid, at 50

14. Moses Moskowitz; Supra note 8, at 834.

15. Weissbradt and Newman, Supra note 10, at 1.

17. Ibid

18. Ibid.


20. Ibid, at 1


22. Lawrence J. Leblanc; Supra note 19, at 7

23. Hans Danelius and Jherman Burgers, Supra note 21, at 6


25. Ibid

26. Ibid, at 3


28. Human Rights Watch, Supra Note 24; at 3


30. Human Rights Watch, Supra note 24; at 5

'The Covenants on Human Rights are International treaties binding upon governments willing to subscribe to them. They are indispensable as a definite and concrete beginning of an International Legal Order and they answer the dilemma which confronts the United Nations in its efforts to promote human Rights and Fundamental Freedoms.'

- Moses Moskowitz
CHAPTER 2

ZAMBIA’S PARTICIPATION IN THE AMBIT OF HUMAN RIGHTS: INTERNATIONAL AND REGIONAL CONVENTIONS

2. INTRODUCTION

This chapter appraises and evaluates the various International and regional human Rights Conventions to which Zambia is a signatory. International human rights Law or rather Conventions play a vital role in relation to the implementation of human rights, at national level. This is owing to the fact that they provide a standard against which Nations can measure or rate themselves as regards their own human rights standards. They therefore provide Nations with a goal at which to aim in the promotion of human rights. International human rights Conventions also to a great extent provide remedies for human rights abuse at national level such that governments are forced to keep themselves in check as regards human rights abuses. International human rights conventions thus guide nations as regards the rights which their citizens are entitled to enjoy. For this reason it is vital for nations to ratify these conventions and implement them. This chapter thus examines the core of these Conventions which were born of the desire to enhance the protection of these fundamental human rights and freedoms.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND FREEDOMS

One of the first major achievements of the United Nations in the field of human rights was the adoption of the Universal Declaration of Human Rights by the General Assembly on the 10th December 1948. The Assembly proclaimed the Declaration to be a ‘common standard of achievement for all peoples and Nations’. It must be noted at the outset that this Declaration was
not intended to have any legal Force. As Esejoiter correctly noted, 'The draft declaration was not a treaty or International agreement and did not impose legal obligations, it was rather a statement of basic principles of Inalienable human rights setting up a common standard of achievement for all peoples and Nations.' Hence it was recommended to governments to solemnly publicize the text and to cause it to be disseminated, read and expounded principally at schools and other educational institutions. Every effort was hence made to underline the declaration's obligatory character. To further illustrate, D. Roosevelt declared:-

'In giving our approval to the Declaration, it is of primary importance that we keep in mind the basic character of the document, it is not a treaty..............it is a dedication of basic principles of human rights and freedoms to be stumped with the approval of the General Assembly by a formal vote its members.........' 

It is probably this absence of legal obligation that made governments willing to subsinbe to this declaration that appeared full of promise. Little did they know that although it was not legally binding the Declaration would nevertheless have considerable weight. The power and impact of the Declaration's moral rules may be judged by their widespread acceptance and Incorporation into domestic junsdictions.

The preamble of the Universal declaration of Human Rights States that 'the recognition of the Inherent dignity and the equal and in alienable rights of all members of the human family is the foundation of freedom, justice and peace in the World. '6 It also acknowledges that disregard and contempt for human rights have metamorphosed into barbarious acts which have outraged the conscience of mankind. It further states that member states have in joining the United nations 'pledged themselves to achieve in co-operation with the United Nations, the promotion of Universal respect for and observance of human rights and fundamental Freedoms. '7 The preamble also states that a 'common understanding of these rights and freedoms is of the greatest importance

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for the full realisation of this pledge. '8

The Universal declaration of human rights categorises human rights into civil and political and Social, Economic and Cultural rights. Hence articles 1 to 21 deal largely with traditional civil and Political rights found in older declarations. Articles 1 and 2 of the Declaration state that 'all human beings are born equal in dignity and rights. '9 They are also entitled to all the rights and freedoms set forth in the declaration 'without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. '10 The Universal declaration, hence, as U Thant rightly stated, calls upon states to dedicate themselves to the principles enshrined therein and to therefore 'redouble their efforts to provide for all human beings a life resonant with freedom and dignity and conducive to physical, mental, social and spiritual welfare. '11

The civil and political rights enumerated in the Universal declaration include, the rights to life, nationality, recognition before the law, protection against cruel, degrading or inhuman treatment as punishment and protection against racial, ethnic, sexual or religious discrimination. They also include legal rights such as access to remedies for violations of basic rights, the presumption of innocence, the guarantee of fair and impartial public trials and protection against arbitrary arrest. Detention and exile. Civil liberties enumerated include rights to freedom of thought conscience, religion, opinion, expression and movement. Also the freedom of assembly and association, provided that they are peaceful. Finally, political rights include the rights to take part in government and to periodic and genuine elections with universal and equal suffrage.

Articles 22 to 27 are concerned with economic, social and cultural rights. These include the rights to food, a standard of living adequate for the health and well being of oneself and one's family, the right to work, leisure, rest and social security; and the right to education.
According to article 29, 'Everyone has duties to the community in which alone the free and full development of his personality is possible.' It must be noted that these rights shall only be limited by laws designed to safeguard the rights of others and to further the just requirements of morality, public order and the general welfare in a democratic society. Finally, article 30 provides that nothing in the Declaration Authorises any state, person or group to engage in any act calculated to destroy the rights conferred by it.

The Universal Declaration has hence, since its adoption exercised a powerful influence throughout the World both Internationally and Nationally. Its provisions have been cited as the justification for various actions taken by the United Nations and has inspired the creation of International Conventions by the United Nations. The unofficial assembly of human rights in 1998 thus stated in this light that the 'Universal Declaration of human rights constitutes an authoritative interpretation of the charter of the highest order and has over the years become a part of customary International law.' To illustrate further, it has been stated that, 'The Universal declaration of human rights states a common understanding of the peoples of the World concerning the inalienable and inviable rights of all members of the human family.'

The Universal declaration has clearly become much more powerful than was foreseen. For it was intended to have just a strong moral force as is seen by the words of the Netherlands delegate to the General Assembly, 'It should have great moral force and should serve as guiding light to all those who endeavour to raise man's standard of living.' It is, however, much more powerful than that.

It would be apt at this point to illuminate the Universal Declaration within the Zambian context. In this regard, Zambia is unfortunately not a sparkling example of strict adherence to the terms of this Declaration. This is particularly evident with regard to the issue of further. One of the furmre provisions of the Universal declaration is that no one is to be subjected to further or cruel
and inhuman or degrading treatment as punishment. Yet, although the 1991 constitution in article 15 prohibits fortune, 'police regularity use excessive force when apprehending, interrogating and detaining criminal suspects or illegal aliens. '17

police are reputed to use vicious brutality in the handling of suspects. In one instance the police are reported to have crushed the testicle of a detainee. '18 Hence, it cannot be over emphasised that the rights of all human beings must be respected. This includes criminals, aliens or regular citizens. They must be treated fairly and humanely. It is this end that the Universal declaration hopes to achieve. It is for this reason that it to this retains its symbolism, rhetorical force and significance on the human rights movement. As Steiner and Alston rightly state, 'It is the parent document, the initial burst of idealism and enthusiasm, terser, more general and grander than the treaties, in some sense the Constitution of the entire movement. It remains the single most invoked human Instrument. '19

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Following the adoption of the Universal declaration, work began on the drafting of two International Covenants on human rights: One on economic, social and cultural rights and the other on civil and political rights. The aim was to put into binding legal form the rights proclaimed in the declaration. As Dr. A.W. Chanda rightly states, 'The covenants are designed transform the general principles proclaimed in the Universal declaration into binding legal obligations and to establish an International Machinery to ensure governmental compliance '20

The need for further work to secure the adherence of member states to the principles set out in the Universal Declaration had long been recognised but it took 18 years before the United Nations adopted the two covenants and the implementation mechanism attached to them. This, as Dr. Chanda further explains, is owing to the serious political and ideological differences among the members of the United Nations over the scope and the nature of the rights to be protected. '21
The International covenant on social, Economic and cultural Rights were unanimously adopted by the General Assembly on 16th December 1966. These Instruments, along with the Declaration itself, and a second optional protocol adopted in 1981, make up what is now widely known as the International Bill of Human Rights. The critical importance of these 2 documents can hardly be doubted. In the words of U That, 'their historical significance has been stressed by all those who were involved in their preparation and unanimous adoption by the General Assembly

...They encompass for reaching legal obligations which are the outcome of attentive work and efforts of experts and governmental representatives from all the regions of the World over many years.  "22

It is noteworthy that although the two covenants are based on the Universal Declaration, they are not a replica of the Declaration. To illustrate, according to the United Nations, 'Although the covenants are based on the Universal Declaration, the rights covered are not identical. The later covenants and conventions go into much more detail than the Universal Declaration and include a few important changes. For example, the covenants prominently include a right to national self determination which is absent in the Universal Declaration but do not include the right to private property. Further, as Dr A W Chanda states, "that list of civil and political rights stipulated in the covenant on civil and Political Rights is formulated with greater judicial precision and is longer than the catalogue of similar rights found in the Universal Declaration. '24 Nevertheless, they for the most part can be seen simply as elaborations of the Universal Declaration which remains the Central normative document in the International human rights regime.

Article 1 of the United Nations charter provides, 'All peoples have the right of self determination, by virtue of that right they feel determine their political status and freely pursue their economic, social and cultural development.  "25 Hence in accordance with the principles of the United Nations, article 1 of the International Covenant on civil and political rights, recognizes that all
peoples have the right to self determination. The right of self determination is of particular importance because its realisation is an essential condition for the effective guarantee and observance of individual human rights... It is for this reason that the provision in article 1 is set apart and before all the other rights in the covenant.

Article 2 of the Covenant concerns the implementation of the covenant at the national level, it contains a general obligation of state parties to respect and to ensure the rights recognised in the covenant without any distinctions on the grounds of race, colour, sex language, religion, political or other opinion, property, birth or other status. The covenant itself addresses the implementation of the fundamental International treaty obligation of state parties in the subsequent paragraphs of article 2.

Article 4 is of particular importance because it deals with the issue of Public Emergency. It states that when a public emergency which threatens the life of a nation arises and it is officially proclaimed, a state partly may derogate from a number of rights to the extent strictly required by the situation. The state, however, may not derogate from certain specific rights such as the right to life.

The Covenant proceeds to deal with various rights and freedoms, such as freedom of movement, equality before the law, the right to a Fair trial and the presumption of innocence, Freedom of thought, conscience and religion, Freedom of opinion and expression, peaceful assembly, freedom of association participation in public affairs and elections. It prohibits arbitrary deprivation of life, fortune, cruel or degrading treatment or punishment and slavery and forced labour. Also prohibited are arbitrary arrest or detention and advocacy of racial or religious hatred.

It is vital to dwell a while on article 40 owing to its great importance. Article 40 states, 'The states parties to the present covenant undertake to submit reports on the measures they have adopted
which give effect to the rights recognised herein and on the progress made in the enforcement of those rights. Hence, each state party is required to submit within two years into force an initial report covering the rights and enshrined in the Covenant. Subsequent reports are due every five years to the human rights committee which also receives individual and state complaints of human rights violations.

The Covenant establishes an eighteen member Committee which 'considers reports submitted by state parties on measures taken to implement the Covenants provisions.' The Committee makes recommendations to the state parties based on the study of the reports.

Zambia, it is to be noted acceded to both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on civil Political rights and its Optional Protocol on 10th April, 1984. Dr. Hansungule notes that 'the most notable failure of Zambia’s human Rights obligations is in the reporting obligations......... Zambia is in arrears over several reports and the silvation seems less promising.' Hence, Zambia must make a continued effort in ensuring that these reports are submitted or else the very essence of acceding the treaty is defeated. That is ensuring the protection of human rights. Lip service is insufficient; there must be positive action taken or else the covenant loses its essence. As moskowitz states, 'The covenant on civil and political rights marks the beginning of a long process of Investiture of a great idea with the substance of power capable of producing effective and positive change in all realms of personal, national, and International life. There must, therefore, be a continuous effort in ensuring the promotion and protection of the rights enshrined therein.

2.3 THE FIRST OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The first Optional Protocol to the Covenant on civil and Political rights entered into force on 23rd March 1976. Zambia acceded to this protocol on 10th April 1984. The optional protocol
pertains to the right of the individual to appeal to the International Community in case of violation of his guaranteed rights and freedoms. It hence lays down certain procedures to this effect. The Human Rights Committee receives and considers Communications from individuals who claim that their human rights protected by the covenant, have been violated by a state party.

The Committee considers in private meetings, communications from individuals. The letters and other documentation remain confidential. 34 The findings of the Committee, however, are made public immediately after the session at which they were adopted and are reproduced in the Committees annual report to the General Assembly. Several countries have changed their laws as a result of decisions taken by the Committee on Individual complaints. Under the first optional protocol, 1 in a number of cases, persons have been released and compensation paid to victims of human rights violations. 35 The Committee has instituted a mechanism whereby it seeks to monitor move closely whether state parties have given effect to its decisions.

The Optional protocol is the first important step towards the emancipation of the individual from the restraints of nationality and his entry into the International Community in his own right as a human person. That is, he is an object or subject of International concern. For it is indeed true in the words of Moskowitz that 'Just as the freedom of the citizen is a safeguard internally against the excesses of Nationalism and propensity..........So too emancipation of the human person from the shackles of nationality is indispensable to the reconstruction of International relations on just and humane foundations 36

Within the Zambian context, there have been complaints against the government alleging human rights abuses. To illustrate in the case of Chiko Bwalya v Zambia (1989), Chiko Bwalya complained to the United Nations Committee under the optional protocol alleging abuse of his right to freedom of liberty. He had been detained under presidential order which he successfully challenged before the Zambian High Court. The government refused to pay him his damages as directed by the court ruling, prompting him to take the matter to the Committee. The government
then agreed to pay him his damages and the matter was resolved amicably. The optional protocol is hence beneficial to the Zambian people in promoting and protecting their human rights.

2.4 THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The International Covenant on Economic, Social and cultural Rights entered into Force on 3rd January 1976. By 31st December 1994, it had 131 state parties. Zambia acceded to this treaty on the 10th April, 1984. The Convention is divided into five parts. Part one recognizes the right to self determination, Part two defies the general nature of state parties obligations, Part three enumerates the substantive rights, Part four deals with International Implementation and Part five contains typical final provisions of a legal nature.

The Covenant is the twin sibling of the International Covenant on Civil and Political rights. Each of the Covenants elaborates on some of the rights contained in the Universal Declaration of Human Rights and there is some overlap in content between the two. Dr. A.W. Chanda notes that 'the Inventory of Economic, Social and Cultural rights is longer and more comprehensive than that contained in the Declaration. '37 The preamble of the covenant recognises that the human rights ideal can only be achieved 'if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights. '38

Article 1 of the covenant states, 'All peoples have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. '39 This article is identical to article one of the covenant on civil and Political rights. The right to Self-determination as stated in this article encompasses not only political self determination but also the right to freely pursue economic, social and cultural development.

Under article 2(1) of the covenant, each state party 'undertakes to take steps........ with a view to achieving progressively the full realisation of the rights recognised.'40 This obligation is made subject to the availability of resources. Article 2 is of particular importance top a full understanding
of the covenant and must be seen as having a dynamic relationship with all of the other provisions of the covenant. It describes the nature of the general legal obligations undertaken by the state parties to the covenant. Hence Moskowitz says of the terms expressed in the covenant, ‘Each of these rights and freedoms expresses notions and ideas of external relevance and validity and each of them dictates a definite code of national and International conduct and practice.’

Article 3 provides that the state parties to this covenant must undertake to ensure equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the present covenant. This provision emphasises the special importance attached to the obligation to ensure the equal rights of men and women in the enjoyment of all economic, social and cultural rights. ‘The obligation to ‘ensure’ this result is immediate and is not subject to progressive achievement.’

Article 4 states ‘The state parties to the present Covenant recognize that in the enjoyment of those rights provided by the State in conformity with the present covenant, the state may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of the rights and solely for the purpose of promoting the general welfare in a democratic society.’ Article 4 is applicable to all of the rights recognised in the covenant. Unlike the International covenant on civil and Political Rights none of the rights are specifically stated as non-derogable. ‘Nevertheless the specific requirements that must be met in order to justify the imposition of limitations in accordance with article 4 will be difficult to satisfy in most cases.’

The Covenant, particularly in Part 3 deals with other various rights and freedoms. It recognises the rights to: work, just and favourable conditions of work, rest and leisure, form and join trade Unions, and to strike; social security, special protection for the family, and adequate standard
of living including food, clothing and housing, physical and mental health, education and specific cultural rights. It is because of this detailed category of rights that Moskowitz states of the Covenant, 'Each of the rights and freedoms in the covenant on Economic, Social and Cultural rights of only postulates co-operation among peoples and nations, but is capable of providing the emotional drive behind the logic of International Ideal. '45 The right to property although recognised in the Universal Declaration is not included. Steiner and Alston consider that its omission is due to the inability of governments to agree on a formulation governing social takings and the compensation therefore. '46

It must be noted that the Interdependence of Civil and Political rights and Economic, Social and Cultural rights has always been part of the United Nations doctrine. This is reflected in the preamble of the Internation covenant on Economic, Social and cultural Rights which states in terms mirroring those of the covenant on Civil and Political Rights that 'In accordance with the Universal declaration..........the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, Social and Cultural rights as well as his civil and political rights. '47

The Interdependence principle reflects the fact the two sets of rights cannot logically nor practically be separated in entirely water fight compartments. Thus, for example, the right to form trade unions is contained in the International covenant on Economic, Social and Cultural Rights while the right to freedom of association is recognised in the covenant on civil and political Rights. The former covenant also recognises various liberties and freedoms in relation to schooling, scientific research and arcative activity. Also, the prohibition of discrimination in relation to the provision of and access to educational facilities and opportunities can be derived from both article 2 of the International covenant on Economic, Social and Cultural Rights and the International Covenant on civil Political Rights.

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The principal United Nations body concerned with economic, social and cultural rights is the committee on Economic, Social and Cultural Rights established in 1987 to monitor the compliance of state parties with their obligations under covenant. An initial report by each state party is due within two years and subsequent reports are required at 5 year intervals. The Committee consists of 18 Independent experts elected by the Economic and Social Council for four year terms and reflecting an equitable geographic distribution. Its principal activities are the adoption of 'general comments' and the examination of state parties reports leading to the adoption by the Committee of 'concluding observation' thereon.

With regard to Zambia, in reference to this covenant one of the problems lies once again in the ambit of the reporting system. As already stated, under the provisions of the covenants a report is required every five years. Since Zambia acceded to the treaty in 1984, it has according to Dr. Hansungule submitted only one report under this covenant in October, 1985. There has been no follow up report ever since. Dr. Hansungule also states, 'Even the 1985 report was no more than only a cursory outline of only three Institutions dealing with human rights namely the Commission for Investigations, the Anti-corruption Commission and the Industrial Relations Court. '48 In its reaction the Human Rights Committee found the report 'highly inadequate as it did not cover all the issues on human rights and neither did it detail the problems. Rather, government used the report to enage in self-praise. '49

It must therefore be emphasised that in ratifying the covenants, states bind themselves to observe the provisions and abide by their rules. If this is not done the convention becomes useless, like a cracked cistern which can hold no water at all.
2.5 THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF

DISCRIMINATION AGAINST WOMEN

'The time has come to recognise that denials of individuals rights on the grounds only that
they are women are human rights violations and that those state practices that expose women to
degradation, indignity and oppression on account of their sex are to be identified and condemned and
preferably prevented. '50 Thus, has been the cry of women, so clearly heard, particularly in recent
years.

The subject of women's rights as International human rights offers distinctive perceptions on
the human rights movement as a whole. The basic treaty in this field- The convention on the
elimination of all forms of discrimination against women has exceptional reach. The Convention
was adopted by the General Assembly of the United Nations on the 18th December 1979. It entered
into force on 3rd September 1981.

The preamble acknowledges that despite various United Nations efforts to promote the
equality of rights of men and women, 'extensive discrimination against women continues to exist.
'51 and that such discrimination 'violates the principles of equality of rights and respect for human
dignity. '52 This is clearly evident in the words of women's voice magazine, 'women's rights are
formally included in general human rights but crimes like fortune, starvation, terrorism, humiliation
and even murder are routinely committed against women and girls and not seen as crimes
because the victims are female. '53 The preamble goes on to state that discriminatory practices are,
an obstacle to the equal participation of women in all aspects of the life of their countries, hampering
the increased prosperity of society and family. The preamble also recognises women's great
contribution to society. As is well stated by women's voice, 'women are the peacemakers and
guardians of the sources of life, without whose caring and nurture human kind would not be fully
human... ‘54 By adopting the Convention the International Community expresses its determination to adopt the measures required for the elimination of discrimination against women in all forms and manifestations.’

Article 1 is of paramount importance as it gives the definition of what constitutes discrimination against women. It states ‘...........the term discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women of human rights and fundamental Freedoms in the political, economic, social, cultural, civil or any other field. ‘55 Zagora III.c states of this article, ‘it establishes that the Convention deals with discrimination directed against women, and not with discrimination based on sex. The Convention therefore does not address discriminatory practices experienced by men. ‘56 The definition of discrimination is broad and encompasses a broad range of issues.

Article 2 is the general undertaking article that applies with respect to rights recognised in articles 5 to 16 of the women’s Convention. It generally requires state parties to ensure compliance by their governmental organs with the Convention and to take all appropriate measures to effect the elimination of discrimination in all its forms by any person, organisation or enterprise and ‘to modify or abolish existing laws, regulations, customs and practices, ‘57 that is, those which discriminate. Illic further states of this article that its purpose is to ensure that there is an appropriate legal structure to guarantee equality, to provide remedies and sanctions for public and private acts of discrimination and to repeal overtly discriminatory laws. ‘58

Article 3 sets forth a grand goal for states to ensure the full development and advancement of women so that they may enjoy their rights and freedoms on a basis of equality with men. In addition to impugning laws and practices that detrimental in their effect buy neutral on their
face, article 3 prohibits practices that are detrimental to women, including for instance non-
provisions of obstetric services.

Article 4 can be seen as enforcing article 3. It specifies that temporary special measures aimed
at accelerating de facto equality between men and women shall not be considered to be discrimination
as defined by the Convention. According to Illlic this allows for determinate concrete practices to
secure equality of opportunity and treatment.

As regards article 5, it stipulates that parties endeavour to help men and women to overcome
predetermined, sexually stereotyped role behaviour and false concepts of inferiority or superiority
of either sex. This is a vital article because most societies are blinded by such concepts and must
hence be enlightened.

Alston and Steiner states of the following articles that these articles evidence low a treaty
devoted to one set of problems, here ending discrimination against women and achieving equality
makes possible a discrete, desegregated treatment of the different issues relevant to these problems.
Article 6 requires a state party to regulate specific non-governmental activity. Articles 7 to 9 deal
with the traditionalisation of state action, hence barring discrimination by the State. Article 14
desegregates women's problems in regional and functional terms. It urges state parties to eliminate
discrimination against women in rural areas. Finally, article 16 orders the state parties to sweep away
a large number of fundamental and traditional forms of subordination of women.

It is evident, then from the foregoing that much has been achieved in the protection of
women's rights as regards conventions. There is, however, still much to be done. As U Thant rightly
states, 'We ought to remember also that the struggle for women's rights and their proper place in
society is far from over......... The discriminations against women which still exist are unlikely to
be overcome without the active co-operation of men and women......... Governments and society
must ensure the advancement of women to full equality and must enable women to participate fully
in the development and progress of their nations. 59

Zambia is one of the states in which much more has to be achieved in the area of women's rights. For, in Zambia systematic gender based inequalities exist at household, community and national levels. To illustrate, although an increasing number of women aspire for political careers, politics is exclusively male dominated. The Independent Monitor Group. The foundation for Democratic Process (FODEP) attributes the low participation of women in national political life to the pattern of women's education that prepares them primarily for domestic duties, and the reluctance of men despite utterances to the contrary, to accept women as equal partners in politics. 60 It is reported that the number of women appointed to ministerial positions and other senior positions has been low since Independence.

Zambia, having ratified the Covenant on 21 July 1994, submitted the third periodical report to the Committee on the Elimination of discrimination against women. However, Dr. Hansungule reports that far from detailing the measures taken to effect the covenant and the problems confronted, government tried to devote its presentation to justifying its conduct in the human rights field, especially the rights of women. 61 He further states that this has not helped the development of human rights jurisprudence because the government is more concerned with disputing any alleged human rights abuses rather than with submitting to International scrutiny on the basis of fair play.

As regards the participation of women, again in the political arena, chigunta states that the percentage of male and female participation in parliament is 94% and 6% respectively. Further, in the ordinary working environment an illustrative 1993 survey of Zambia Electricity Supply Corporation (ZESCO) employees shows that the number of women in managerial positions was very low. Of 167 employees in lower management only five were women. Labour and Wage data on women's participation are equally discouraging.

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It is thus indeed true as Chigunta further states of the Zambian situation, 'the Way forward is for civil society to make concerted efforts to ensure that society adopts a more positive attitude towards women. Furthermore civil society should pressure the government to adopt the National Gender policy to redress the historical and cultural prejudices. '62

2.6 THE CONVENTION ON THE RIGHTS OF A CHILD

'Human Society is made up in such a way that there are the stronger and the weaker or the advantaged and disadvantaged. The weaker or disadvantaged demand that they be protected so that they too can enjoy what is due to them as human beings. '63 Thus children, being among the weaker individuals in society must be given fair and equal treatment just as any adult human being. They must be granted the opportunity to grow knowing just principles such as freedom of opinion, expression and association. It is their birthright and as such they should not in all fairness be denied.

The rights of a child as recognised or laid down in the Convention on the Rights of a child adopted on November 20, 1989, by the General Assembly, are human rights. When the Convention entered into force then UN Secretary General Perez de Cuellar pointed out, 'The Convention on the rights of a child is Unique. It addresses the needs of those who are human's most vulnerable as well as its most vulnerable and cherished resource....... Besides Incorporating the whole spectrum of human rights, the Convention stresses that respect for and protection of childrens rights is the starting point for the full development of the individual's potential in an atmosphere of freedom, dignity and Justice..... '64 The Convention is the result of long negotiations between representations of countries with different social and economic systems and various cultural, ethnic and religious approaches, non-governmental Organisations and the United Nations agencies. It has as its guiding light the best interests of the Child and calls on states which ratify it to create conditions in which children may take an active and creative part in the social, cultural and political life in the country. 'They way a society treats its children reflects not only its qualities of compassion and protective caring but also
its sense of Justice, its commitment to the future and its urge to enhance human conditions for coming generations...’65

The Convention on the rights of a child, not only puts together in one document the human rights of children, but also puts these rights into terms that reflect the special vulnerability and the changing needs of a growing person. The rights already protected have been restated, tailored to the needs of children, and have also been coupled with additional rights all aimed at enhancing the life of a child.

The preamble of the Convention recalls the basic principles of the United Nations and reaffirms that children, because of their vulnerability, need special protection. It emphasises the responsibility of the family, the importance of respect for cultural values of the child’s Community and the vital role of International Co-operation in achieving the realisation of children’s rights.

Article 1 deals with the definition of a child. It states, ‘For the purposes of this Convention a child means every human being below the age of 18 years, unless, under the law applicable to the child, majority is attained earlier.’66 It is worthy to note that it was pointed out when drafting the Convention that 18 appeared to be quite late in the light of some National legislation and that a lower age limit should be recommended. Finally, however, it was decided that article 1 would define all persons under 18 as children with the already mentioned exception.

Article 2 deals with the issue of non discrimination. It provides that state parties to the Convention shall ensure the rights set forth to each child within their jurisdiction without discrimination. This article is important because it ensures that children’s rights, like adult rights are applied without discrimination thereby enhancing Justice and fairness.

Article 4 is one of the most important articles of the Convention. Here, the states pledge to transform all the rights in the Convention into reality. For it is indeed true as Flekkoy states that, ‘The Convention may become a history of mankind. But laws, national or International, are after all,
words on paper. They may codify attitudes, but the real results depend upon how they are implemented, what is done to follow up and read the ideals.  ‘67

Article 4 urges all party states to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the Convention.

Article 6 which deals with survival and development states
1. State parties recognise that every child has the inherent right to life.
2. State parties shall ensure to the maximum extent possible the survival and development of the child.  ‘68 Children have the right to life. The state must hence make sure that every child has the chance to live and develop.

The Convention goes on to recognise a long list of personal, social cultural and political rights to be enjoyed by children. These include the child’s right to a name and nationality, identity and the right not to be separated from parents. Article 12, in particular, obliges states to give due weight to the views of the child in accordance with his or her age and majority. This is vital because children must be allowed to express themselves.

The Convention proceeds to state various other childrens rights and freedoms. These include the freedom of expression, thought, conscience and religion, Freedom of association, protection of privacy. The right to access to appropriate information, protection from abuse and neglect, protection of children without families. It also deals with the issues of adoption, health services, education and leisure.

Special attention must be given to article 18 which deals with parental responsibility for raising children and the state’s responsibility to assist in this task. Lopaka states, ‘The child is not the property of his or her parents nor the state or anybody else. Each child is an individual person whose personality and identity should enjoy Universal recognition ans respect.  ‘69 The task of parents is not to use the child for labour or other purposes, it is to protect the child. However, even

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the most loving and well meaning parents are unable to meet the needs of the children alone. Hence a Public school system is, according to Flekkoy, the result of an early and widespread acceptance of the fact that children need more than parents can give. Hence, the state and the parents must work together to protect the child.

Articles 42 to 45 deal with the implementation of the treaty. For the progress of examining the progress made by state parties in achieving the realisation of the obligations undertaken under the Covenant, a Committee on the rights of a child is established. Hence, every state party must present a report every five years to this Committee. The National report must be based on data provided by the relevant Ministers national statistics and must reflect the true state of affairs at the Material time. The Convention as N. Cantwell puts it, 'covers the three P’S of Provision, protection and participation. '70 These, no doubt, all children are entitled to. The Convention should hence be seen as the cornerstone of a new normal ethos for children. For it transposes moral ethos into an International legal and binding Instrument. For this reason the importance of this convention cannot be denied.

From the Zambian perspective, government does to some extent seek to improve the welfare of children. But, as the human Rights report states, 'sources and ineffective implementation of social programmes adversely affect the welfare of children and adults alike. '71 Government recently launched a new programme of action known as National Programme Action (NPA). It is a commitment by government and the people of Zambia to the Zambian Children. It is a statement of a set of goals which it will undertake to establish by the year 2000. Its achievements are yet to be seen as it was recently established. It must, however, be noted that due to harsh economic conditions both urban and rural children must work in the Informal sector to held their families make ends meet. The minimal legal age for employment of children is 16 years. However, this law is not enforced for those who work in the subsistence, agricultural, domestic service and Informal sectors where persons
below the age of 16 are often employed. In urban areas children commonly engage in street vending. In this light, the Zambian government must do a lot more for children in Zambia so that life is breached into the Convention of the Rights of a child to which Zambia is a party. Children are the future. As such, they need love, happiness and understanding. For this reason, parents and the state must work hand in hand so that there may be a better future for children ahead.

2.7 THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS

'Within the context of law in the post colonial era, the African Charter on Human and Peoples Rights is a beautiful jewel conceived by African in order to enhance its self-conscience, to present a new image of the necklace of the World's peoples, to make a special place for itself in the concert of Nations, to play from time to time, a significant role in the management and conduct of World affairs. '

The African charter on Human and Peoples rights is the governing document of the Organisation of African Unity. It was adopted in 1981. It is undoubtedly an important link in the momentous work that Africa has undertaken in its march towards humanity. For it must be noted that even at regional level nations must work together in an effort to ensure that the rights of all citizens within that continent are protected and enhanced.

The charter includes a preamble which recalls the principal objectives of the Organisation, as well as a total of sixty-eight articles, divided into three parts. The first twenty-nine articles proclaim the rights and duties. The second part entitled, 'measures of safeguards' concerns itself entirely with the African Commission on human and Peoples Rights. That is, its composition, organisation, sphere of competence and principles applicable in its activities. The third part entitled general provisions includes practical measures concerning signature, and ratification of the charter amongst other things.
The preamble is in itself a programme for Human Rights. It recalls that the Charter of the Organisation of African Unity provides for Freedom, equality, Justice and the legitimate aspirations of the African Peoples. It reaffirms the solemn pledge made by member states to co-ordinate their actions in order to remove all forms of colonialism from African so as achieve a better life for their peoples. The historical traditions and values of African Civilisation are drawn upon in order to affirm the importance traditionally attached to these rights and freedoms in Africa. It is evident that much time and care was spent on drafting the preamble. According to T.O. Elias, almost all the time spent on preparing the Charter as a whole had been devoted to this preamble alone, as so much store had been set by African Leaders on the postulates enunciated in the preamble of the Charter.

The African Charter on human and People’s rights was careful to enumerate the individual rights of the human being. They include the fundamental rights established by Charters and Conventions. These include equality before the law, equal protection of the law, the right to Freedom of Movement and the right to Information.

The concept of equality imposes on the state in article 18 ‘the duty to eliminate every discrimination against women and also to ensure the protection of the rights of the women and the child as stipulated in International declarations and conventions. These include freedom of conscience, religion and opinion. The same is true of fundamental collective freedoms among which are freedom of association and assembly. However, the former may be enjoyed provided that he abides by the law while the latter is ‘subject only to necessary restrictions provided that he abides by the law in particular those enacted in the interests of National security, health, ethics and rights and freedoms of others.

The second part of the Charter constituting measures of the safeguards is of considerable importance. It is devoted to the composition, organisation, competence and
procedures of a Commission. Article 30 clearly stipulates that the Commission shall be
established to promote human and Peoples rights and to ensure their protection in Africa. The 11
members shall be chosen from African personalities of the highest reputation known for their
high morality, integrity impartiality and competence.

Part three of the Charter headed “general provisions” deals with issues such as the
ratification of the Charter. Article 67 provides that the secretary General of the Organisation
shall inform member states of the deposit of each instrument of ratification or adherence.

The promulgation of the African charter, constitutes, in the eyes of Africans, an
important step in their struggle to establish the rule of law in their continents. However as
Nguema states, it is in some aspects still a far cry from responding to the hopes and legitimate
aspirations of the population it was meant to serve. To illustrate, though states may report to the
Organisation if a member state is violating the conditions of the charter, in practice nations have
stood by and watched as African Leaders have committed atrocities against their citizens, such as
the reign of Idi Amin in Uganda. Hence work must be done to improve things. It is hoped that
Zambia as a member state will at present and in the future strive to serve as a true
embodiment of rights and freedoms stipulated in the Charter.

CONCLUSION

Various Conventions, both Internationally and regionally which are all aimed at flustering
and enhancing human rights have been adopted. Zambia, being a signatory to all the foregoing
Conventions, must ensure that these conventions are given life through law or else the whole
essence of ratification of these treaties is emptied. In this light the next Charter shall hence focus
on Zambian Law, so as to establish whether or not these Conventions have fact been Incorporated
into Zambian Law.
ENDNOTES


8. Ibid., at 10.


10. Ibid


12. Council of Europe; Supra note 7, at 16.

13. Thomas Buergenthal, Lovis and Sohn; Supra note 6, at 516.
14. Gaius esejoiter; supra note 2, at 89.
15. Thomas Buergenthal, Louis and Sohn; supra note 6, at 519.
16. Ibid., at 519.
18. Ibid.
21. Ibid., at 273.
22. Zizzamia; supra note 11, at 11
23. The United Nations; Supra note 1, at 191.
24. Chanda; Supra note, at 24.
26. Ibid.
27. Ibid.
28. Covnal of Europe; Supra note 7, at 33.
29. The United Nations; supra note 1, at 192.
30. Council of Europe, supra note 7, at 48.
31. The United Nations; supra note 1, at 192.
32. Michelo Hansungule 'Human Rights protection system in Zambia; (a paper prepared for Presentation to a seminar on Democracy and Human Rights Organised by the Swedish Embassy); Lusaka, 1996, at 1.


34. The United Nations; supra note 1, at 192.

35. Ibid; at 193.

36. Moses Moskowitz; supra note 33, at 103.

37. Chanda; supra note 20, at 24.

38. United Nations; supra note 25, at 39

39. Council of Europe; supra note 7, at 18.

40. Ibid.

41. Moskowitz; supra note 33, at 109.

42. Council of Europe; supra note 7, at 18.

43. United Nations; supra note 25, at 48.

44. Ibid.

45. Moskowitz; supra note 33, at 109.

46. Steiner and Alston; supra note 19, at 263.

47. Ibid.


49. Ibid.

50. Rebecca Cook 'claiming our place: Working the human Rights system to women’s advantage: (Institute for women, Law and Development, USA, 1993) at 39.

51. Council of Europe; supra note 7, at 83.
52. Ibid.


54. Ibid, at 78.

55. Council of Europe; supra note 7, at 85.

56. United Nations; supra note 25, at 156.

57. Council of Europe; supra note 7, at 86.

58. Ibid.

59. Ibid.


65. Ibid, at 214.


67. Flekkoy; supra note 64, at 218.

68. Veerman, supra note 66, at 536.

69. Ibid.

70. Ibid, at 214.


72. Ibid, at 12.

'There is need for Zambia to follow up ratification of International Human Rights Instruments... by the legislation adopting the application of their provisions in Zambian Law if the ratification is to have meaningful effects on the protection of Human Rights.'

- R.M.A. Chongwe
CHAPTER 3

TO WHAT EXTENT DOES ZAMBIAN LAW INCORPORATE THE
PROVISIONS OF INTERNATIONAL HUMAN RIGHTS
CONVENTIONS

INTRODUCTION

3. This Charter embarks on a critical examination of the Zambian Law. It further addresses the
Key question as to whether the provisions of the International human Rights conventions to which
Zambia is a party have in fact been incorporated into Zambian Law. It thereby brings to the fore the
effects and drawbacks of non compliance with Internationally set human rights standards.

3.1 THE NATURE OF ZAMBIA'S LEGAL SYSTEM: DUALISM

Zambia, as the previous charter has already shown, is a signatory to a number of International
human rights conventions. It has signed, acceded or ratified the following conventions and
Declarations: The Universal Declaration of Human Rights (1948), the International Covenant on
Civil and Political Rights (1966), The International Covenant on Economic, Social and Cultural
rights (1966). The Covenant on the Elimination of All Forms of Discrimination Against Women
(1979), the Covenant on the Rights of a child (1989) and the African Charter on Human and Peoples
Rights (1981), to mention but a few. None of these International Instruments, however, can actually
be applied directly to Zambia unless they are specifically incorporated into domestic law. To
Illustrate R.M.A. Chongwe states, ‘Ratification of the International Instruments without specific
adoption of the provisions of such Instruments in Zambia’s domestic Law has the consequence that
the state is not bound by such Instruments. ‘1

The reason for the foregoing lies in the nature of Zambias’ legal system, namely dualism. For
it must be noted that as one of her colonial legacies, Zambias’ legal system is dualist. This means
that in order for the protection mechanism in the International human rights Instruments to be locally effective they must be enacted in accordance with domestic law making process.

It would be apt at this point to make a clarification as regards the theories that have been expounded regarding the relationship between International law and state law. There are two main theories which are known as Monism and Dualism. 12

According to Monism International law and state law are concomitant aspects of one system. That is, law is regarded as a single unit composed of binding legal rules, regardless of whether those rules are obligatory on states, on Individuals, or on entities other than state. 13 Monists believe that the science of law is a united field of knowledge.

According to Dualism, International law and state law represent two entirely distinct legal systems. International law having an Intrinsically different character from state law. Triepel argue that there are two fundamental differences between state law and International law. 14 The first is that the subjects of state law are individuals, while the subjects of International law are states solely and exclusively. Secondly their juridical organs are different; the source of state law is the will of the state itself while the source of International law is the common will also known as gemeinville of the states. Thus the two systems are totally different.

The discussion concerning Monism and Dualism would be incomplete without briefly referring to certain theories concerning the application of International law within the municipal sphere. According to the specific adoption theory, the rules of International law cannot directly be applied within the municipal sphere by state courts on otherwise; In order to be so applied such rules must undergo a process of specific adoption or specific Incorporation into municipal law. 15 In the case of treaty rules it is claimed that there must be a transformation of the treaty, and this transformation of the treaty into state law, which is not merely a formal but substantive requirement alone validates the extension to individuals of the rules laid down in treaties. Thus the
transformation theory. According to the delegation theory, there is delegated to each Constitution by Constitutional rules of International law, the right to determine when the provisions of a treaty or Convention are to come into force and the manner in which they are to be embodied into state law.

6 The procedure and methods to be adopted for this purpose by the state are a continuation of the process begun with the process of the conclusion of the treaty or convention.

Regardless of the manner in which International law is Incorporated into state law it cannot be overemphasised that it is imperative for the provisions of International human Rights Conventions to be Incorporated into Zambian law. It is insufficient to ratify Conventions without enforcing them. It is true as Schwartz and Wade state that, ‘All we need now in the area of human Rights is their enforcement. We already have enough analysis, too much verbiage and an endlessly expanding list of claims being inflated to ‘rights. ’7 Zambia must hence make a massive effort to Incorporate International Conventions into local law. Only then can the Zambian people be subjected to their full benefits.

3.2 THE ZAMBIAN CONSTITUTION: BILL OF RIGHTS

The Bill of rights in the Zambian Constitution classifies fundamental rights into five categories. These are human dignity, life and personal liberty, intellectual and political rights, private enterprise and property. The rights and freedoms protected under the Zambian bill of rights include the right to life, ‘8 the right to personal liberty, ‘9 freedom from slavery and forced labour, ‘10 freedom from inhuman treatment, the right to property and freedom from its deprivation, ‘12 the right to privacy of home and other property, ‘13 and the right to protection of the law, ‘14 They also include freedom of conscience, thought and religion, ‘15 Freedom of expression, ‘16 Freedom of assembly and association, ‘17 Freedom of movement, ‘18 and freedom from discrimination. ‘19
It is, however, worthy to note as Dr. A.W. Chanda does, that, ‘the bill of rights and other laws provide only for a fraction of the rights contained in International Instruments. ‘20 The bill of rights appears to cater only for first generation rights, that is, civil and political rights and ignores second and third generation rights, that is Economic, Social and Cultural rights.

The Zambian bill of rights is not absolute but largely derogable. Most of the rights are subject to broad exceptions. This can be identified as one of the Constitution’s greatest weaknesses. An individual cannot justly be granted a right in one breath and then have it taken away in the next. In this regard, it is important at this point to examine some of the provisions of the Zambian bill of rights.

3.2.1 THE RIGHT TO LIFE

The first right guaranteed under the Zambian Constitution is the right to life. However, as Professor L. Shimba rightly states, ‘even the more direct given right, that is the right to life is subject to a number of exceptions. ‘21 Article 12 of the Constitution provides for the right to life but it is subject to various exceptions. To illustrate, article 12 (1) states:

‘No person shall be deprived of his life Intentionally except in the execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he is convicted. ‘22

This provision establishes the death penalty in Zambia. Under the Penal Code, murder, attempted murder, aggravated robbery and treason are punishable by death. ‘23 However, deprivation of life without intent is excusable where it is shown that the prisoner not only lacked intention but also that he did not act carelessly or that he acted in self defence, was Intoxicated or so impaired as a result of disability as to have been incapable to decide. ‘24

Further, provocation is a defence to the charge of murder under Section 205 of the Penal Code. However, it was held in the case of Makomelo v The People (197) that this defence can only
be available to the accused if his action bears the necessary reasonable relationship to the 
provocation. 25

The foregoing indicates that Zambia not only subscribes to the death penalty but also that 
it makes the taking of a life excusable in too many circumstances thereby emptying the right to life 
of its very essence. It is insufficient to declare the right but then allow it to be taken away in various 
circumstances without imposing a penalty on the person who does so. This is not what the drafters 
of International Covenants intended.

Article 6 of the International Covenant on civil and Political rights provides that every person 
has the inherent right to life and that no one shall be arbitrarily deprived of their right to life. It also 
provides that in countries which have not abolished the death penalty, criminals shall be sentenced 
to death only for the most serious crimes and in accordance with the law. Article 6 also provides:

'Nothing in this article shall be invoked to delay or to prevent the abolition of capital 
punishment by any state party to the present covenant.' 26

Whilst article 4 of the African Charter on Human and Peoples rights provides:-

'Human beings are inviolable. Every human being shall be entitled to respect for his life and 
Integrity of his person, no one may be arbitrarily deprived of his life. 27 Zambia, having ratified both 
of these conventions is under a serious obligation to ensure that the right to life is protected. The 
International Covenant on civil and Political Rights clearly acknowledges that some states still 
subscribe to the death penalty. If it is imposed however, it must be imposed reasonably and for just 
reasons. Article 6 (6), however makes it clear that the covenant encourages states to completely 
abolish the death penalty.

The African Charter, on the other hand, simply states in precise terms that the right to life is 
to be held sacred and seems to indicate that nothing justifies the taking of a life. The Charter is in 
no uncertain terms totally against the death penalty. Both Covenants advocate the abolition of the 
death penalty.
The state, however, clearly has no intention to abolish capital punishment in line with the desires of International Covenants. To illustrate there are currently approximately 108 inmates on death row in Zambian jails. ²⁸ Most of these have been convicted of treason were all released under presidential amnesty in 1991. Those who are accused of having partaken in the abortive coup attempt last year, however, seem doomed to hang. The Post Newspaper reported recently that at the launching of Trinity Broadcast Network (TBN) Zambia Channel 63, at the hotel International, President Chiluba, preaching on the folly of sin justified the death penalty by stating that anywhere in the World high treason is punishable by death. ²⁹ Zambia is thus no exception. He likened the imposition of the death penalty in Zambia to the Biblical punishment meted towards Adam and Eve in the garden of Eden. ³⁰

Another Common reason given as the justification for the death penalty is that it acts as a deterrent to would be criminals. In this regard it must be noted that in February this year, the death penalty came up for debate in parliament when the House was considering estimates for expenditure for the Ministry of Home Affairs. The Roan member of Parliament, V.J. Mwaanga called for the abolition of the death penalty arguing that there is no evidence to show that capital punishment acts as a deterrent. However, no practical steps have been taken to effect these calls. ³¹ This seems to be the general trend as regards incorporation of treaty provisions. To illustrate, former Legal Affairs Minister Remmy Mushota, stated in 1996, ‘My government is ready to incorporate International humanitarian law for practical and realistic measures, that are appropriate to the Zambian people. ³² Today, however, almost three year later, there is little or no evidence that the provisions of International Conventions will be incorporated into domestic law. Efforts must be made to this effect. As J Kangana rightly states, ‘Regrettably and contrary to public expectation the mere fact that a state has ratified an International human rights instrument, Convention or treaty does not make that Instrument automatically an integral part of that state’s domestic law. ³³ So the state
must comply with the standards of International Covenants that it has ratified by initiating steps which are directed towards incorporating the provisions into local law.

3.2.2 THE RIGHT TO LIBERTY

The protection of the right to liberty is also guaranteed subject to a number of qualifications which however, are requested to have been authorised by law. These include imprisonment, upon reasonable suspicion of his having committed a criminal offence under the law in Zambia or for the purpose of preventing the spread of an Infectious disease. When cholera broke out on the Copperbelt in 1993, authorities announced far reaching measures in terms of the Public Health Act of 1968 to curb the spread of the disease. Some of the measures amounted to Infringements of the personal liberty of individuals as travelling for example was severely restricted. *34

3.2.3 INTELLECTUAL AND PROPERTY RIGHTS

One of the categories of rights protected under the bill of rights is intellectual and property rights. These include the freedom of conscience and religion, freedom of expression and freedom of political assembly and association which are found in article 11 of the Constitution. Though these are natural rights which are necessary to man as a social being and as a political animal, It is said that they greatly affect public security, public order, public morality and health or the protection of the rights and freedoms of other persons.

Though these rights correspond to those of expression, assembly and association which exist in articles 18 to 22 of the Covenant on civil and Political rights and identical rights found in the African Charter on Human and Peoples Rights, the difference lies in the fact that they are absolute in the aforementioned Conventions while in the Constitution, they are derogable. This once again empties the entire article of its very substance. R.M. A. Chongwe rightly states, that the 'Right is given and taken away under some pretext or the right is given but subject to some existing law which
may indeed almost extinguish that right. '35 This is tantamount to not granting the right at all. To illustrate article 18 of the Covenant on Civil and Political Rights guarantees freedoms which include freedom of conscience, thought and religion. They are absolute, whilst article 19 of the Zambian Constitution guarantees these rights subject to any law enacted in the interests of defence, public security and public order amongst other things.

Though the Zambian Constitution in article 19 appears to echo what is provided under article 18 of the covenant, the fundamental difference lies in the fact that in the convention, the right is absolute whilst in the Zambian Constitution extensive derogations are provided for. Therefore, in this instance Zambia may claim that it has incorporated this provision into its local law, but this is of no significance, what so ever, if the right is subject to derogations which empty it of its substance and meaning R.M.A. Chongwe, therefore rightly states. 'It is surprising, however, in the case of the Zambian Constitution in general and in the case of the Chapter dealing with the protection of Fundamental rights in particular that the derogatory clauses have remained intact as provided for in the 1964 Constitution, when one takes into account the global development of the human rights jurisprudence over the past 31 years. '36

3.2.4 FREEDOM OF EXPRESSION

With regard to the Freedom of expression, article 20 of the Zambia Constitution is very restrictive on the nature and extent of freedom of expression to be enjoyed by citizens. This is unfortunate for as Dr Sipula Kabanje rightly states. 'In democracies, freedom of expression has especially been singled out as more significant, since it not only protects the individuals right to speak his mind and persuade others but also protects others to have differing views. '37 Although there is provision in article 20 (2) that no law shall make any provision that derogates from the freedom of the press, it is obvious that the Parliamentary and Ministerial Code of Conduct Act does contain provisions which are likely to derogate from the freedom of the Press. In Section 13 (2) of
the Act, a member of parliament or a minister who considers that a statement made in the Press or through other media alleges directly or by implication that he is guilty of some impropriety, may report the breach or breaches in writing to the Chief Justice and request that the matter be referred to a tribunal. Once found guilty of the offence a person shall be liable on conviction to a term of imprisonment not exceeding one year. '38 Such a provision restricts freedom of the press and stifles opinion by journalists on the working of Parliamentarians and Ministers. Since parliamentarians and ministers are public officers, they should allow some measure of criticism in order to guard against abuse of power. The fact that journalists do not have special privileges like lawyers and doctors means that they are forced under pain of imprisonment for contempt of court to disclose sources to whom they had pledged confidentiality. To illustrate, the courts in Zambia have maintained that journalists should not claim any privileges of confidentiality like medical doctors and lawyers. '39 This greatly curtails press freedom.

Freedom of the Press is a vital aspect of freedom of expression. As Dr Kabanje rightly states 'Freedom of Press is an aspect of freedom of expression. In a democratic Society the written word plays a vital role in the formation of Public opinion and the dissemination of ideas. '40 An examination must thus be made of Section 67 of the Penal Code for it has a direct and serious impact on the Freedom of the Press. The International Covenant on Civil and Political rights, provides in article 19 for the Freedom of expression. The African Charter provides for this right in article 9. Article 20 of the Zambian Constitution, as already stated, provides for Freedom of expression and Freedom of the Press. This Freedom is however made subject to other laws that are reasonably required in the Interests of defence, public security, public order...... '41 the effect of this provision is that in essence it allows the freedom of expression to be suppressed.

To illustrate the Penal Code in section 67 creates offences of publishing false news with intent to cause fear and alarm to the public, the penalty for which is imprisonment for three years.
It shall be no defence to the charge in this sub section that he did not know or did not have reason to believe that the statement, rumour or report was false and unless he proves that prior to publication he took reasonable measures to verify the accuracy of such statement, rumour or report. 42

It is also an offence under section 69 of the Penal Code to defame the president whether by writing, printing or any other manner. The Penalty on conviction is three years imprisonment. The stringency of these laws and their effects on Journalism has been a constant concern of our country both before and after independence. It is without doubt that this provision stifles press freedom. In the case of Fred M'membe and Bright Mwape V Attorney-General (1995), the supreme court upheld the constitutionality of section 69 of the Penal Code, which creates the offence of defamation of the President. The Court held that the law was enacted to safeguard the integrity of the head of state and to hold him in high esteem because of the Office. It ruled that the Office of president was protected from any defamatory remarks or publications by the media or citizens so that anyone who flouted that law was, according to section 69 liable to prosecution. 43 Thus in the Times of Zambia of 26th August 1987, the then editor rightly complained of 'people holding important office muzzling the press through claims of defamation. 44

The Penal Code in Section 53 empowers the president in his absolute discretion to prohibit such publications which in his opinion are contrary to public interest. Such prohibition is to be published in the government Gazette and any local newspaper as the president may consider necessary. These presidential powers to ban publications are supported by Penal sanctions. Section 54 of the Penal Code makes it an offence to import, publish, sell, offer for sale, distribute or reproduce any prohibited publication. The penalty of this offence is imprisonment for two years or a fine.
As of April, 1995, there were over 300 prohibited Publications in Zambia. The 1997 human Rights report also states that in February 1996 government banned Issue 401 of the Post for allegedly revealing state secrets. It was held in this case that the accused had no case to answer as the essential ingredient of knowledge or reasonable ground for belief that the information was covered by the state security Act had not been proved. 45 The government also indefinitely incarcerated three post writers on the orders of the speaker of the house of Parliament. It must be noted that the presidential powers to ban publications are still intact and their exercise in any particular case must raise questions under article 19 (3) of the International Covenant on Civil and Political Rights which provides that freedom of expression will only be exercised subject to laws which provide for respect for the rights and reputations of others, and for the protection of national security or for public order, public health or morals. It must be noted that the government or its appointed officials have also over the years filed numerous libel and defamation suits against the Post in response to a series of headlines and stories focusing on issues of corruption and controversial government policies. It is thus stated of the year 1997 in particular that the government 'Persisted.....in attempts to limit the freedom of the Press and restricted citizens right of peaceful assembly. 46

The foregoing paints a very dismal picture as regards the general respect for press freedom. For press freedom is vital to any society. In the words of Thomas Jefferson, 'if I were to decide whether we should have a government without a free press or a free press without a government, I would prefer the latter. 47 It is insufficient to print rights on paper when in effect no attempt is made to enforce them. Dicey rightly states. 'It is more important to provide a remedy for the enforcement of particular rights than a declaration of the rights of merit. 48

It can thus be said that Zambia needs to develop a culture of tolerance of views expressed by others with which one may dispute. People in political authority should have the vision and competence to be part of such a culture. We should have in our constitution a provision similar to
the one in article 37 of the Malawian Constitution which is couched in similar terms of the Constitution of the Republic of South Africa. In article 23 it provides that every person has the right of access to all information held by the state in so far as such information is required for the exercise of his rights.

3.2.5 THE RIGHT TO HUMAN DIGNITY

The Zambian Constitution also deals with rights which affect an Individual’s human dignity as a person. The dignity of a person is rated above all rights. Denied of his dignity the human person is not worth anything. The rights which pertain to human dignity are freedom from torture or inhuman or degrading treatment (article 15), freedom from slavery (article 14) and freedom from discrimination and forced labour. These freedoms are also found in the International Covenant on Civil and Political rights respectively in articles 7, 8, 10 and 16. It must once again be noted that unlike in the Covenant, these rights are derogated from except that concerning torture. Article 14 (2) of the Zambian Constitution prohibits forced labour. In practice, however, there are several examples to show that freedom from forced labour has yet to be transformed into a reality. In the majority of cases people are still being compelled to do communal work much in the same way as before Constitutional rule. For example, some Chiefs in some parts of the country still demand communal labour from their subjects as a matter of customary duty. Even the government has directly or indirectly encouraged forced labour in some schools. School pupils in primary and secondary school are frequently made to do communal work, sometimes clearing fields for farmers in return for payment to the school. The government must ensure that forced labour is eliminated in accordance with the Constitution.

3.2.6 PROPERTY RIGHTS

Another category of rights dealt with under the Constitution is property rights. With regard to this the Constitution errs generously. It does not guarantee the right to property. Its acquisition,
use and disposition. Under the Constitution the right to property exists only to the extent that compulsory acquisition by the state is restricted. The scope of the provision is limited only by the failure to guarantee the right to acquire, use and dispose of property but also the fact that the restriction on the government's power of compulsory acquisition is very slight. Under the Land Acquisition Act (1972), the president can acquire land including immovable property of any description where in his opinion it is expedient or desirable in the national interest. These extremely generous powers of the president in principle limit the Content of the guaranteed right.

With regard to the freedom of enterprise, although strongly emphasised under the current Economic policies of the state, it is guaranteed only to a limited extent. It is true the Constitution guarantees liberty but it is not used in the generalised sense used in the American bill of rights to embrace both freedom from physical restraint and freedom of enterprise but 'personal liberty which in this context refers simply to freedom from restraint of the person by arrest or detention.

In view of the foregoing there are two main points to be noted as regards the Zambian Constitution. One is that where the right is granted in accordance with International provisions, it is derogated from such that it empties the entire article of its meaning. Secondly, some of the provisions found in International Conventions which Zambia has ratified are simply not addressed in the Zambian bill of rights at all like women's rights and children's rights which shall be discussed in the pages to come. The current bill of rights is hence highly inadequate and incapable of ensuring the adequate protection of human rights. It is, therefore, hoped that the government will make a massive effort in undertaking the herculean task of ensuring that all the provisions which Zambia has ratified in International Covenants are adequately addressed within the Constitution.

3.2.7 THE DIRECTIVE PRINCIPLES OF STATE POLICY

It is, however, encouraging to note that the government has inserted a part in the Constitution dealing with the directive principles of state policy. This is in part ix of the Constitution. In article
112 the state undertakes to create conclusive conditions for the enhanced lives of citizens. These include clean and safe water, adequate educational opportunities and a clean and healthy environment for all. These provisions are compatible with those found in the International Covenant on Economic, Social and Cultural Rights. Though those found in the covenant are broader. To illustrate the covenant also provides for issues such as special protection for mothers during a reasonable period before and after birth (article 10 (2) and special protection for all children and young persons (article 10 (3). It is therefore more specific whilst the Constitution is very general. To further illustrate whilst the covenant specifically deals with measures to be taken to eradicate hunger (article 11), the Constitution simply speaks of a favourable conditions under which all citizens shall be able to secure adequate means of livelihood (article 112 (c)). The directive principles of state policy thus reflect the economic, social and cultural rights guaranteed under the Covenant to a somewhat limited extent in that they are rather general rather than precise and specific.

It is also worthy of note that these directives are not justiciable. This is provided by article 111 of the Constitution. The means that they are not legally enforceable in any court, tribunal or administrative institution or entity. This is owing to the fact that their application is subject to state resources. This is understandable owing to the fact that if the state has no resources it cannot reasonably be expected to apply these principles. It is just hoped that state resources will in fact allow these directive principles to be applied for the benefit of society as a whole.

3.3. **THE CRIMINAL PROCEDURE CODE**

The Criminal Procedure Code is a statute which lays down comprehensive provisions relating to all Criminal Investigations. It addresses various issues such as warrants, provisions as to bail, procedures during trial, examination of witnesses, judgement and compensation. It provides an overall framework as regards criminal procedure.
We shall first examine International provisions relating to criminal procedure before proceeding to local provisions so as to examine their compatibility.

In the International context the UN Charter provides in article 10, 'Everyone is entitled in full equality to a fair and Public hearing by an Independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him.

'52 Whilst the African Charter On Human and Peoples Rights provides in article 7:-

'1. Every individual shall have the right to have his cause heard

This encompasses:-

(a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, law, regulations and customs in force;

(b) The right to be presumed innocent until proved guilty by a competent court or tribunal;

(c) The right to be tried within a reasonable time by an impartial court or tribunal. '53

In the national context the constitution provides in article 18(i)

'If any person is charged with a criminal offence, then unless the charges is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an Independent court established by law. '54

Article 18 (2) proceeds to outline various entitlements of the accused person such as the presumption of innocence and facilities to examine witnesses. The Constitution is in line with International Conventions in terms of providing for a fair trial of the accused person.

The Criminal procedure Code, however, gives more detailed provisions as regards the treatment and rights of an accused person.
The question to be examined, then, is if indeed the accused persons in Zambia are treated according to the provisions of these International Conventions and national legislation.

As already stated International Conventions require that an accused person be granted a fair trial by an Independent Judiciary. Article 18 (I) of the Constitution also provides for a fair and impartial judiciary. The important link between this provision of the Constitution and Criminal Procedure Code lies in the fact that it is the Criminal Procedure Code which specifically states which courts will conduct the trial thus constituting the ‘Independent judiciary’. To illustrate Part 2 of the Criminal Procedure Code deals with the powers of the court and provides in particular in section 4:-

‘Subject to the other provisions of this code, any offence under the Penal Code may be tried by the High Court. ‘55

The issue to be examined, then is whether this judiciary as provided by the Criminal Procedure Code really is impartial and Independent. This is a vital aspect of the 5 concept of a fair trial for only then can justice really be said to be done. For, as Honourable Justice Earnest Sakala rightly states ‘Since the principle of fair trial is the Corner stone in the administration of justice, then the causes or sources of denial of a fair trial which result in miscarriages of justice in a judicial system must be identified and viewed as a very serious breach of human rights. ‘56 The idea that a person who is charged with a criminal offence should be afforded a fair trial within a reasonable time by an Independent and impartial court established by law is among the fundamental principles underlying the principle of a fair trial.

The Independence of the judiciary in Zambia is, however, highly debatable. This perception derives from at least two angles. In the first place, the manner in which judges including the Chief Justice are appointed to their respective offices raise doubt about their Independence from the appointing authority. Currently there are two authorities who are involved in the appointment of the Chief Justice, Deputy Chief Justice and Supreme Court judges, namely the President and the
National Assembly. According to article 93 of the Constitution the President appoints these officers after which the National Assembly ratifies the appointments. In exercising his powers, the president is not requested to consult nor seek advice. There is no procedure he is required to follow.

57 The contention here is not that the judiciary lacks independence only on account of the appointment provisions. For indeed there are provisions which ensure judicial independence such as security of tenure of office. It is simply that the independence of the judiciary is reasonably very doubtful, considering the appointment provisions, for they will obviously show some loyalty to the person who has guaranteed them their monthly paycheck. Thus the expression 'biting the land that feeds you' The mere concept of 'Presidential appointee' is incompatible with the concept of independence of the Judiciary.

Secondly, the general trend or pattern of decisions in quite a number of cases indicates the judiciary’s tendency to finding in favour of the state. Also the grounds upon which the state wins many of these cases are in most cases very flimsy. To illustrate, the case of William Banda V Attorney General (1995) demonstrated the perceptibly 'warm relations' between the state and certain sectors of the Judiciary. 

58 The appellant an outspoken member of the opposition UNIP was arrested on the grounds that he was not a Zambian National but a Malawian. The Chipata High Court which tried him held that he was not Zambian only on the flimsy ground that he had failed to prove that he was born in the Zambian village he claimed. This judgement was bad in law, because Mr Banda was deported merely on that ground alone, there was no substantive or concrete reason to justify his deportation other than that he had been unable to prove that he was born in the village he claimed. On appeal, the supreme court upheld this decision and he was deported.

Further in the case of Kasonde and five others V Attorney General (1994) the facts were:

59 Six members of Parliament (MP’s) from the ruling MMD resigned at the same time alleging corruption in their party. The subsequently addressed a Press Conference at which they announced
plans to form a new party. Later, the Speaker of the National Assembly wrote the Director of elections informing him that the six seats for the MP’s had fallen vacant whereupon the Elections Office announced dates for the by-elections in the affected Constituencies. The MP’s attempted to stop this development. The High Court issued a temporary order to prevent the elections while the case was being heard. In Court the MP’s argued that they had not forfeited their seats in Parliament by the mere fact of their resigning from MMD. According to their understanding, an MP who resigned from a political party on which he stood for the National Assembly did not cease to be MP but continued as an Independent. They derived this interpretation from article 71 (2) (c) of the Constitution which provides:-

‘71 (2) A member of the National Assembly shall vacate his seat in the Assembly;

(c) in the case of an elected member, if he becomes a member of a political party other than the party of which he was an authorised candidate when he was elected to the National Assembly, or if having been an independent candidate, he joins a political party. ‘60

According to the MP’s, their resignation from the MMD did not, by itself, constitute a vacation from the National Assembly unless they joined another political party but some of them merely announced the formation of a party which was not even registered at the time of the announcement, therefore they could not be said to have vacated their seats. The state argued that on the contrary, the resignations from the MMD Constituted a vacation from the National Assembly. The High Court decided in favour of the MP’s but the supreme court reversed this decision and, rather, upheld the decision of the MP’s as a vacation of their seats in the National Assembly. To arrive at this decision, the court had to literally read words into article 71 (2)(c) in order to hold that what the article actually means is that an MP who resigns from his party vacates the National Assembly even if he does not join another party. ‘61
The limited space granted does not allow an exhaustive examination of all the cases in which the Judiciary has clearly acted partially, but it is undisputable that there is a visible pattern of decisions in favour of the state this is especially with regard to recent times. This is unfortunate because if the Judiciary cannot be independent then the trial cannot be fair. For as it was rightly stated by Lord Halsbury in Scott v Scott (1913):

'The Judiciary plays a vital role in the realisation of the principle of a fair trial, However, for the Judiciary to effectively play its role, It must be independent. The Independence of the judiciary is a means to achieve an impartial and efficient judgement. '62

In view of the foregoing an accused person in Zambia stands little chance of being granted a fair trial. It might be helpful for the constitution to provide for an alternative method for the appointment of judges. Though as already stated this is not the only reason for their lack of Independence. It is hoped that the trend of partial judgements will change in favour of justice and fairness to the accused person.

The Criminal Procedure Code, it is comforting to note, does however, fully take into account the interests of the accused person in criminal proceedings in accordance with International standards. To illustrate article 30 provides that where an accused person is arrested without a warrant he must without unnecessary delay be brought before a magistrate. Further, article 33 provides that if a person is taken into custody without a warrant for an offence whose punishment is not death and if he is not brought before a court within 24 hours, then he must be released upon executing a bond. Thus the Criminal Procedure Code is faultless. Its provisions tally with International standards.

The flaw lies in the fact that the provisions of this statute are in practice not followed. In practice authorities hold detainees for more than one month from the time of arrest to the first appearance before a magistrate. In many cases an additional period of six months elapses before a magistrate commits the defendant to the High Court for trial. '63
According to the US Report on Human Rights in Zambia, 'Approximately 2,000 of the 12,000 jailed prisoners are awaiting trial on Criminal charges. In some cases defendants have been awaiting trial for ten years. These long delays are as a result of inadequate resources, inefficiency, lack of trained personnel and broad rules of procedure that give wide latitude to prosecutors and defence attorneys to request adjournments.

Section 123 gives provisions as to bail upon the satisfaction of certain conditions. Although there is a functioning bail system, over crowded prisons reflect the large number of detainees accused of serious offences for which bail is not granted. '64 These include treason, murder and aggravated robbery. Also, many prisoners lack the financial resources to post bail. The government legal aid office is responsible for providing legal representation to poor detainees or defendants in criminal or civil matters. In practice few are assisted. In 1996 the office had only 16 attorneys to cover the entire country and a budget of $110,000. '65

In view of the foregoing, it is commendable that the Criminal Procedure Code is in line with provisions of International Covenants. It's provisions must, however, be enforced, lip service is insufficient. Efforts must thus be made in ensuring that these important provisions are enforced.

3.4 WOMEN’S RIGHTS

By becoming state parties to the Women’s Convention, parties agree to condemn discrimination in all its forms. The preamble to the Women’s Convention, notes that the UN Charter, the Universal Declaration of Human Rights and the Declaration Against women promote equality of rights of Men and Women. However, the drafters expressed concern in the preamble, that despite the various instruments, extensive discrimination against women still exist.

Zambia is a signatory to the Convention on the Elimination of all Forms of Discrimination Against Women (herein after the Women’s Convention). Article 5 of the women’s convention requires all state parties to take all appropriate measures to eliminate discrimination against women.
Justice J.C. Mutale says 'it is my argument that a state that ratifies this should own up and automatically take all steps against all forms of discrimination.'

To appreciate the magnitude of the problem of gender inequality violations of women's human rights and the lack of will to address the situation, Lillian Mushota states 'We must address the looking glass of our society. The looking glass or mirror reflects the rights (or lack of rights) of all peoples, the strategies or (lack of strategies) for the promotion and protection of these rights (if any) and the provision of and access to (or lack of denial or obstruction to access to) services.'

This is reminiscent of Ghandi's statement that the level of Civilisation of a society can be judged by the manner in which it treats its most vulnerable.

Women are indeed among the most vulnerable group in society. However, the current constitution does not directly address women's rights. In this light Dr Hnasungule notes 'Government though a party to the Convention has not taken steps to transpose this covenant or some of its provisions into domestic law.' The question then, as Dr A W Chanda rightly inquires is 'why hasn’t Zambia ‘transformed’ the International human rights treaties it has ratified into domestic law?' There is no specific clause guaranteeing the equality of men and women although article 11 of the bill of rights provides for equality to fundamental rights and freedoms but only in general terms. Article 23 guarantees freedom from discrimination on various grounds such as sex and marital status. However, this prohibition is not complete. Paragraph 4 provides that the prohibition shall not apply to any law so far as that law makes provision.

(c) with respect to adoption, marriage, divorce, devolution of property on death or other matters of personal law;

(d) for the application in the case of members of a particular race or tribe of customary law with respect to any matter which is applicable in the case of other persons.
Article 23 evidently allows discrimination against women in matters relating to divorce, devolution of property on the death of a spouse or present, custody of children, adoption, maintenance and other personal laws because they are governed by customary law. This is a grave Injustice to women.

Other than article 24 which deals with discrimination, the Constitution has not focused on this subject to any extent that would be necessary to ensure the protection of the rights of women. It is, therefore, true as Mushota states that there is need for specific legislation providing for appropriate machinery to promote human rights and women's rights alike to make equality a democratic requirement. 72 As Justice Mutale notes, 'International norms and Conventions are now the International law and should be domesticated without an eye blink not blindly though. 73

It must be noted that the Constitutional Review Commission suggested the introduction of reforms in the system of Protection of Women's rights in Zambia. The specific rights suggested by the Mwanakatwe Commission are that women have the right to maternity leave with full remuneration, that women have equal rights with men regarding the use, transfer, administration and control of land and enjoy the respect to marriage, that women have the right of access to education and information on family planning so as to enhance their good health, that women have the right to equal treatment and opportunity to participate in the political, economic, social and cultural life of the nation and that women be consulted on issues and projects affecting their interests. Also, that all laws, customary practices and stereotyped attitudes which are against the dignity, welfare or interest of women or which otherwise adversely affect their physical and mental well being be prohibited. 74 The government, however, rejected the idea on the ground that equality of sexes was already guaranteed in the constitution, while specific rights relating to women are provided in a number of statutes such as the Employment Act, the Labour and Industrial Relations Act, the Intestate Succession Act and the Marriage Act. 75
In this light the Marriage Act only describes a framework for concluding marriages with the Western system. Although it was referred to, the Marriage Act does no more than provide this framework. In fact the Act is itself in certain aspect discriminatory. To illustrate, section 17 of the Act provides that a person under 21 years requires written consent of the father first and if he is dead or of unsound mind, the mother’s consent may be obtained clearly this provision puts women in a position of subordination to the man and destroys the principle of equality.

The Marriage Act is inadequate legislation in ensuring the promotion and protection of women’s rights. It is but a skeleton and does not reach the heart of the matter of women’s rights what is required is a detailed and comprehensive piece of legislation laying out step by step the rights of women, so that their protection is ensured. Mushota states of women. 'They are special or vulnerable groups because hitherto their rights have been overshadowed by blanket rights to such an extent that women’s rights have not been classified as women’s rights.'

Zambia must prove that it is women friendly by implementing the human rights conventions to which she is party. Until attitudes change with regard to discrimination against women, society will be deprived of their worthy contribution. Efforts must therefore be made to incorporate the provisions of the women's convention into domestic law or else society will forever progress at a snail's pace.

3.5 CHILDREN'S RIGHTS: THE JUVENILES ACT

Children are undoubtedly the most vulnerable group in any society. In the words of Mabula. ‘Although the majority of us profess to love children, the reality of the lives of many children does not attest to this. If this was the case we would not see so many problems of children in extremely difficult circumstances such as street children, orphans living in child headed households or the many reported cases of horrific physical and sexual abuse. There is no doubt that children need the special protection provided by the human rights framework.'
What constitutes the human rights of children and their protection must be seen from three levels. At the global level there is the United Nations Convention on the Rights of a child and other International Instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. At the regional level there is the African Charter on the Rights and Welfare of a Child. At the national level there in the Zambian Constitution and other laws such as the Adoption Act, the Affiliation and Maintenance Act and Juveniles Act.

Zambia has ratified all the relevant conventions at International level. It has, however, surprisingly not ratified the African charter on the Rights and Welfare of children, which is the only regional Instrument on children’s rights.

Zambia is under an obligation to ensure that these conventions are implemented into local law. ‘Even the fact that we are a disadvantaged people groaning with a crushing burden and struggling to cope with the basic necessities will not let us off the hook.’

The current provisions relating to children’s rights are inadequate to effectively deal with children’s rights. Attempts to incorporate the rights of children in the constitution were rejected on the ground that there are other pieces of legislation which already protect the rights children. Some of the specific rights of the children proposed by the Commission were the right to life; to a name and Nationality as from birth; the right of the child to be cared for by its parents or legal guardians; the right to basic education and that children born out of wedlock be granted equal rights and entitlements as those born in wedlock.

Zambia does have more than 20 pieces of legislation which govern matters concerning the rights of a child. Some of them reflect some of the principles contained in the children’s convention. For example, the Affiliation and Maintenance Act has expressly Introduced the concept of the best interests of the child to Zambian Law. The constitution also provides in article 24 for the protection
of young persons and there are other Acts such as the Juveniles Act which deals with children’s rights.

Overall, however, Zambian Law generally needs to be revisited with regard to the protection of children’s rights. To illustrate, article 28 of the children’s convention, to which Zambia is party, provides that state parties must make primary education compulsory and available free for all. Zambia has ratified this convention and yet the Education Act does not provide for free and compulsory Primary Education. Parents must pay to send their children to school. Zambia has failed and neglected to incorporate this crucial provision into local law which is why numerous children from disadvantaged families remain uneducated.

The area of the juvenile Justice system is also very important therefore it requires special attention. The children’s convention also deals with this issue. In Zambia, the administration of juvenile justice is regulated by the Juveniles Act.

Sections 58 and 62 provide for separate detention of juveniles whilst on trial, which includes removing a juvenile from prison to some other place if there are no facilities to keep them separate. This is in accordance with article 37 of the convention on the Rights of a child which provides that the juvenile offender will be separated from adults. The fact of the matter is, however, that in Zambia children are kept in remand with adults in total disregard of the provisions of the law and the International Covenant thereby violating the rights of the child.

Further, article 37 of the children’s convention provides:-

‘Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of his or her age.....’

It is an unarguable fact that corporal punishment is a sign of disrespect to a person’s dignity. Yet the Juveniles Act section 73 (I) (e) provides that a juvenile can be caned as a form of
punishment. 81 This shows, as T.K. Mabula notes that canning is a prescribed form of punishment.... 82 This is contrary to International provisions and must be changed in respect of the juveniles rights.

In the same light article 28 (2) of the children's convention provides:-

"State parties shall take appropriate measures to ensure that school discipline is administered in a manner consistent with the child's dignity." 83

Yet the Education Act still provides for corporal punishment even though this is in disrespect of the child's dignity and contrary to the provisions of the treaty which Zambia has ratified.

Further, article 32 of the children's convention prohibits the economic exploitation of the child. In practice, however, due to harsh economic conditions both rural and urban children often must work in the informal sector to help families make ends meet. 84 The minimum legal age of employment of children is 16 years. This law, however, not enforced with regard to children who work in subsistence, agricultural and domestic sectors where children under 16 years are employed to work. In urban areas, many children are street vendors. Hence as T.K. Mabula rightly states, 'the laws prohibiting the employment of children are not broad enough to cover all situations where children are being exploited.' 85

Section 50 of the Juveniles Act provides that any person who causes a child to go into the street and beg will be liable to a fine or imprisonment. Yet, in practice the City streets are swarming with children who are sent out to beg especially with regard to blind people most of them are led by a child who is charged with the duty to beg. This occurs on a daily basis yet the police stand by and simply watch. More must be done for the children to protect their rights.

The covenant on the Rights of a child hence provides a broad framework to guide our law reform and development and its implementation. One of the ways in which Zambia needs to

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proceed to ensure the promotion and protection of human rights of children is by an extensive programme of reform of the domestic law to ensure its compliance with International standards. The other is to close the gap between existing provisions of our domestic law and their implementation, 'Children are the future. There is no better way to foster the growth of a human rights culture in Zambia than to begin with respect for the human rights of children. '86

3.6 **THE EMERGENCY POWERS ACT AND THE PRESERVATION OF PUBLIC SECURITY ACT**

Any assessment of the protection of human rights in Zambia must take into account the legal grounds permitting derogations from the rights which are constitutionally protected. An examination must hence be made of the Emergency Power Act and the Preservation of Public Security Act. Firstly, though, to an analysis of the International Conventions to which Zambia is party regarding the state of emergency.

Article 4 of the International covenant on civil and Political rights provides:-

1. 'In time of Public Emergency which threatens the life of the nation and the existence of which is officially proclaimed, the state parties to the present covenant may take measures derogating from their obligations under the present covenant.....

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2) 11, 13, 16 and 18 may be made under this provision. '87

Articles 6, 7, 8, 11, 15 and 16 include the right to life, the freedom from torture or cruel, inhuman or degrading treatment or punishment, the right to recognition as a person before the law, the right not to be subjected to arbitrary or unlawful interference with privacy, home or family and the freedoms of thought, conscience and religion. Article 4 requires that rights and freedoms may only be limited to the extent strictly required by the exigencies of the situation. That measures taken are not inconsistent with the states other obligations under International law and that they do not include discrimination.
It is vital to also examine the Paris Minimum Standards of Human Rights Norms in a State of Emergency. These were approved by the International Law Association (ILA) in 1984. Based on the International Covenant on civil and Political rights, the European Convention on Human Rights and the American Convention On Human rights, these minimum standards provide a reference model for a rule of law in a state of emergency having relevance well beyond the treaty refines.

The Paris Minimum Standards provide sixteen non-derogable rights. These include the right to legal personality (article 1), freedom from slavery or servitude (article 2), Freedom from discrimination (article 3), The right to life (article 4), the right to liberty (article 5) Freedom from fortune (article 6), the right to a fair trail (article 7) freedom of thought, conscience and Religion (article 8), freedom from imprisonment for inability to fulfil a contractual obligation (article 9) and the rights of minorities (article 10).

The Zambian Constitution, however, allows derogation from the guaranteed fundamental human rights and freedoms. Article 25 of the constitution permits derogation in two circumstances. That is where the state is at war and where a state of Emergency has been declared. The rights derogated from include the right to privacy of home and property, freedom of conscience, expression, assembly, association and Movement. Also the right to Protection from discrimination on the grounds of sex, marital status, political opinion colour or creed. 88

The declaration of Emergency brings into force one of two statutes. The Emergency Powers Act and the Preservation of Public Security Act. The Emergency Powers Act is activated when there is a full state of Emergency. The Preservation of Public Security Regulations Act is activated when a semi state of Emergency is declared. The former is supposed to be a more serious state of affairs than the latter and therefore would require greater powers for the executive to deal with the calamity that has beset the nation. Both statutes empower the President to make regulations for the Preservation of Public Security. These regulations are found in Section 3 of the Emergency Powers
Act and in section 4 of the Preservation of Public Security Regulations. They provide for:-

(a) The detention and Restriction persons without trial;
(b) The prohibition, restriction and control of assemblies;
(c) The regulation, control and maintenance of supplies and services;
(d) The prohibition of dissemination of matter for the regulation and control of the production, publishing, sale, supply, distribution and possession of publications;
(e) The taking of possession or control of any property, undertaking and the acquisition of any property other than land;
(f) The entry and search of Premises. ‘89

In view of the foregoing, it is clear that article 25 of the Constitution and indeed the provisions of the Emergency Powers Act and the Preservation of Public security Act constitute a serious breach of human rights and are in conflict with the provisions of International Conventions. For as Amnesty International rightly states’........Article 25 of the constitution is not in conformity with Zambias obligations under the International covenant on civil and Political rights......This is a serious flaw to the protection of human rights in the country. ‘90

The Constitution lacks any clear definition of the extent to which the rights are limited conferring excessively broad vindication of any act by authorities if it can be shown that such actions were ‘reasonably required for the purpose of dealing with the situation in question.’ While the International Covenant on Civil and Political rights recognises that there are times of International or national crisis when Emergency powers may legitimately be used. The United Nations also sees the danger to human rights when such sweeping powers are granted. The UN Human Rights Committee noted that measures taken under article 4 relating to a state of Emergency are of an exceptional and temporary measure and may last only as long as the life of the nation concerned is threatened and that in times of Emergency, the protection of human rights because all the more important particularly those rights from which no derogations may be made. ‘91
It is vital at this point to elaborate on the fact that Zambia has in recent times in fact violated the provisions of the convention as regards the state of Emergency. This can only be done by citing specific examples.

On 28th October 1997, an attempted coup against the ruling government was aborted. After holding a special meeting the following morning President F.T.J Chiluba declared a state of Emergency as provided by article 30 of the Constitution. This enabled him activate the two Emergency Acts.

Under article 15 of the Constitution no person shall be subjected to torture or to inhuman or degrading punishment or other like treatment. This right is absolute. The two Emergency Acts also prohibit torture. Regardless of this however, ZDC Leader Dean Mungomba was arrested and on the first November he was torturated. Police Interrogators allegedly suspended him from a metal bar by his handcuffed hands and rope tied legs, and beat him, in a method of torture known as the ‘swing’. Among the torture methods used were electrical shocks to his handcuffs. Mungomba was also deprived of sleep, food and water for the first four days in custody. ’92 The denial of food amounts to ill treatment which is prohibited under article 15 of the Zambian Constitution, article 7 of the International covenant on civil and Political rights and articles 5 of the African Charter on human and Peoples rights. This is just one of several incidents in which individuals were arrested and tortured. Several people believed to have been involved in the Coup were arrested and tortured. To illustrate, Police reportedly tortured Major Bilex Mutale who described being beaten by two police officers using short batons. Major Musonda Kangwa was also allegedly tortured during his detention on November 2, 1997. Steven Lungu was also tortured to the extent that he could not walk. ’93 In this light, looking back at the months of rampant abuse of human rights in Zambia under the state of Emergency LAZ Chairman George Kunda observed ‘cases of torture are now well documented......the torture of suspects by police leads to unfair trial and we cannot allow

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this if we have to have a fair system of Justice. '94

It is worthy to note that the Emergency statutes and the Constitution do not permit to torture. It is because of Political tolerance that torture is allowed to continue. The governing authority is aware of the trend of torture but simply ignores it and does nothing. Further there is no strict penalty imposed on offices who torture prisoners the matter is simply ignored. This must in all fairness change.

There were also various political detentions effected under the state of emergency. The flaw in this area lies in the fact that many of the were arrested merely on suspicion, or on non-existent or flimsy grounds. Former President Kenneth Kaunda was arrested without charge on December 25th 1997 on suspicion of Involvement in the coup plot. On 31st December the Opposition Leader was transferred to house arrest as a ‘restricted person’ under section 3 (a) of the preservation of Public Security act. Police also arrested MMD National Chairperson for women’s affairs and member of Parliament Princess Mirriam Nakatindi on 28th January 1998, she is currently still in detention. '95

The mere arrest of alleged Coup plotters is not contrary to International human rights law. However, the Paris minimum standards provide in article 5 that the detainee must be informed within seven days of the ground of detention while the constitution states 14 days. The article also provides the right to communicate with and consult with a lawyer at any time after detention. In this case the detainees were denied some of these rights. To illustrate, Dean Mungomba was not allowed to communicate with his lawyer for several days after his detention. Thus the Paris Minimum standards were violated.

The foregoing hence indicates that the governing authority acted contrary to International provisions which it has acceded. The current Zambian law regarding Emergencies is in total conflict with these International Conventions. It must be noted that Zambian law falls short of the Paris Minimum standards in that though the latter allows the derogation of rights this is subject to certain
conditions such as the fact that the basic rights and freedoms guaranteed by International law must remain underogable and unaffected by the state of Emergency (section B (2) (e)) of the Paris minimum standards. ‘96 Also that such measures must be strictly proportionate with the exigencies of the situation. Zambian Law, does not, however, provide for specific conditions other than that it be reasonably required for the interests of security. Even the African Charter on Human Peoples Rights does not allow derogations from the rights enshrined in the treaty.

The Constitution of Zambia must hence be amended in conformity with the provisions of the International covenant on civil and political rights and the Paris minimum standards. The two Emergency Acts are two potentially lethal weapons for they allow the governing authority to act in total disregard of the fundamental human rights and freedoms of citizens. It is for this reason that the powers contained therein must be substantially limited. For only then are citizens assured of protection even under the threat of a state of Emergency.

3.7 CONCLUSION

The foregoing discussion provides evidence of the fact that though Zambia has ratified numerous International human rights treaties much work is yet to be done as regards the incorporation of the provisions of the covenants into local law. Some provisions have been Incorporated into local law but this is insufficient, if those laws are not followed and enforced. In some instances' the provisions simply have not been Incorporated at all. A great effort must be made to ensure that these International provisions are Incorporated. The next Chapter concludes this discussion. It summarises the foregoing chapters and puts forward recommendations.
ENDNOTES


3. Ibid; at.72.

4. Ibid; at.73.

5. Ibid;

6. Ibid; at.77.


10. Ibid article 14.

11. Ibid article 15.

12. Ibid article 16.

13. Ibid article 17.


15. Ibid article 19.

16. Ibid article 20.

17. Ibid article 21.

18. Ibid article 22.
19. Ibid article 23.


24. Ibid


27. Ibid, at 344.


30. Ibid


33. Kanganja, supra note 3; at 7.

35. Chongwe, supra note 1, at 10.
38. Ibid
40. Kabanje, supra note 37, at 8.
42. The Penal Code, supra note 23, section 67, at 48.
44. The Penal Code; supra note 23, section 69 at 48
45. A. W. Chanda, supra note at 139.
47. Kamanje; supra note 37, at 16.
48. Kanganja; supra note 7, at 3
50. Ibid, at 21.
51. Ibid


54. Ibid, at 3.

55. The Criminal Procedure Code.

56. Sakala, supra note 52, at 5.

57. Human Rights Protection in Zambia; supra note 25, at 12.

58. Ibid


60. The Constitution of Zambia 1996; supra note 8, at 56.


62. Sakala; supra note 52, at 5.


64. Ibid

65. Ibid.


68. Ibid

70. Chanda; supra note 20, at 12.

71. The Constitution of Zambia 1996; supra note 8, at 32.

72. Mushota; supra note 67, at 7.


74. The Times of Zambia, 4th July 1995.

75. Supra note 25, at 12.

76. Hnasungule; supra note 69, at 3.

77. Mushota; supra note 67, at 1.

78. Mabula; supra note 66, at 1.

79. Ibid; at 2.

80. Council of Europe; supra note 26, at 136.

81. The Juveniles Act section 73, at 491.

82. Mabula; supra note 66, at 10.

83. Council of Europe; supra note 26, at 132.


85. Mabula; supra note 66, at 9.

86. Ibid; at 10.

87. Council of Europe; supra note 26, at 33.


91. Ibid.

92. Ibid, at 1.

93. Ibid.

94. Ibid.

95. Ibid, at 8.

'International responsibility for the promotion and defense of Human Rights is not only a basic principle which flows from the image of man in terms of the Universal invoked in all great civilizations, it is a conclusion drawn from the Interdependence of Peoples and Nations.'

- Moses Moskowitz.
CHAPTER 4

4. CONCLUSION

This chapter concludes the foregoing discussion. It summarises the previous chapters, highlighting their main aspects and provides recommendations for the conclusion reached. In so doing it is hoped that the human rights protection system may be made more effective so that the human rights protection in Zambia may remain not merely a theory, but that it may be transformed into a tangible reality for the enhancement of the lives of each and every human being.

4.1 SUMMARY

Chapter 1 traced the origins and evolution of the concept of human rights. It began by defining and discussing the concept human right so as to clarify this issue which has, over the years, attracted much attention and indeed much concern. It then proceeded to examine the historical background of human rights. It examined this background from the period of the second World War when their promotion and protection became a matter of the greatest International concern. For indeed the atrocities of that period to date remain unmatched. This chapter then analysed the concept of human rights within the Zambian context. In particular, it focused on the period of the third republic. It concluded by finding that the International community has over the years been seriously concerned with the protection of human rights. The United Nations has spearheaded this struggle for the protection of human rights. It, however, brought to the fore the fact that Zambia must strive so as to be heralded as a model for human rights and as a respecter and promoter of the rights and freedoms of its people.

In Chapter 2, an appraisal was made of the various International Human Rights Convention to which Zambia is a signatory. A close examination was made of these Conventions which were born of the desire to enhance the protection and promotion of these fundamental human rights and
freedoms. The position of Zambia as regards each Convention was also examined. The convention examined included the Universal Declaration of Human Rights, which has over the years assumed a vital role in guiding states as regards the fundamental Rights and freedoms which their citizens are entitled to enjoy. The International Covenant on Civil and Political rights and the International Convention on Economic, Social and Cultural rights were also examined. These convenants, the Chapter stated, were inspired by the Universal Declaration and complement each other. The Convention on the Elimination of All Forms of Discrimination Against Women was also examined, being a convention which strives to enlighten Nations on the fact that women also have rights which must be enforced. The Convention on the Rights of a child which ensures the protection of society's most vulnerable and prized asset was also examined. In the regional sphere, the African Charter on Human and Peoples Rights was examined, in particular its attempts to United African states in the protection of fundamental human rights and freedoms. The Chapter concluded by stating that though these conventions have been ratified by Zambia, they remain of no practical use to the Zambian people unless they are specifically incorporated into domestic law.

Chapter 3 embarked on a critical examination of the Zambian legislation. It addressed the key question as to whether the provisions of International Human Rights Convention have been Incorporated into domestic law. It thereby brought to light the effects and drawbacks of non-compliance with Internationally set human rights standards. The statutes examined included the National Constitution, which is the leading legislation of the land. In particular, it focused on the bill of rights. I also examined part IX of the constitution which contains the directive principles of state policy, namely, the obligations that the state has towards its citizens. As regards the Constitution, it was found that the bill of rights cannot adequately protect human rights owing to the fact that most of its article contain derogation clauses thereby emptying the provisions of their substance. The directive principles of state policy were found lacking in that they are stated in very general terms.
whilst in the International Convention on Economic, Social and Cultural rights, they are very precise and specific. The chapter also studied the Penal Code and concluded that some of its provisions stifle the freedom of the press and are thus not compatible with the principles of a free and democratic society. The Criminal Procedure Code was also examined and found to be an adequate piece of legislation for the regulation of criminal behaviour. The only flaw was found to lie in the fact that its provisions are not strictly enforced thereby stumping on the rights of the accused person. An examination was also made of the Marriage Act and the Juveniles Act which respectively govern matters relating to the rights of Women and Children. Of the Marriage Act, it was concluded that it does not effectively address Women’s rights as it simply provides a framework as to how marriages are to be conducted. The Juveniles Act was found to be in conflict with many of the provisions of the Children convention thus vendering it an inadequate piece of legislation.

Time was also devoted to examining the two Emergency Acts. Namely the Emergency Powers Act and the Preservation of Public Security Regulations Act. An indepth analysis was made of the Impact of these two acts vis-a-vis the guarantee and protection of fundamental human rights and freedom. They were found to provide a serious threat to the protection of human rights as they allow rights to be derogated from. They are thus inadequate in effectively protecting human rights. The chapter concluded by stating that Zambia has to a great extent not incorporated the provisions of International Human Rights Conventions into local law. Also that the governing authority must undertake to ensure that these provisions are infact incorporated into local law. So that the Zambian people may benefit and thus achieve their greatest potential.
4.2 RECOMMENDATIONS

In view of the foregoing the following recommendations are made in the hope that they will lead to the eventual establishment of a society free of the clutches of the evils of human rights abuse. So that human beings may breathe easily knowingly fully well that their fundamental human rights are secure, promoted and most of all, protected.

(a) INCORPORATION OF THE PROVISIONS OF INTERNATIONAL HUMAN RIGHTS CONVENTIONS INTO LOCAL LAW.

The first recommendation is that the governing authority must Incorporate the provisions of International Human Rights Conventions into local law. For, as seen in the foregoing discussion, rights such as women's and Children's rights are not adequately addressed in the Constitution and other pieces of legislation. There must, therefore, be legislation drawn up which deals specifically with both women's and children's rights so that women and children may have somewhere to turn once their rights have been violated. The various other provisions which have not been incorporated into local law must also be incorporated as soon as possible. The present situation is insufficient. Ratification of a treaty does not in itself transform the provisions into local law. efforts must thus be made to incorporate international provisions into local law. Once this is done, further efforts can then be made to ensure that these rights are enforced.

6. AMENDMENT OF PART THREE OF THE CONSTITUTION

Part three of the constitution should be amended so as to remove the various derogations from the rights. A good number of the rights are subject to derogations. These must, thus, be removed so as to make the rights absolute. Only a few specific ones should be subject to laws which are required in the interests of Public safety, public order and public morality. Granted, this part of the Constitution can only be amended by a public referendum and this would be cumbersome and time consuming but it would, nevertheless, eventually be done. The bill of rights as it stands with all its
derogations cannot adequately protect human rights because in most cases the derogation empties the entire provisions of its substance. The bill of rights must, thus, be amended so as to adequately protect human rights.

(c) APPOINTMENT OF JUDGES

As already observed, individuals in Zambia often are denied a fair trial because the Judiciary is partial. This is a grave injustice because a fair trial is vital in any criminal proceedings. In order for the trial to be fair, the judiciary must be independent and impartial. Therefore, it is recommended that government guarantee the independence of the judiciary as required by Zambian and international law. This can only be done by enacting into legislation an alternative method for the appointment of judges other than leaving it solely to the President and Parliament for ratification. Perhaps the President could merely be empowered to nominate for, instance the Chief Justice, who would come before a special Committee selected from members of Parliament who would then screen him and make sure he had no particular political affiliation. The Committee could then be empowered to reject or accept him. The task of appointment of judges should thus be left to people other than government who can be impartial and objective in their selection.

(d) RATIFICATION OF THE CONVENTION AGAINST TORTURE AND OTHER FORMS OF CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Zambia, as already noted is not a party to the convention against torture and other forms of Cruel, Inhuman or Degrading treatment or punishment. This omission is significant because police and security establishments in Zambia can hardly be said to have regard to human rights standards in their operations. Further, the ever present threat of the state of Emergency makes a good case for committing the state to the Convention against torture. Recent times in Zambia have shown that torture is a common occurrence despite the prohibition in article 15 of the Constitution. It must also be noted that the failure to accede to this convention gives the impression that Zambia is a torturer,
African Constitution Article 37(1) a state of Emergency may be declared only by an Act of Parliament whilst under the Zambian Constitution the President makes the declaration after which it must be approved by the National Assembly. The foregoing indicates that the laws governing Emergency Powers in Zambia must be reformed. For one thing the issues is left solely in the hands of the President which is not a healthy state of affairs in the interests of justice and fairness. For another, the two Emergency Acts allow the derogation of rights which under International Law must not be derogated from. This is evident from an examination of the Paris Minimum Standards of Human Rights Norms in a state of Emergency.

The Paris Minimum Standards provide amongst other things provisions as regards Declaration, Duration and Control of the state of Emergency. They provide that the declaration of the state of Emergency shall never exceed the period strictly required to restore normal conditions. Article 3(a). It also provides that the Constitution of every state shall define the procedure for declaring the state of Emergency. Also that whenever the executive authority is competent to declare a state of Emergency, such official declaration shall be confirmed by the legislature within the shortest time. The Zambian Bill of Rights is incompatible with the Paris minimum standards in that, it allows the derogation from some of the sixteen non-derogable rights stated in the Paris Minimum Standards in a state of Emergency. These include freedom from discrimination (Article 3), the right to liberty (article 5), and freedom of thought, conscience and religion (article 8)under the Paris Minimum Standards. These can all be derogated from under the article 25 of the Zambian Constitution. Thereby allowing the violation and abuse of these fundamental human rights and freedoms. There is, therefore, an urgent need for the Laws which govern the state of Emergency in Zambia to be reformed. For they are incompatible, as the foregoing has shown, with the provisions of International Human Rights Instruments.
The state of Emergency laws in their current form facilitate the abuse and total disregard of human rights. It is therefore hoped that these laws will be reformed or repealed in the soonest possible time.

(f) **STRENGTHENING OF HUMAN RIGHTS SAFEGUARDS IN THE JUSTICE SYSTEM**

Lastly, legislation should be adopted to confirm the role of the Courts in safeguarding human rights, including giving the courts a mandate to supervise effectively the detention of prisoners, supervise and call into question the activities of the security services, and order the release or transfer of those detainees who appear in the courts judgement to have been tortured.

In conclusion it can only be said that though Zambia has ratified numerous International Human Rights Conventions, this is in itself insufficient if the provisions thereof are not specifically incorporated into local law. This point cannot be overemphasised. For, it must be noted that hundreds of citizens continue to suffer on a daily basis because they are unable to freely exercise their rights. Zambia must, thus, prove her commitment to the International Human Rights movement by taking concrete steps towards incorporating the provisions of the International Conventions she has ratified into domestic law. So that citizens may be assured of residing in a society which is committed towards promoting their fundamental human rights and freedom.
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