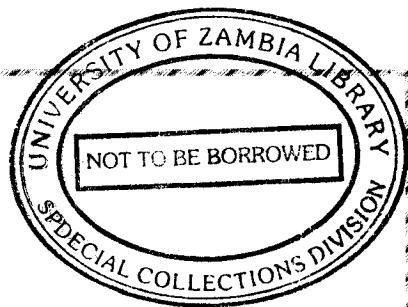




THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**A CRITIQUE OF FORFEITURE PROVISIONS GENERALLY IN
ZAMBIAN LAWS WITH PARTICULAR EMPHASIS TO SECTION 15
OF THE FISHERIES ACT CHAPTER 200 OF THE LAWS OF ZAMBIA**

BY

**CHIBWILI DAVIES
COMPUTER #: 21081786**

DIRECTED RESEARCH

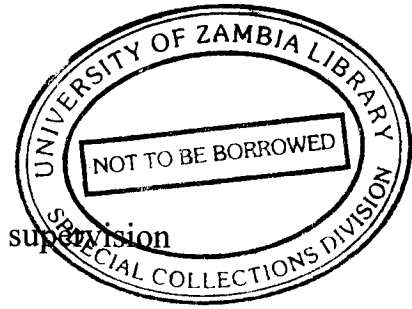
**SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE
AWARD OF A BACHELOR OF LAWS – LLB OF THE UNIVERSITY OF ZAMBIA.**

UNZA

DECEMBER, 2005

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW



I recommend that this Directed Research prepared under my supervision

By

CHIBWILI DAVIES

ENTITLED:

**A CRITIQUE OF FORFEITURE PROVISIONS GENERALLY IN
ZAMBIAN LAWS WITH PARTICULAR EMPHASIS TO SECTION 15
OF THE FISHERIES ACT CHAPTER 200 OF THE LAWS OF ZAMBIA**

Be accepted for examination. I have checked it carefully and I am satisfied that it fulfills the requirements relating to format as laid down in the regulations governing Directed Research.

Date:

Supervisor:
MR. S. WATAE

TABLE OF CONTENTS

	Page
Certificate of Acceptance	ii
Table of Contents	iii
Dedication	v
Acknowledgements	vi
CHAPTER ONE	1
1.0 Introduction: Historical Background of the Fisheries Act Chapter 200	1
CHAPTER TWO	11
2.0 Forfeiture Provisions Generally in Zambian Law	11
2.1 Conclusion	19
CHAPTER THREE	20
Forfeiture: An International Perspective	20
3.0 What is Forfeiture	20
3.1 Forfeiture Law in England	20
3.2 Deodand Forfeiture	21
3.3 Forfeiture Laws in the United States of America	26
3.4 Criminal Forfeiture	27
3.5 Civil Forfeiture	28
3.6 Forfeiture Laws of India	33
3.7 The Position of the United Nations	36

CHAPTER FOUR	37
4.1 Constitutional Protection of Property Rights	37
4.2 Criticisms on the Zambian Situation	43
4.1 Conclusion and Suggestions	46
References	50

DEDICATION

This work is dedicated to my mother Abiya Mwelwa Chibwili and my late father David Chibwili.

The two of you believed in me and in turn made me believe in myself. Although I am trudging this path late you had indicated earlier in my life that I was able to do what others had done and even surpass them.

I hope this will inspire my children Musenge, Mwelwa, Musonda and Chisenga who have had a rough time growing up in my absence and at a crucial period of their development. Now that I am almost there, I will try and make up for the long absences, guys I love you all.

ACKNOWLEDGEMENTS

A lot of persons have contributed to the putting together of this essay without whom it would have been impossible to complete the task at hand. At the risk of offending those whose names may not be mentioned I wish to take this opportunity to thank the following from the bottom of my heart, who in one way or another helped me to come up and finish this essay:

Mr. S. Watae, my Supervisor who patiently and painstakingly went through my drafts and corrected them. His unwavering support direction and guidance will be appreciated forever.

Mr. Kafumbe, the Principal Fisheries Officer at Mansa who assisted me so much with the historical development of the Fisheries Act and the fishing ban.

Ms. Dolores Nthawie for providing invaluable support and assistance in the field of research on the internet with regard to the international perspective of the subject matter.

Mrs. Ngwira who typed the final draft for her dedication and patience in deciphering my almost illegible handwriting and helpful suggestions.

To all of you and others too numerous to mention I say, “thank you and may the good Lord Bless You!”

CHAPTER ONE

1.0 INTRODUCTION: HISTORICAL BACKGROUND OF THE FISHERIES ACT CHAPTER 200

Like most Zambian Acts, the Fisheries Act, Chapter 200 of the Laws of Zambia, traces its origins from the colonial era.

Fishing is a way of life and it has been so for ages for those communities that live along or near rivers and lakes. Fish does not only provide an alternative and cheap source of protein to meat but it is also a lucrative business, readily available and easy to access. It is for this reason that fish and the fishing industry need to be regulated. If people were allowed to indiscriminately kill fish either for food or for economic reasons it will invariably disappear in no time. Such a scenario will have a negative impact on the communities concerned for it will entail a drastic change in their way of life. It will also pose a very serious challenge to government to find an alternative vocation for the affected communities because fishing is the only vocation they know and have known since the times of their forefathers.

It was in this light that governments, past and present, have always sought for ways and means of regulating the fishing industry. Yes it is an industry because fishing has become so commercialized that most businesses in fishing communities and beyond depend on it. Low catches mean low incomes for these businesses and higher or good catches mean higher incomes.

Without legislation it would be impossible to regulate any facet of social life (society). It was therefore thought prudent to introduce a law to regulate the fishing industry by the colonial government. It is interesting to note that may be because the industry was not well developed at the time, the law to regulate fishing was bundled together in an Ordinance dealing with the protection of wildlife. It was called the Game Ordinance.¹

In its interpretation section it defined 'game' as meaning;

*"any animal or bird not being domesticated mentioned in the first, second or third schedule and any animal bird or fish which may be added thereto by the governor under the powers conferred upon him by this ordinance."*²

The protection provisions of this ordinance clearly extended to fish as can be seen from the above definition.

The ordinance also had a forfeiture provision for in section 15 it stated:

In all cases of convictions for any offence against the provisions of this ordinance, the court may order that any live game and any heads, horns... or other remains of game found in the possession or under the control of the person convicted, shall be forfeited, unless proved to be the property of another person who was not a party to such offence."

¹ Act No. 19 of 1925

² Section 2

The main purpose of the game ordinance as spelt out in the preamble was the preservation of 'game' which included fish. It however failed to achieve this objective because the governor who was supposed to enforce it had no manpower to assist him.

Government's resolve to control and regulate fishing did not however wane.

In 1941 government passed another Game Ordinance³ to replace the 1925 one.

It stated in Section 27 that:

"The Governor in Council may from time to time make regulations applicable to the whole territory or to any part thereof or to any specified waters of the territory.

(a) Prohibiting, restricting or regulating

(i) The use of boats, nets and stakes for the hunting of fish or of any particular species of fish.

(ii) The use for hunting of fish or any particular species of fish or any other device or method whatsoever.

(iii) The introduction into any water of any fish not native to such water."

It can be seen that protection of fish was given more prominence in the ordinance of 1941 than in the 1925 ordinance.

³ Act No. 47/1941

Also of interest was the reframing of the forfeiture provision. Section 49(2) stated:

“When any person is convicted of an offence against this ordinance the court may order that any animal, meat or trophy or any instrument, material or thing ... in respect of which the offence has been committed shall be forfeited to the government....”

This latter provision was wider than the earlier one in that it not only mentioned the game apparently found with the offender but it also included all instruments and materials with which the offence or in connection with which the offence was committed.

In 1943 the Governor in the exercise of the power conferred on him by Section 27 of the 1941 Ordinance had promulgated fish control regulations⁴ which prohibited the introduction of new species of fish and restricted the methods of fishing in specified areas namely the Bangweulu and Mweru-Luapula Fisheries.

This was a demonstration of the government's objective of regulating fishing in the territory. Enforcement of these regulations proved to be problematic once again.

It should be appreciated that since people in fishing communities know no other vocation apart from fishing, any measures to control and regulate fishing are met

⁴ Fish Control Regulations 1943

with stiff resistance. Without the support and participation of the fishing community in any conservation method introduced, it is almost impossible to achieve any meaningful result and the measures fail. This is especially so in areas or rivers which share the waters with other neighbouring countries example is the Mweru-Luapula river which shares its waters with the Congo on the other side.

It so happens that whatever control measures are introduced on the Zambian side, the Congolese do not do likewise on their side. This means that there is no control of fishing on the Congolese side.

Because historically, the people of the Luapula basin are inter-related, their kin on the Zambian side merely cross over to the Congo when they find it difficult to operate on the Zambian side due to control measures. This is what happened in 1948 when the Northern Rhodesian government introduced a closed season or fishing ban. It was to run from December to February of the following year. The objective was to allow the fish to breed because this period was known to come with a lot of food for the fish which come with the rains.

Although the Northern Rhodesia government had agreed with the Belgium government the colonial administration in the Congo then, to introduce similar regulations on their side and enforce them, it did nothing and people continued to fish on their side. This situation has continued to date making it difficult for

the Zambian government to effectively police the fishing ban. In his thesis, David Malcolm Gordon stated at page 4 thus:

*"In Mweru-Luapula the most ambitious and important arena of state intervention were conservation regulations. The Belgian, British, Zambian and Congolese states all attempted to control levels of exploitation in Mweru-Luapula fishery by implementing closed seasons, restricting the size of nets and prohibiting certain fishing techniques. Fishers resisted the measures which invariably failed."*⁵

In the 1950's the struggle for independence started shaping up with the result that African political activities used the fisheries regulations as a catalyst in nurturing political protests against the colonial government. They politicized the regulations to appear as an attempt to hinder African participation in the fishing industry. This led to fishers disobeying the regulations with impunity because they saw them as a colonial gimmick designed to exclude them from participating in the booming fishing industry.

In 1955 the government passed the Fish Development Ordinance whose objective was the conservation of fish as well as providing for the control of fishing. Among other things of interest in this ordinance was section 13 which dealt with forfeiture. It stated;

⁵ The making of a Hinterland, Environment and politics in Mweru - Luapula

“When any person is convicted of an offence against this Act... the court may order that any fish, or any net ... device or other thing in relation to or in connection with which an offence has been committed shall be forfeited to and become the property of government....”

Although couched in different language from the 1941 Ordinance its meaning was the same.

When Zambia became independent in 1964 the ordinance became the Fish Conservation Act.⁶

The powers that had hitherto reposed in the governor were now to be exercised by the Minister responsible for Agriculture.

In 1974 the Fisheries Act was enacted and it carried similar provisions in relation to forfeiture and the power of the Minister to make regulations for the better carrying into effect of the provisions of the Act.

Like in the colonial period the government of the day, which was the United National Independence Party (UNIP), failed to enforce the fishing regulations as a way of appeasing its supporters. The effects of none enforcement of fishing regulations soon became apparent. Fish stocks were quickly dwindling and

⁶ Chapter 314 of the Laws of Zambia

catches were becoming poor. It was apparent that it was just a matter of time before fish became extinct.

In 1986 a monumental step was taken by government with the passing of Statutory Instrument No. 55/1987.⁷

The Statutory Instrument introduced a fishing ban in prescribed areas as follows:

Area	Period of Prohibition
Mweru-Luapula Fishery	Throughout the year
Lake Bangweulu	1 st October – 28 th February
Kafue River	1 st October – 28 th February
Lower Zambezi	1 December – 31 March
Kariba Dam/Lake	1 December – 31 March
Lower Luangwa	1 December – 31 December

The ban was vigorously enforced but as before, it was met with some resistance. For some years it appeared that the government would succeed but again politics came in.

With the re-introduction of multi-party politics, the opposition, then the Movement for Multi-Party Democracy (MMD) demonized the fishing

⁷ Fisheries Regulations 1986.

regulations and promised the people that it will remove the stringent fishing controls once elected into government.

In 1991 the MMD was elected and to appease its supporters, it shortened the period of the fishing ban by the passing of Statutory Instrument No. 140/1998⁸ running from October or December to February or March of the following year it now ran from January to February. The result of this kind of irresponsible decision-making by government were quick to manifest. Within 2 years it was observed that there was a serious decline in the fish stocks in the affected areas and people started complaining about the depleted catches.

In 1993 government reverted back to the original length of the closed season with the passing of the Statutory Instrument No. 42/1993.⁹

The regulations promulgated by this statutory instrument are still in force to date.

The above has been a brief history on how the Fisheries Act as we know it today and its regulation have developed over time. Of particular interest to this research, however, is not the conservation and control methods of fish but the provision in the Act dealing with forfeiture. It is apparent from the 1925 Game Ordinance to the Chapter 200 (Fisheries Act) that the provision has undergone a

⁸ The Fisheries (Amendment) Regulation 1991

⁹ The Fisheries (Amendment) Regulations 1993.

lot of rephrasing and it is the objective of this research to find out why this has been so. The following chapters will attempt to answer that question and test the provision's constitutionality.

CHAPTER TWO

2.0 FORFEITURE PROVISIONS GENERALLY IN ZAMBIAN LAW

A good number of Zambian laws contain forfeiture provision whereby a court is empowered to order forfeiture of the convicted person's property which is believed to have been used in connection with the commission of the crime or is suspected to be part of the proceeds from a criminal transaction.

This property will be forfeited to the state without compensation.

Under Chapter VI section 24 of the Penal Code¹⁰ forfeiture is listed as one of the punishment that can be inflicted by the court.

In section 29 it is stated:

"When any person is convicted of offence under any of the following sections, namely, section 94, 95, 96 (which have since been repealed) 113, and 114 (and the now repealed sections 385 and 386,) and court shall, in addition to or in lieu of any penalty which may be imposed, order the forfeiture of any property which has passed in connection with the commission of the offence..."

Amongst legislation having forfeiture provisions are:

- (i) The Firearms Act
- (ii) The Zambia Wildlife Act

¹⁰ Chapter 87 of the Laws of Zambia

- (iii) The Forestry Act
- (iv) The Fisheries Act
- (v) The Narcotic Drugs and Psychotropic substances Act
- (vi) The Anti-Corruption Commission Act
- (vii) The Anti-Money Laundering Act
- (viii) The Banking and Financial Services Act etc.

Interpretation of the forfeiture provision has not been without controversy. It has come up many times before Zambian Courts and none of the Acts have attracted more attention than the Firearms Act¹¹ and the National Parks and Wildlife Act.¹² The problem has mainly been the meaning attached to section 54 of the Firearms Act and Section 149 of the National Parks and Wildlife now renamed the ZAWA Act.¹³ To illustrate this argument better the relevant parts of the two sections have been reproduced below:

Section 54 (2) of the Firearms Act Cap 111 stated:

Where any person _____

- (a) Is convicted of an offence under this Act or is convicted of any offence for which he is sentenced to imprisonment, or
- (b) Has been ordered to be subject to police supervision...

¹¹ Chapter 111 of the Laws of Zambia

¹² Chapter 316 of the Laws of Zambia

¹³ Chapter 201 of the Laws of Zambia

The court by which he is convicted or by which the order is made may order the forfeiture or disposal of any firearm or ammunition found in his possession and the revocation of any firearm licence held by him.

Section 145 of the National Parks and Wildlife Act Cap 316 then stated:

- (1) Upon conviction of any person of an offence under this Act, the court shall, at the request of the prosecution, in addition to any other penalty imposed declare any wild animal, meat of any wild animal, trophy, firearm or other weapon or trap... inclusive any vehicle, aircraft or boat, with which the offence was committed, or which was used in, or for the purpose of, or in relation to, or in connection with, the commission of the said offence, to be forfeited without compensation and shall order the same to be disposed of as the Director deems fit.

The use of the word “may” in section 54 of the Firearms Act denotes a discretion on the part of the court to either order forfeiture or not.

However, under the National Parks and Wildlife Act, the forfeiture provision does not give the court any discretion at all. As long as the prosecutor applies for one the court must order forfeiture. This is the position as stated in the below examined authorities.

This apparent conflict in the two provisions was first addressed in the case of **Chisimba V the People**¹⁴ Moodley J of the High Court stated thus:

"A court may order forfeiture in the case of a person who is convicted under the Firearms Act or is convicted of any offence resulting in a sentence of imprisonment, but where a person is convicted under the National Parks and Wildlife Act, then the court must order forfeiture provided the prosecutor applies for such an order. There is neither an ambiguity nor a conflict in these provisions."

This holding was restated in the later case of **Hyden Dingiswayo Banda V the People**¹⁵ by the Supreme Court which ruled that under the Firearms Act a magistrate can exercise a discretion whether to forfeit a firearm or not but under the National Parks and Wildlife Act the order for forfeiture will only be made upon the request of the public prosecutor and the court before which such an application is made has no discretion but to order forfeiture. The question that begs an answer is:

What if the property to be forfeited does not belong to the accused but a third party? An example would be a person who takes a relative's firearm to go poaching or someone who uses a friend's vehicle to carry government trophies

¹⁴ (1976) ZR 17

¹⁵ (1981) ZR 69

or fish during the fishing ban. Should these properties be forfeited without giving an opportunity to the real owners to be heard?

The point to note when interpreting a forfeiture provision is that although some provisions are framed as if an interested or third party's vested rights have been excluded, this is not the case. The law has been interpreted in such a way that a person whose property is to be forfeited must be given an opportunity to be heard before the order is made.

This was well laid down in the cases of **R V Potlas Azekiyele and the Another¹⁶** and **RV Visagie¹⁷**.

In both these cases the accused persons had committed similar offences under the Fauna Conservation Ordinance¹⁸. The Magistrate after convicting the accused ordered that the lorries used in the commission of the offences must be forfeited to the state. The accused persons appealed to the High Court and the two cases were heard at the same time.

Charles J in his holding stated:

¹⁶ HPR/256/64

¹⁷ (1963 – 64) ZR 140

¹⁸ Forerunner to the National Parks and Wildlife Act Chapter 146

"A statute is not to be construed so as to deprive a man of his property without his having an opportunity to be heard, unless it clearly appears that was intended. There was nothing in the section 39 (3) in any way indicative of the legislature having intended such a breach of natural justice. The orders for forfeiture are nullified and must be quashed."

Section 39 (3) of the **Fauna Conservation Ordinance**¹⁹ was couched in the following terms:

"Upon conviction of any person for any offence against this ordinance or any regulation or rule made there under, the court may, in addition to any other penalty... order that any animal, meat or trophy or any firearm or other weapon... in relation to or in connection with which the offences has been committed... shall be forfeited to and become the property of the government..."

As can be seen from the wording of the section there is nowhere were it mentions the right of the third party to be heard before the order is made. But because the right to be heard is a vested right and there is no express exclusion of it in the Act then it must be implied as if it exists.

In coming to the conclusion in the two cases cited above, the judge had recourse to Halsbury Laws of England²⁰ where it is stated in paragraph 627 as follows:

¹⁹ The Fauna Conservation Ordinance was the forerunner to the National Parks and Wildlife Act.

²⁰ Third Edition Volume 36 @ p. 413

*“Unless it is clearly and unambiguously intended to do so, a statute should not be construed so as to interfere with or prejudice established private rights under contracts or the title to property or so as to deprive a man of his property without his having an opportunity of being heard. In particular, an intention to take away property without giving a legal right to compensation for the loss of it is not to be imputed to the legislature, unless that intention is expressed in **unequivocal** terms. This rule applies a fortiori to the construction of a statute delegating legislative powers.”*

The writer is of the firm view that it was following the ruling in the two cases cited above that when the Fauna Conservation Ordinance was renamed the National Park and Wildlife Act, the forfeiture provision was also amended to make provision for an interested person to make representation to the court before which the case is and if he is successful the order for forfeiture will not be made absolute.

The amended section on forfeiture makes provision for a court, upon an application by the Public Prosecutor, to make a conditional forfeiture order. This order allows for interested parties to apply to the court within 3 months of the conditional forfeiture order being made. The court will then set a date for hearing of the application inter parties between the interested party and the state. The burden is on the interested party to show on a balance of probabilities that

he was not party to, nor did he have knowledge about, the commission of the offence in which his property was used.

Once he discharges that burden then the court can set aside the conditional forfeiture order and release the property in issue to him. If on the other hand he is unsuccessful the court will make the conditional forfeiture order absolute and the property will be forfeited to the state without compensation.

In the case of **The People V Francis Mwalilanda**,²¹ the accused was convicted of unlawful possession of firearms and ammunitions and the firearm and ammunitions were ordered to be forfeited to the state. They belonged to a third party and not the accused person: Silungwe AG J, of the High Court then on appeal held:

"I can see nothing in this provision (Section 54 of the Firearms Act) which shows that the intention of the legislature was to involve a breach of natural justice, namely the denial of an opportunity for the owner of the property to be heard before the forfeiture could be made..."

Similar sentiments were expressed in the later case of **Jonathan Mwiinga V The People by Muwo J**²² of the High Court in somewhat similar circumstances to those in the Mwalilanda case above. Firearms were ordered to be forfeited to

²¹ (1971) ZR 166

the state by the magistrate without giving the owner an opportunity to be heard. The order on appeal was held to be improperly made and was reversed.

CONCLUSION

What can be deduced from the above is that in Zambia, even where the Act is seemingly framed in language which appears to exclude the audi patem rule such as the Fisheries Act and the Firearms Act, the rule must be applied unless the contrary is expressly stated to be the case.

CHAPTER 3

FERFEITURE – AN INTERNATIONAL PERSPECTIVE

3.0 WHAT IS FORFEITURE?

In the preceding chapters, we have proceeded on the premise that the reader already knows what forfeiture is. That may be presumptuous and in this chapter we start by defining what forfeiture is and try and trace its origins.

To Forfeit, according to the Oxford Advanced Learners Dictionary²³ of current English means to lose or surrender as a penalty; it may also mean to be divested or deprived of the ownership of something as a penalty for the commission of a crime; to give up or surrender property. In old English cases it means a vassal surrendering his land, property to his lord, after a conviction in the Lord's Court.

3.1 FORFEITURE LAW IN ENGLAND

Forfeiture has its roots in feudal English law. It was a form of punishment which was used on people who had committed crimes against the Crown (King). After the Norman conquest of England by William the conquer between 1066 and 1087 the King started a system of land tenure whereby he became the absolute owner of all land in England. Later he started parcelling out some of the land to those who had assisted him in the conquering of England. The recipients of

²³ A.S. Hornby, Edited by Sally Wehmeier, Oxford University Press (c) 2000.

these lands directly from the King became Lords of these estates. These Lords; or vassals of the King, were in effect, caretakers of the land for the King.

The King expected order to be observed in the Kingdom, therefore, anyone who violated the peace was said to have breached the King's peace. It was treated as treasonable to commit an act outlawed by the King.

Punishment for such an act was usually death and the forfeiture of the offender's land back to the King.

As years passed by the punishments meted out to offenders underwent modifications whereby the offender's land escheated to his Lord whilst his chattels went to the King.

3.2 DEODAND FORFEITURE

This was a form of forfeiture which was directed at the property, animate or inanimate of an individual which was alleged to have caused directly or indirectly the death of a person. For example, if one's bull had caused the death of another person and there was fear that it may cause further harm, it was forfeited to the Crown and destroyed.

Later the object's destruction was discouraged but their value would be assessed and charged on the owner. The money would then be forfeited to the crown and

sometimes would be donated to the poor. Because of the pain of losing ones land or property, the fear of forfeiture ensured that subjects behaved themselves in the Kingdom.

Later forfeiture was used less and less until it was finally abolished in the 19th century and replaced by other forms of punishment like deportation to the new world such as the Americas or Australia. It only resurfaced when the war on drugs was stepped up in the 1970s.

Certain Acts have been enacted with a provision empowering the courts to make orders divesting an offender of his rights in property or to forfeit his property if it was used in the commission of an offence or to facilitate the commission of an offence.

Such property to which the order relates must have been in the possession of the offender at the time of his apprehension and not before.

In the case of **R v. Macfarlane**²⁴, the appellant was involved in a robbery in which his car was used. The car's registration number was given to the police and was subsequently found in a street and impounded. When the appellant went to the police station to claim his car he was arrested. A forfeiture order made pursuant to the **Powers of Criminal Courts Act 1973** was quashed on the

²⁴ (1982) 4 Cr. App. R (5) 264

ground that the car was not in the possession or under the appellant's control at the time of his arrest. The power to make a forfeiture order is also not available where the proceedings against the accused were instituted by summons as opposed to arrest. This was the gist of the holding in the case of **R v Bramble**.²⁵

The order is also not available where the property in issue is real property. This seems to be the position as adumbrated in the Court of Appeal case of **R v Khan**.²⁶

Amongst the Acts that have a forfeiture provision are:

(1) Powers of Criminal Courts Act 1973

Section 43 of the above Act states that

"Where a person is convicted of an offence punishable on indictment with imprisonment for a term of two years or more and the court by or before which he is convicted is satisfied that any property which was in his possession or under his control at the time of his apprehension –

- (a) has been used for the purpose of committing or facilitating, the commission of, any offence or*
- (b) was intended by him to be used for that purpose:*
the court may make an order under this section in respect of that property.... "

²⁵ (1984)6 Cr. App. R (5) 80.

²⁶ (1982)4 Cr. App. R(s)298

In subsection 4(b) the Act goes on to state that no application shall succeed unless the claimant satisfies the court either that he had not consented to the offender having possession of the property or that he did not know, and had no reason to suspect that the property was likely to be used for the purpose of committing an offence.

This suggests that before an order is made the party against whom the order is made is given an opportunity to be heard and that if an order is to be made against a person who was not the convict or the offender that other person must be heard before the order is made.

It is trite law in England that the order to deprive the offender of his property rights must not be seen as being in addition to the sentence passed on the offence he has been convicted of. It must be viewed as part of the total penalty. If it is done in conjunction with a custodial sentence or a heavy fine, there is a risk of overdoing the punishment.

In the case of **R v Scully**,²⁷ the appellant was convicted of burglary. He had stolen goods worth about £1239, most of which were recovered. He was sentenced to 9 months imprisonment which was suspended and fined £5000.

²⁷ (1975) 7 Cr. App. R. (5) 119

In addition the offender's car worth about £10,000 was ordered forfeited.

The judge on appeal observed that:

"...the court must bear in mind that the overall penalty should be commensurate with the offence, the additional penalty involved in the confiscation of the appellant's car was too heavy a burden.

Further, where the making of the order will result in unusual hardship as, for example, where a vehicle is adapted for the use of a handicapped driver, the order should not be made. The case of **R v Bucholz**.²⁸

The power to make a forfeiture order is not available where the property involved is subject to multiple ownership. In **R v Troth**²⁹ the appellant who used a partnership lorry to transport stolen coal was convicted and an order made against his rights in the lorry. On appeal the judge stated that:

"Forfeiture orders ought not be made except in simple uncompleted cases."

2. Another Act which contains a forfeiture provision is the Misuse of Drugs Act 1971.

It states in Section 27 that a court has power to order forfeiture of anything which to its satisfaction was related to the commission of the offence. It further provides for a person against whom such an order will be made to be given an opportunity to be heard. The offender must be allowed to call

²⁸ May 10, 1974 CSP J4.4 (b)

²⁹ (1979)1 Cr. App. R(5)341

evidence to disprove the claim that the property in issue was used in relation to the commission of the offence. In the case of **R v Churchers**³⁰ forfeiture orders made against the offender were quashed on appeal because the lower court refused to allow the offender to call evidence to show that the money he was found with was not related to the offences he was convicted for.

3. Drug Trafficking Offences Act 1986

This Act also provides for confiscation orders against any offender convicted of drug trafficking offences and who is found to have benefited from drug trafficking.

In a nutshell this is the law on forfeiture in England.

3.3 Forfeiture Laws in the United States of America

The English legal system was exported to the American colonies but with modifications. In America, because of its states system forfeiture was not applied as it had been applied in England. Individual states used it as a form of punishment for capital crimes and treason. Later at the Constitutional Convention the issue was taken up and the protection of ones property rights were guaranteed.

³⁰ (1986)8 Cr. App. R(s)94

Under the Fifth Amendment the American Constitution states:

"No person shall ... be deprived of life, liberty or property without due process of law; nor shall private property be taken without due process of law; nor shall private property be taken without just compensation."

Again the fourteen Amendment states:

"No state shall deprive any person of life, liberty or property without due process of law."

The American law on forfeiture has mainly been used as a weapon on the war against drugs. It is divided into two namely:

- (i) Criminal Forfeiture
- (ii) Civil Forfeiture

3.4 CRIMINAL FORFEITURE

Criminal forfeiture which operates in personam is punitive action by the state aimed at an offender as part of the sentence after he has been convicted of an offence.

The criminal forfeiture provisions relate to any property, real or personal, involved in the commission of an offence, or any property traceable to such property.³¹

³¹ US Customs Procedures

Under these proceedings the accused is protected by the procedural rights found in the 4th and 5th amendments of the constitution. The property in issue must be definitely identified so that the accused is served with the notice in time to enable him make representations against the intended forfeiture.

The state must prove its case against the accused "beyond all reasonable doubt" but the burden borne by the accused in forfeiture proceedings is much lower. It is on the preponderance of evidence (the civil burden of proof). Once the state shows that the accused acquired the property around the time the alleged criminal activity then the burden shifts onto the accused to show otherwise. The defences available to the accused include third party claims and an appeal against the conviction since forfeiture comes after a conviction.

The accused can assert that the property did not belong to him but to a third party, who should also be given an opportunity to be heard.

3.5 CIVIL FORFEITURE

Civil forfeiture operates in rem; meaning it is directed at the property. The theory is that it is the property which has committed an offence. This happens in a situation where the property, for instance, was being used for an illegal purpose. Such a property is subject to forfeiture under civil forfeiture proceedings. The action is commenced by the state against the property in issue

and the owner of the property is treated like a third party in the proceedings. If the state shows that the owner ought to have known about the property's illegal use then the property will be forfeited to the state without compensation. The owner may, however, show that the crime alleged never in fact happened or that the property was not closely enough connected to the crime to be considered as part of the criminal proceeds or instrument. The civil forfeiture law in the US has been extensively used in fighting organized crime especially drug trafficking and invariably the law has received a lot of criticism from citizens as well as lawyers.

The following cases may help illustrate the point:

1. **United States of America v Ruben Desantiago-Flores.**³²

Ruben Desantiago-Flores was convicted on drug related charges. He thereafter applied to the court to have his seized funds in the form of a "Certificate of deposit" to be returned to him. As part of an investigation on a drug conspiracy officers searched De Santiago-s residence and in the process a cheque valued \$16,218.00 was seized.

Later this cheque was ordered forfeited to the state by the district court.

De Santiago appealed claiming

³² No. 98-1459 (D.C. 94-CR-414-M Colorado)

- i. that the state failed to prove a nexus between the seized property and the illegal drug conduct;
- ii. the seizure was unconstitutional application of the law of capture.

Held: that since Desantiago failed to show that the procedures for the administrative forfeiture, such as adequate notice, were defective, the court held that De Santiago had failed to contest the seizure hence had waived his right to be heard. On the second ground of appeal the court refused to address it claiming that Santiago had not raised it with the court below although it believed that the ground had no merit. It accordingly upheld the district court's finding and affirmed the decision to have De Santiago's money forfeited to the state.

2. The case of **James Burton of Bowling, Green, Kentukey** makes interesting reading.

Burton was a 43 year old Vietnam war veteran who used marijuana to reduce pressure in his eye. He suffered from a rare hereditary disease and a doctor testified on his behalf that marijuana was the only medication that could save his eyesight.

On 7 July 1987 police raided Burton's farm and found 138 marijuana plants. Burton admitted growing the marijuana for his personal use. He

was found guilty of possession. The court sentenced him to a year in a federal maximum security prison with no parole. Additionally the court ordered that Burton's 90 acres farm be purchased for \$34,701 in 1980 and valued twice that figure at the time of seizure, be forfeited to the state. This order was done without hearing witnesses nor was Burton given an opportunity to be heard. He was given 10 days to leave the farm. In passing the order US District Judge Ronald Meredith said:

"When owners of property live at a site while marijuana is growing in their presence, there is no defence to forfeiture."

3. Another case of interest is that of **Calero v. Toledo**.³³

Facts: Pearson Yacht Leasing Co. had leased a yacht to some Puerto Rican residents. Without the lessor's knowledge, the lessees had taken some marijuana aboard the leased vessel. Puerto Rican authorities later found the marijuana and under a Puerto Rican law, they seized, then forfeited, the yacht without giving Pearson a chance to be heard.

The question that arose was whether a state statute by which an innocent party's property was forfeited violated the Federal Constitution.

Pearson contended that its due process was violated by failure to have a hearing and that its property was taken without just compensation.

³³ 16 US663; 945 Ct. 2080 1974

Although Pearson was not itself convicted of any crime their property was ordered forfeited.

This was in sharp contrast to the United State's Supreme Court's decision in **U.S. v James Daniel Good Real Property**³⁴ which held that the seizure of real property for forfeiture under some state laws, without prior notice and a hearing violates the owner's due process rights under the fifth amendment.

From the way the forfeiture law has been applied in the US it is difficult not to think that the law is not only oppressive but that it has been used as additional punishment for those unfortunate enough to transgress specific laws with forfeiture provisions.

Yet the US constitution in its Eighth Amendment prohibits excessive fines or punishments.

Although the philosophy behind the forfeiture law is alright there is need to moderate its application and possibly use it proportionally to the transgression.

³⁴ 114 S.Ct. 492 (1993)

3.6 FORFEITURE LAWS OF INDIA

Another country which has made extensive use of the law of forfeiture is India. India has more than legislation dealing with economic crimes which have forfeiture provisions and these are:

1. The Smugglers and Foreign Exchange Manipulations (Forfeiture of Property) Act, 1976.
2. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974.
3. The Customs Act, 1962
4. The Foreign Exchange Regulations Act 1973
5. Opium Acts of 1857 and 1878
6. The Dangerous Drugs Act 1930.

Under all the above Acts the procedure for forfeiture is similar in that once property is suspected to have been acquired as a result of an illegal activity or used in the prosecution of an illegal activity then the competent authority will issue what is known as 'Show-cause' notice to a person or persons possessing such property. It calls upon such persons to indicate the sources of their income, earning and assets out of which or by means of which they may have acquired such property.

The competent authority is appointed by government and its duties include the examination of tax records and other matters and makes inquiries into various persons activities if suspected to have infringed provisions of the Acts concerned.

Once a response has been received from the suspected persons they are further given an opportunity to be heard at which they can call evidence to support their claim of how they acquired the property in issue.

After receiving the evidence the competent authority will make conclusions as to whether or not to forfeit the property.

Once the property has been adjudged to have been illegally acquired then a forfeiture order will be made. The aggrieved persons have a right of appeal to an Appellant Tribunal for Forfeited Property which is composed of appointed officials by central government.

For a person to sit on the Appellate Tribunal for forfeited property, he/she must be qualified to be appointed a Judge of the Supreme Court or High Court of India.

Section 8 of the Customs Act places the burden of proof in forfeiture proceedings on the suspected persons who must prove that property and assets in

One golden thread that should be noticed in all Indian legislation dealing with forfeiture is that they all give the person/persons whose property is the subject of forfeiture proceedings, an opportunity to be heard before a forfeiture or confiscation order is made. The law also provide for an appeal procedure both in administrative as well as judicial proceedings.

3.7 THE POSITION OF THE UNITED NATIONS

The need to deprive criminals, especially drug traffickers of their ill-gotten wealth and assets acquired as a result of their nefarious activities has not escaped the attention of the United Nations. At its thirty-Sixth Session, the General Assembly of the United Nations adopted resolution 36/168 entitled: "International Drug Control Strategy and Policies prepared by the Commission on Narcotic Drugs at its Twenty-ninth Session in February 1981."

One of the strategies arrived at this session related to the reduction of illicit drug trafficking by way of several policy measures, which included identification and tracing of financial transactions connected with the illicit trade with a view of depriving the perpetrators of their ill-gotten profits and proceeds of their crimes.

CHAPTER 4

4.1 CONSTITUTIONAL PROTECTION OF PROPERTY RIGHTS

Property rights in Zambia are protected by the constitution. This is the position in most civilized nations and where they do not have a written constitution like England the rights are guaranteed under a Bill of Rights Act.

In Zambia these rights are guaranteed in Article 16 of the Constitution³⁵ and the same article provides instances when such rights can be derogated from or when an individual can be divested of such rights.

For a better appreciation of the article I have quoted it below in full.

It states:

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

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

³⁵ Chapter 1 of the Laws of Zambia

- (a) *in satisfaction of any tax, rate or due*
- (b) *by way of penalty for breach of any law, whether under civil process or after conviction of an offence;*
- (c) *in execution of judgments or orders of courts.*

Of relevance to this discourse is sub article 2(b) which provides for the taking possession or acquisition of any property or interest therein or right there over which states:-

- (b) *By way of penalty for breach of any law, whether under civil process or after conviction of an offence.*

One cannot seriously, argue therefore that forfeiture of a person's property, who has been convicted of an offence contravenes the constitutional provision especially if the law under which he has been convicted contains a provision of forfeiture as punishment for the offence.

The issue we intend to examine is whether this constitutional provision has been properly interpreted and applied by our courts when meting out forfeiture as a form of punishment.

Due to a dearth of Zambian authorities on the subject, we have endeavoured to go at large to other jurisdictions notably England, the United States of America and India for specific cases and statutes to elaborate the point. The question to resolve is whether our courts have applied the law on forfeiture mechanically or

whether they ought to take into account other principles of sentencing from other common law jurisdiction such as those mentioned above.

In the United States for example, there are arguments against the forfeiture law which claim that:

- (i) that forfeiture of one's property violates the double jeopardy clause of the fifth amendment.

The fifth amendment states:

"No person shall be subject for the same offence to be twice put in jeopardy of life or limb Nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The argument under the above provision is because in the United States there are two types of forfeiture as seen from the previous chapter. An offender can be proceeded against criminally and punished after conviction. On the other hand the state may decide to proceed against that person's property under the civil asset forfeiture laws in essence punishing the same person twice for the same offence.

- (ii) The second argument is that the forfeiture laws violates the due process clause and taking clause of the fifth and fourteenth amendments.

The fourteenth amendment states:

"No state shall deprive any person of life, liberty or property, without due process of law."

To elaborate this there is a case of **US v. James Daniel Good Real Property**³⁶ where the government apparently failed to serve the appellant with a notice of seizure before forfeiting his property. The Supreme Court held that seizure of real property for forfeiture without prior notice and a hearing violated the owner's due process rights under the constitution.

(iii) The third argument is that forfeiture violates the excessive fines clause of the eighth amendment.

The eighth amendment states:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

In forfeiture proceedings it is not unusual to find that a forfeiture order invariably follow a custodial sentence or a fine.

This may not be wrong in principle if the forfeiture order is not pronounced as a separate form of punishment in addition to the other sentence but as part of the whole or total punishment meted out for a particular offence.

³⁶ 114 S.Ct. 492 (1993)

The punishment must fit the crime and the argument about the violation of the eighth amendment is that the total punishment may be disproportionate to the crime. Where forfeiture is ordered after a custodial sentence or a fine it appears the court is overdoing the punishment and it will be seen to be excessive.

In the case of **US v. Bajakajian**³⁷ the court took an unprecedented step of overturning a criminal forfeiture on grounds that it constituted an excessive fine. Justice Thomas stated that even where forfeiture is primarily remedial, if it is in any way meant to be punitive, it is subject to the eighth amendment scrutiny.

He then held that a forfeiture order may be deemed an excessive fine if the amount forfeited is “grossly disproportionate” to the offence charged.

In Zambia the clause forbidding excessive fines is not contained in the constitution but can be found in the Penal Code.³⁸ Section 28(a) which states:

“Where a fine is imposed under any written law, then, in the absence of express provisions relating to such fine in such written law, the following provision shall apply:

(a) where no sum is expressed to which the fine may extend the amount of the fine which may be imposed is unlimited, but shall not be excessive.”

In England the situation is not very different from the United States although England has no written constitution. In the application of the forfeiture laws

³⁷ 524 US 321 (1998)

³⁸ Chapter 87 of the Laws of Zambia

however, courts there are guided by statutes and common law principles. For instance, ensuring that proportionality is observed, **Section 43 of the Powers of Criminal Courts Act 1973** states that there must be a relationship between the deprivation order and other sentences passed on the offender. It was also held in the case of **R v Buddo**³⁹ that an order depriving an offender of his rights in property is to be viewed as part of the total penalty imposed for the offence, and that if a deprivation order is made in conjunction with a sentence of imprisonment or a substantial fine there is a risk of “overdoing the punishment” as per Park J.

On the issue of giving the owner of the property an opportunity to be heard, before a forfeiture order is made there is Section 27 of the Misuse of Drugs Act 1971 which states:

Sec 27(2) “The court shall not order anything to be forfeited under this section, where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.”

In India the situation is also similar to the above two jurisdictions. For example the **Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act 1976** provides for principles of natural justice to be followed by issue of

³⁹ (1982)4 Cr. App. R.(s) 268

notice for forfeiture in respect of properties, affording the party a reasonable opportunity of being heard before a forfeiture order is passed.

4.2 CRITICISMS ON THE ZAMBIAN SITUATION

We now come to the situation in Zambia. The law of forfeiture in Zambia has been promulgated in a manner which one may describe as haphazard. There is no standard formulation of the provisions as a result one finds differently framed forfeiture provisions which deal with similar situations.

An example is the framing of **Section 139 of the Zambia Wildlife Act⁴⁰** which is a forfeiture provision. Subsection 5 states:

“Any person who claims any right of ownership in any vehicle, aircraft or boat may, within three months after the making of the conditional forfeiture order referred to in subsection (2), serve upon the Director and lodge with the clerk of court an application in writing for the discharge of the conditional order setting out his claim of ownership in the vehicle, aircraft or boat as the case may be; whereupon the clerk of court shall fix a date, ... for hearing....”.

This subsection brings out the application of principles of natural justice before the conditional forfeiture is made absolute.

However, in other enactments such as the one under the **Fisheries Act⁴¹** they do not state such an elaborate procedure but just end at stating that “upon

⁴⁰ Chapter 201 of the Laws of Zambia

conviction, the court before which the matter was brought may order that any fish or net, trap, line ... or other thing in relation to or in connection with which an offence has been committed shall be forfeited to and become the property of the state.”

The provision under the Fisheries Act does not take into account third party rights nor does it give them an opportunity to be heard.

Forfeiture provisions under the Zambian Laws do not also take into account the principle of proportionality. For instance, a person may have committed an offence under the Zambia Wildlife Act by being found in possession of game or government trophies worth K50,000 in his car. Since he was carrying the trophy hidden in the boot of the car, the car is said to be used in connection with the commission of the offence hence liable to forfeiture. The car may be worth several millions of Kwacha but the law does not care nor does it take into account the absurdity of such a situation.

Similarly, under the Fisheries Act someone may be found with a bundle of fish in a truck during the fishing ban and according to the law the truck should be subject to forfeiture. This is despite the fact that the owner of the truck had just sent his driver to do some legitimate work but on his way back the driver had

⁴¹ Chapter 200 of the Laws of Zambia

decided, without the owner's knowledge or permission to give a lift to a woman who had a bundle of fish nicely disguised as a bag of clothes.

The fish will be worth a few thousand Kwacha whilst the truck may be worth hundreds of millions. Will it make sense to forfeit the truck under such circumstances? Of course the law must be applied by the courts as it is whether it makes sense or not. The worst of this provision is that the owner of the truck has no way of claiming his truck back despite the fact that he was not party to his driver's misdeeds.

Of course the owner of the truck can argue that he was not party to the driver's commission of the crime but without an express provision protecting third party rights, his fight will be long and protracted in that he will need to petition the High Court for Judicial Review or that his rights under Article 16 of the Constitution have been infringed.

Whilst this course is open to the property owner it is expensive and laborious and may not be accessed by the majority of Zambians.

It will be more helpful if forfeiture laws were drafted in simple language and be elaborated and clearly expressed such that the majority of Zambians who happen to come into conflict with such laws can easily understand them and be able to

follow court proceedings without difficulties. We should take a leaf from South Africa where most laws have been rewritten with a view to make them simple and easily understood.

The government of South Africa took a deliberate policy to do so in order to accommodate the needs of the majority black people who were largely illiterate and whose needs the previous minority white governments had ignored for a long time.

4.3 CONCLUSION AND SUGGESTIONS

It is clear from the above discussion of the various jurisdictions' forfeiture laws and constitutions that Zambia is far behind in the manner it has drafted its forfeiture provisions.

There is need to have a system of ensuring that the provisions of forfeiture in various laws are brought in line with internationally accepted standards whereby as much as it is constitutional to deprive a person of their property rights under certain circumstances, this must be done in a manner consistent with the rule of law or due process as the Americans would call it.

The person who has committed the crime must be notified at the earliest opportunity about the possibility of having the property involved in the commission of the crime forfeited to the state.

What we see in our courtrooms is that the accused is engaged in an exercise to avoid going to jail and nothing is mentioned about the property he was found with until after conviction when sentence is passed and a forfeiture order is made as a consequence. The accused's mind is never addressed to what will happen to the property if he is convicted as a result one cannot say that he has been given a genuine opportunity to be heard over the property.

It is our considered view that the issue of a possible forfeiture must be brought to the accused's attention early in the proceedings so that ample opportunity is given to him to address it in his defence. On the issue of proportionality the challenge is to the legislators to be more realistic and not make forfeiture orders to be applicable in all cases.

Courts must be given a broader discretion whereby they can decide whether or not to order forfeiture of certain properties. In most cases where fines could suffice forfeiture orders should not be applied for thereby leaving the issue entirely in the discretion of the courts.

It will then be incumbent upon the courts to apply the principles of sentencing as applied in other common law jurisdiction to arrive at reasonable orders which will serve the purpose of punishing the offender and remedying the wrong.

Take for instance, a farmer with 50 acres of farmland which he uses to cultivate cash crops such as maize, beans, sweet potatoes etc. In the meantime due to the high profits generated by drug trafficking he is enticed into cultivation of cannabis, on say, an acre of the farm. Within a year of engaging in this unlawful activity he is arrested, convicted and sentenced to 10 years imprisonment with hard labour and fined K5 million. Would it be fair, reasonable and proportionate for such a farmer to also lose the whole 50 acres plus the house and other improvements on the farm because that is what the law says?

There is need therefore to re-write our laws so that they can meet and fit in the modern challenges of society.

Lastly but not least the issue of excessive fines should be elevated to the constitution instead of dealing with it in the Penal Code. It should be treated at par with the provisions on inhuman and unusual punishment.

Although there are as yet no Zambian cases dealing with this point directly, the case of **Musonda v. The People**⁴² is near the point. In that case the Supreme

⁴² (976)ZR 215.

Court dealt with the suitability of sentencing an offender to a custodial sentence when legislature has also provided for a fine.

The court held that where the legislature has seen fit to prescribe a sentence of a fine or imprisonment or both a first offender in a case where there are no aggravating circumstances which would render a fine inappropriate should be sentenced to pay a fine with imprisonment only in default.

The Supreme Court was trying to say that a lenient sentence should be considered if the circumstances of the case are not aggravating. In other words the principle of proportionality should be taken into account whenever sentence is being meted out.

CASES REFERRED TO

Zambian Cases

1. Musonda v. The People (1976) ZR 215.
2. Chishimba v. The People (1976) ZR 17.
3. Hyden Dingiswayo Banda v. The People (1981) ZR 69.
4. R v. Potlas Azekiyele and Another HPR/256/64.
5. R v. Visagie (1963-64) ZR 140.
6. The People v. Francis Mwalilanda (1971) ZR 166.
7. Jonathan Mwiinga v. The People.

Foreign Cases

8. R v. Macfarlane (1982) 4Cr App. R 264.
9. R v. Bramble (1984) 6Cr. App. R. 80.
10. R v. Khan (1982) 4 Cr. App. R 298.
11. R v. Scully (1975) 7 Cr. App. R 119.
12. R v. Bucholz May 10, 1974 CSPJ4.4
13. R v. Troth (1979)1 Cr. App. R 341.
14. R c. Churches (1986)8 Cr. App. R 94.
15. United States of America v. Ruben Desantiago-Flores No. 98-1459 (D.C. No. 94 – Cr. 414-m Colorado).
16. Colero v. Toledo 16 US663; 945 Ct. 2080 (1974).
17. US v. James Daniel Good Real Property 114 Sct. 492 (1993).
18. US v. Bajakajian 524 US321 (1998).
19. R v. Buddo (1982) Cr. App. R 268

LEGISLATION REFERRED TO

Zambian Legislation

1. Game Ordinance No. 19/1925.
2. Game Ordinance No. 47/1941.
3. Fish Control Regulations 1956.
4. Fish Conservation Act Chapter 314 of the Laws of Zambia.
5. Fisheries Regulations 1986.
6. Fisheries (Amendment) Regulations 1991.
7. Fisheries (Amendment) Regulations 1993.
8. The Penal Code Chapter 87 of the Laws of Zambia.
9. The Firearms Act Chapter 111 of the Laws of Zambia.
10. The National Parks and Wildlife Act Chapter 316 of the Laws of Zambia.
11. The Zambia Wildlife Act Chapter 201 of the Laws.
12. The Fauna Conservation Ordinance.
13. The Constitution of Zambia Chapter One of the laws of Zambia
14. The Fisheries Act Chapter 200 of the Laws of Zambia.

BOOKS REFERRED TO:

1. David Gordon Malcolm, "The Making of a Hinterland Environment and Politics in Mweru-Luapula"; Dissertation presented in the Faculty of Princeton University in Candiday of a Ph.D.
2. Halsbury Laws of England, 3rd Edition Volume 36.
3. A.S. Hornby, Oxford Advanced Learners Dictionary, Oxford University Press (C) 2000.

WEBSITES VISITED:

1. American Forfeiture laws.
 - (i) **www.fear.org**
 - (ii) **www.cato.org**
2. English Forfeiture laws.
 - (i) **www.fsu.edu**
 - (ii) **www.ebu.co.uk**
3. Indian Forfeiture laws.
 - (i) **www.unodc.org**
 - (ii) **www.indialawinfo.com**