

ZAMBIA AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS
AS A COMMON STANDARD OF ACHIEVEMENT FOR ALL PEOPLES
AND NATIONS

by

VED PRUKASH TORUL

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To My wife, Premila,
Sweet Mone and Nandish

"Any Human Society, if it is to be well ordered and productive, must lay as a foundation this principle, namely, that every human being is a person. That is, his nature is endowed with intelligence and freewill. By virtue of this, he has rights and duties of his own flowing directly and simultaneously from his very nature, which are, therefore, universal and inalienable."

Pope John XXIII.

DECLARATION

I, VED PRUKASH TORUL, declare that this dissertation
has not been submitted to this or any other
university.

28th June, 1984

.....
Ved Prakash Torul

This thesis of VED PRUKASH TORUL is approved as
fulfilling part of the requirement for the award
of degree of Master of Laws at University of
Zambia.

Signed:

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Signed:

Signed:

28th June, 1984

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ABSTRACT

Events in the past have awakened world opinion on the importance of extending international protection of the individual. World leaders and legal philosophers have also recognised the merit of the struggle for man's basic rights. There is, therefore, a constant and consistent attempt at international as well as municipal levels to build a new public order of human dignity.

The subject on human rights and fundamental freedom is so vast, that it is not possible to do full justice in a few pages written in satisfaction of the requirement for a dissertation. Convinced by the vastness of the subject and the limitations imposed upon a student of law, only a few selected areas on human rights have been brought into focus.

Chapter I looks at the Universal Declaration of Human Rights and its impact on international relations and practices at the municipal levels.

Chapter II attempts to show that Zambia through sustained efforts and legislative enactments, has tried to give effectiveness and force to civil and political rights of an individual.

Chapter III discusses how Zambia, through various economic reforms and the instrumentality of the law has tried to conform to the economic standards of human rights as provided in the Universal Declaration.

Chapter IV brings out the salient features of social rights in Zambia. Problem areas such as the right to work, leisure and social security of an individual have been brought to light. These rights have also been looked at from different levels. These are homes for the aged, family and child welfare, Provident Fund, legal aid and the right to fair hearing and administrative justice.

Chapter V focuses on Zambia's commitment to ensure effective development of human personality by the implementation of the right to education and culture.

The conclusion tries to evaluate the existing civil, political, economic, social and cultural rights in Zambia. It also contemplates to suggest measures to improve on the present set up.

As pointed out earlier, all aspects of human rights cannot be brought within the limited scope of this dissertation. However, attempt will be made to discuss the areas important in relation to the topic.

I have had several constraints while working on the dissertation. On the expiry of his contract, Prof. Dayal who was initially appointed as my Supervisor, left the University. It was not possible for the University to appoint another supervisor until later this year. Major portion of the dissertation has been supervised by Dr. Koul who has tried his best to give the dissertation a presentable form.

Another constraint was lack of resource materials. Due to unavailability of latest reports on Co-operative development, Education, social services and legal aid, it has not been possible to make the present data up-to-date. On the other hand, most of the information collected are from interviews and discussions held with different officials at various levels in the ministries and departments concerned. I also had recourse to the University of Zambia Library (Special Collections), National Archives, High Court Library, The Evelyn Hone College Library, the United Nations Library (Lusaka) and the International Labour Organisation Library (Lusaka).

Preface and Acknowledgements

This dissertation examines the various provisions of the Universal Declaration of Human Rights and the bases for the protection of human rights within the constitutional framework of Zambia. It also indicates how Zambia has a high level of commitment in the implementation of civil, political, economic, social and cultural rights of an individual.

At first I wish to thank Prof. S. Dayal for his initial guidance of the first chapter of the dissertation.

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VED PRUKASH TORUL

Abbreviations

A.C	Appeal Cases
A.G	Attorney General
A.J.L	The African Journal of International Law
A.J.I.L	The American Journal of International Law
Cap.	Chapter (Zambia)
Cols.	Columns
Col. L.R	Colombia Law Review
G.A	General Assembly
I.C.L.Q	The International and Comparative Law Quarterly
Int. Org.	International Organisation
J.A.L	Journal of African Law
J.I.L.I	Journal of the Indian Law Institute
Leg. Ass. Deb	Legislative Assembly Debates
N.R.	Northern Rhodesia
Res.	Resolution
TANU	Tanganyika African National Union
U.N.	United Nations
UNIP	United National Independence Party (Zambia)
UP	United Party (Zambia)
UPP	United Progressive Party (Zambia)
ZLJ	Zambia Law Journal
ZIS	Zambia Information Services
SCZ	Supreme Court of Zambia
ZLR	Zambia Law Reports

CHAPTER I

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AS A COMMON STANDARD OF ACHIEVEMENT FOR ALL PEOPLES AND NATIONS

Introduction

On 10th September, 1948, the General Assembly adopted the Universal Declaration of Human Rights whose main objectives have been to promote respect for human rights in the international community.¹ But the history of human rights in the United Nations extends beyond 1948. An essential part of the foundation was laid by the Charter itself. Though the Charter does not list down the entire gamut of human rights, it has, however, made several important references to them.

The members of the United Nations have, through the Charter, affirmed their "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". Article I of the Charter aims at "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." Similarly, Article 55 provides that the United Nations is to promote "universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

The inclusion of these provisions in the Charter reflects the reaction of the world to numerous violations of the fundamental rights which had taken place in certain countries during and immediately before the second world war. It was pointed out that:

"The second World War demonstrated clearly the close relationship existing between outrageous behaviour by the government of a nation towards its own citizens and aggression against other nations, between respect for human rights and the maintenance of international peace and security."²

It was against this background that the United Nations resolved to include in its charter objectives which could guarantee human rights and fundamental freedoms. This also showed a more determined effort to work for a better destiny for mankind and for Man. The importance of human rights which had so long been considered a narrow field of work, was given a sense of direction in the field of international law and relations.

The Charter merely refers to the promotion of respect and observance of human rights and makes no further elaboration either about the content of these rights or about means for their implementation. It was necessary, therefore, through the instrumentality of the Universal Declaration of Human Rights, to define in precise terms, the nature and substance of these rights, with a view to provide a wider and concrete perspective of human rights as they should be understood and interpreted by the member states of the United Nations.

The Declaration has listed down several provisions on human rights and fundamental freedoms in its preamble and thirty other Articles. Its preamble states:

'.....recognition of the inherent dignity and of the equal and alienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.'³

The principles of freedom and equality are placed at the head of the Declaration and Article 1 sums up the entire concept by stating that all human beings are born free and equal in dignity and rights.⁴

The exact meaning referred to in Article 1 is clarified by Article 2 and Article 7. Article 2 provides that there should be no distinction (discrimination) of any kind in the exercise of fundamental rights and freedoms, whether it be on the basis of rank, opinion or personal status (by reason of race, colour, sex, language, religion, political or other opinion, national or social origin, property birth or other status) or the political status, jurisdictional or international, of the country of which the beneficiary is a national. Article 7 lays down that 'all are equal before the law and are entitled without discrimination to equal protection of the law.'

It is clear from these provisions that the Universal Declaration of Human Rights intends all human beings to be born and to live with equal rights. It is a laudable attempt to raise to the level^{of} those who had formerly been classified as inferior on account of their being women, coloured or non-conformists.

Furthermore, it assures the equal rights of all citizens to take part in the political and social life of the country and to have access, according to their merit, the public service and other government machinery. Freedom in this context, also means equality. By exercising the right to form trade unions, employees can put themselves in a position to negotiate with their employers on equal terms.

Elaborate discussions and interpretation of specific provisions on human rights and fundamental freedoms as embodied in the Universal Declaration of Human Rights will follow in the succeeding chapters when dealing with topics relating to them.

The Declaration as a Common Standard of Achievement for all Peoples and Nations

Since its proclamation in 1948, the Universal Declaration of Human Rights has exercised a powerful influence throughout the world. It has given a different shape and meaning to the entire concept of human rights. It is important to note that far from remaining a mere annex to the United Nations Charter, the Declaration became a common source of inspiration for all international organisations and independent countries.

Several international human rights covenants have also been prepared on the basis of the principles of the Declaration. Among the various instruments on human rights, the most prominent are the International Covenant on Economic, Social and Cultural Rights (1976)⁵ and the International Covenant on Civil and Political Rights (1976)⁶ that have attempted to make operational what has been spelt out in the Declaration. They have stressed on the duties owed by everyone

both to his fellowmen and to the community in the promotion and observance of the rights and freedoms enshrined in the Charter and the Declaration.

The influence of the Declaration has extended far beyond these instruments on human rights. Many regional conventions contain detailed provisions on human rights which are inspired or modeled on the text of the articles of the Declaration. The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) contains detailed provisions conserving most of the Civil and Political Rights set out in the Declaration and states that member countries should take steps 'for the collective enforcement of certain of the rights stated in the Universal Declaration.'⁷ On the other hand, the American Convention on Human Rights (1969) refers quite extensively to the provisions on civil, political, economic, social and cultural rights mentioned in the Declaration.⁸

The most recent of the regional conventions which has derived its basic principles from the Declaration, is the African Charter on Human Rights and Peoples' Rights. When the Charter was adopted in 1963 the participating states 'pledged' to promote international co-operation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.⁹

The African Charter encompasses a very wide perspective on human rights.

They are:

- (a) concept of human and peoples' rights should have the reflection of the virtues of historical tradition and the values of African tradition;
- (b) emphasis on duties along with rights and freedoms;
- (c) particular and pointed attention to the right of development and the realisation that 'civil and political rights cannot be dissociated from economic, social and cultural rights.'¹⁰
- (d) enjoyments of the rights and freedom 'without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.'¹¹
- (e) 'duty to achieve the total liberation of Africa..... and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination.....'¹²

The last provision gives the peoples the right to self determination and the right to assistance from the member states in their liberation struggle. This seems to be a unique feature of the Charter as the people have the 'right to free themselves from the bond of domination by resorting to any means recognised by the international community.'¹³

After examining briefly the main objectives of the international instruments and the regional conventions on human rights, it may be concluded that the Declaration has established itself as the formal basis on which the foundation of these instruments stand.

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Beyond these perspectives and looking from its functional aspect, the Declaration is used as a yardstick by which to measure the content and standard of observance of human rights. Evidence of the impact of the Universal Declaration may be found in texts of various national constitutions which were enacted after the adoption of the Declaration. For instance, Constitutions like the Peoples of Guinea (1958), Madagascar (1959), Ivory Coast, Mali and Niger (1959), Gabon and Mauritania (1961), Rwanda (1962), Burundi (1962), Algeria, Republic of Congo, Senegal and Togo (1963), Zaire (1967), Dahomey and Upper Volta (1970) and Cameroon (1972) and Equatorial Africa (1968) have expressly referred, either in their preambles or in their operative provisions to the Declaration.

Besides the countries already mentioned, there are several other countries which have not made any specific mention of the Universal Declaration of Human Rights in their Constitutions. Nevertheless, their aspirations, ideals and objectives are undoubtedly guided and influenced by the philosophy of the Declaration. The outstanding example is the Republican Constitution of Zambia. 'Humanism' as the directive principle enshrined in the preamble of the constitution and by providing a Bill of Rights, Zambia has incorporated in her Constitution all the essential features which can secure an egalitarian society in which there is equal opportunity for self development for every human being in the country. Detailed and critical analysis of the provisions will be made in the chapters that follow.

When referring to the Declaration as 'a common standard of achievement for all peoples and nations,' its scope should not be limited only to national or municipal laws. Its influence stretches far across and beyond the national frontiers and its effectiveness has become well established. By gradual steps the United Nations has proceeded to enforce more vigorously the obligations of member states to observe human rights and fundamental freedoms, and almost all members have accepted this slow extension of the United Nations powers in this area.

Cases abound in which provisions of the Declaration have been invoked by the General Assembly to give rulings on controversies relating to human rights and fundamental freedoms. In the Russian Wives case, the General Assembly adopted a resolution on the subject, declaring that Soviet measures preventing Soviet wives leaving the Soviet Union with their foreign husbands were 'not in conformity with the Charter,' and it cited Articles 13 and 16 of the Declaration in support of this conclusion.¹⁴ The Declaration was also invoked by the General Assembly in several resolutions relating to the treatment of people of Indian and Pakistani origin in South Africa,¹⁵ the administration of South Africa,¹⁶ and the policies of apartheid in South Africa.¹⁷ The Security Council requested South Africa

'to cease forthwith its continued imposition of discriminatory and repressive measures which are contrary to the principles and purposes of the Charter and which are in violation of its

obligations as a member of the United Nations and of the provisions of the Universal Declaration of Human Rights.'¹⁸
In a more general fashion, the General Assembly condemned

'.....all manifestations and practices of racial, religious and national hatred in the political, economic, social, educational and cultural spheres of the life of society as violations of the Charter of the United Nations and the Universal Declaration of Human Rights.'¹⁹

All these resolutions indicate the growing reliance by the United Nations on the proposition that the Declaration established binding obligations, a violation of which by a state may be severely condemned by the General Assembly. This seems to be also the implication of two provisions included in the two later Declarations adopted by the General Assembly in 1960 and 1963. Thus in 1960 the General Assembly unanimously proclaimed in the Declaration on the Granting of Independence to Colonial Countries and Peoples that:

'All states shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all states, and respect for the sovereign rights of all peoples and their territorial integrity.'²⁰

A similar provision was included in the Declaration on the Elimination of All Forms of Racial Discrimination.²¹ These two supplementary Declarations have been vigorously implemented by the General Assembly and the Security Council, especially in the Rhodesian case.²²

Many critical opinions have been made in appraisal or which doubt the workability of the Declaration. Many member states felt that the Declaration was not a treaty or international agreement and, therefore, did not impose any legal obligations. It was rather a statement of basic principles of inalienable rights, setting up a common standard of achievement for all peoples and nations. The United Kingdom expressed the view that the Declaration constituted 'a statement of ideals, a goal towards which mankind should strive, and in no way a document creating binding legal provisions, such as the covenant.'²³ On the other hand, some saw the Declaration as a document interpreting the Charter, and, therefore, vested with the same mandatory force as the Charter itself. For instance, Mr. Malik (Lebanon) declared that the Declaration was not a simple resolution of the General Assembly, but a continuation of the Charter and must have the dignity of the Charter.²⁴ Furthermore, while outlining its general concept and influence on the various international instruments and conventions, the International Convention on Human Rights which met at Teheran, proclaimed that:

'the Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.'²⁵

The veracity of these statements can hardly be disputed. However, it has come to be established through working experience that the Declaration being an instrument which provides 'a common standard of achievement for all peoples and nations', has pioneered many principles in international law and has been used as a yardstick to measure the content and standard of observance of human rights in the international community. Thus, the Declaration has achieved a worldwide prominence and it provides an obligation for the members of the international community to work out means of implementation of human rights in their respective territories. These facts were further substantiated when the Secretary General remarked in his 1971 survey of International Law that the 'Universal Declaration is not in terms a treaty', but,

'During the years since its adoption, the Declaration has come through its influence in a variety of contexts, to have marked impact on the pattern and context of International Law.'²⁶

From all these observations, it may be noted that the Declaration is not just a towering monument devoid of strong foundation. Its provisions have undoubtedly had an influence and impact on the social and political set up of many countries upholding the right inherently associated with man. In fact, many countries have incorporated entrenched provisions in their constitutions and several others have a number of municipal laws and decrees promulgated in recent years in accordance with the principles of equality and non-discrimination as set out in the Declaration.

Thus it leaves very little doubt that the usefulness and importance of the Declaration are not lessened by the fact that it includes no provisions of legal sanctions and it, therefore, lacks legal force. The Mexican Government expressed the view that:

'.....although this declaration imposes no precise legal obligations on members, these in signing the Charter undertook to fulfill in good faith the principles stated therein, and these principles include the promotion and respect of human rights.'²⁷

Although it seems difficult to draw any firm conclusions on the legal force of the Declaration, yet there is an agreement and consensus of opinion that the Declaration is a statement of general principles, spelling out in considerable detail the meaning of the phrase 'human rights and fundamental freedoms' in the Charter of the United Nations. Besides merely spelling out the general principles in detail, the ultimate aim was also to make the Declaration have legal force. As pointed out by Mr. Dehousse (Belgium), the Declaration

'.....would not, in the strict sense of the word be binding; but it would place an obligation on the member states to consider the action which should be taken on that recommendation of the General Assembly.'²⁸

As the Declaration was adopted unanimously, without a dissenting vote, it can, therefore, be considered as an authoritative interpretation of the Charter of the highest order.²⁹ While the Declaration is not directly binding on the United Nations members, it strengthens their obligations under the Charter by making them more precise.

As Draper has appropriately described, the Declaration is not only a promotional document, it is 'somewhere between a legal and a moral ordering.'³⁰ Thus the members can no longer contend that they do not know what human rights they promised in the Charter to promote. They agreed in the Declaration on 'a common standard of achievement', they approved a list of basic rights and freedoms, and they accepted the obligation 'to secure their universal and effective recognition and observance' by progressive measures, national and international.³¹ A further attempt has been made by the Secretary General of the United Nations in reconciling the two conflicting aspects of the Declaration which ensure a greater measure of enforceability of the provisions of the Declaration.³² He said that member states should reconcile their jurisdiction with the principles laid down in the Universal Declaration. According to him, member states have to be actively involved in the effective implementation of the human rights provisions in the Declaration. They have to conform, therefore, to the norms and established standards laid down in the Declaration.³³

In a concise manner, L.B. Sohn has eulogised the effectiveness of the Declaration in the international context. He has stated:

'In a relatively short period, the Universal Declaration of Human Rights has thus become a part of the constitutional law of the world community; and, together with the Charter of the United Nations, it has achieved the character of a world law superior to all other international instruments and to domestic laws.'³⁴

During the course of the discussion, there has been an attempt to show that human rights as enlisted in the Universal Declaration are not only moral or natural rights³⁵ they are also legal rights that have to be protected by juridical rules.³⁶ Together with various conventions on Human Rights which have been adopted by the United Nations, the specified agencies and the regional organisations, the Universal Declaration has made a major break-through toward a global consciousness on human rights. As a consequence of confirmation of the United Nations Charter by the member states, legal enforcement and implementation of the provisions do not look to be a far-fetched idea.

Throughout the Chapter, attempt has been made to show that the Declaration is a 'Common Standard of Achievement for all Peoples and Nations.' By this it is meant that the Declaration has built an international public order of human dignity and is also searching ways and means to fulfil human needs. Thus the constant and widespread recognition of its principles clothes it with the character of customary international law.³⁷ Examples in the discussion amply show that the 'standards' qualifying the Declaration are of practical value. It should be noted that the Legal normativity of the human rights that were proclaimed in the Economic, Social and Cultural Rights Convention 1966 and the Civil and Political Rights Convention (1966) reinforces the idea that municipal laws should be consistent with and subserve the international normativity of the human rights.³⁸ It has been demonstrated in the earlier lines, that both international law and municipal law blend into one legal category as the constitutions of various municipal states have tried to emulate the

international legal normativity of the human rights.

With regard to Zambia, it is obvious that the Constitution of Zambia in its various articles is not only reproducing in verbatim the various articles of the Universal Declaration and the two covenants, she has also stated the administrative and judicial concepts that are geared to implement and enforce the 'common standards' in varying contexts.

In Chapter II, it will be discussed that not only the Constitution of Zambia respects the provisions of the Universal Declaration and its protocols, she has also instituted mechanisms to achieve the avowed contents of human rights. Consequently, Chapter II has been devoted to establish an access between the international proclamations on human rights and the various provisions of the Zambian Constitution.

CHAPTER II

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND THE CONSTITUTIONAL PROTECTION OF CIVIL AND POLITICAL RIGHTS IN ZAMBIA

After the Second World War, Africa witnessed a great transition in its social and political settings. With the adoption of the United Nations' Charter and its provisions on human rights, i.e. the right to self-determination and equal rights to all peoples,³⁹ coupled with the eventual elaborations of these rights and freedoms in the Universal Declaration of Human Rights, provided the African Nationalists with an additional means of challenging the colonial rule as being contrary to the United Nations' Charter and the Declaration and, therefore, a violation of the United Nations Charter.

The Declaration does not elaborate much on the Civil and Political rights of an individual, nevertheless, the declaration has made this concept explicitly clear in the Article 3, stating therefore:

× 'Everyone has the right to life, liberty and security of person.' The Zambian nationalist leaders being acquainted with this ideology of human rights and of its values in government as an indispensable attribute of democracy, declared human rights as part of the nationalist strategy to encourage the struggle for the achievement of national independence.⁴⁰ They assured the people of Zambia that the independence constitution would contain a bill of rights guaranteeing the freedom of individual and providing against abuses of power by the executive.

Arthur Wina observed:

'We (members of UNIP and others in the coalition government) consider that a Bill of rights would be an essential part of the Constitution of this country.'⁴¹

This pledge was redeemed by incorporation of a Bill of rights in the 1963 Constitution of the then Northern Rhodesia.⁴² Subsequently these were incorporated in Sections 13 - 25 of the Republican Constitution, 1964 as amended. The declaration of these rights have again found expression in the Constitution of Zambia, 1973, as entrenched provisions, which can only be amended if the bill for amendment is supported by two thirds majority of all the members of the Assembly at the second and third readings.⁴³

Before attempting a critical analysis of the entrenched provisions in the Constitution it is necessary to look at briefly the factors that inspired the incorporation of such provisions in the Constitution of Zambia. Primarily, this can be attributed to Zambia's strict adherence to the traditional beliefs⁴⁴ and also the strong resentment of her long period of subjugation and exploitation by the colonial rulers. Secondly, Zambia being a member of the United Nations, was under an obligation to observe the provisions of various instruments adopted by it.⁴⁵

Under the colonial rule the people of Zambia had no say in the Government. As the nation's natural resources were organised and developed mainly for the benefit of the colonialists, the nation's human resources were ignored and disregarded.

People were kept uneducated, untrained and unbenefitted by the growth of the economy.⁴⁶ The President, Mr. K.D. Kaunda, writing on 'Education and Humanism' gave an appropriate picture of those times. He said:

'...education at that time was a rare privilege rather than a universal right. Not only were schools few and widely scattered in colonial days, but education cost the princely sum of two shillings and six pence a year.'⁴⁷

Lack of proper educational opportunities before independence to every member of the Zambian society, created a major handicap for the political as well as economic progress of the country.

After the independence, Zambia inherited a society of unequals; a society rife with racial discrimination and class suppression in the mines, factories and shops.⁴⁸ As the political realities and the social attitudes of the local people could not be changed overnight, Zambia had to re-organise and mobilise her social heritage. On the other hand, they also needed a concerted and careful planning to overcome poverty, disease and lack of education in order to achieve social justice, human dignity and economic welfare for all.⁴⁹

Apart from the impact of the United Nations' Charter and the Universal Declaration, African socialism had its strong influence on the thinking of the political leaders and on the objectives and mechanisms for implementing human rights in Zambia.⁵⁰ It should be noted here that both phrases 'African Socialism' and 'Zambian Humanism' are complementary and supplementary.

In fact, Zambian humanism has much in common with African socialism as the roots of both lie in the soil of African tradition.⁵¹ For our present study, two important African traditions need be mentioned in particular. They are political democracy and mutual social responsibility. Political democracy implies that a man is born politically free and is equal in his political rights.⁵² His voice and counsels are heard and respected regardless of the economic wealth he possesses. On the other hand, mutual social responsibility means an extension of the African extended family spirit to the nation as a whole. It implies a mutual responsibility by society and its members to do their best for each other with the full knowledge and understanding that if society prospers, its members will share in that prosperity.⁵³

It is interesting to find that African socialism with its political and social values form the core of Zambian humanism. It means that Man is given the central place in society. He is highly valued and he is the focus and master over all institutions in the traditional society. President Kaunda's words are highly supportive of this. He has stated;

'This high evaluation of MAN and respect for human dignity... is a legacy of our tradition... All our political, economic and social policies have always been geared towards protection of Man's individuality, his dignity and freedom.'⁵⁴

Thus the concept of MAN, the principles of human equality, man centredness and mutual aid constitute the basis of democracy in Zambia.

It is an attempt, therefore, to establish a perfect democratic system in which an individual is allowed to enjoy his life to the full without any danger of being molested or his rights being infringed because of his political or religious beliefs or because of his colour or tribe. President Kaunda has again observed:

'The type of democracy that exists in Zambia, is one that is based on the importance of man. In other words, we are working to establish a man centred society...this man is not defined according to his colour, tribe, religion, creed or political leanings. Indeed, not even his material contribution is considered. It is simply that he is a man, the beginning and end of everything on earth.'⁵⁵

Zambia has enshrined these values in the Republican Constitution and committed herself to establish a sound welfare state imbued in socialism. With this, Zambia has conserved rights and liberties as an expression of character of the society and man is looked upon as an integral element of the environment in which he lives.

Protection of Civil and Political Rights under Zambia's one party Constitution

The one party constitution of Zambia became operative in 1973. Among its several other important provisions, it has also reaffirmed the rights protected under the 1964 Independence Constitution by setting out in details the fundamental rights and freedoms of individuals which relate to:

- (a) life,⁵⁶ liberty,⁵⁷ security of person and the protection of the law;⁵⁸
- (b) freedom of conscience,⁵⁹ expression,⁶⁰ assembly and association,⁶¹ freedom of movement;⁶²
- (c) protection for the privacy of his home and other property and protection from deprivation of property.⁶⁴

These rights are found expression in the Universal Declaration of Human Rights as inviolable provisions and the Constitution of Zambia is equally emphatic in incorporating these rights in its constitutional articles. By enshrining these fundamental human rights in the Constitution, Zambia has incorporated the rights proclaimed in the Universal Declaration. It also shows Zambia's dedication and commitment for securing these rights.

The preamble to the Constitution of Zambia contains the guiding principles of the nation and it recites that Zambia is a 'one party participatory democracy under the Philosophy of Humanism.' It also asserts the inherent and inviolable rights of the people of Zambia and it recognises that the fundamental rights and freedoms of the individual are based on the rights and dignity of all men. It recognises:

'....that individual rights of citizens including freedom, justice, liberty and equality are founded on the realisation of the rights and duties of all men in the protection of life, liberty and prospects, freedom of conscience, expression and association within the context of our national constitution.'

The Preamble further pledges the bounden duty of the state to respect the rights and dignity of all men and to preserve and develop and equitably distribute the resources of the state for the benefit of its citizens as a whole and prevent the exploitation of man by man.

First and foremost, the controversial issue that Zambia had to resolve after establishing one party participatory democratic form of government, was to prove the legal validity of a one party state within the framework of the constitutional rights of an individual. The point was brought to the notice of the court and the legality of such a move was vehemently challenged.

It was contended in the case of Harry Nkumbula v Attorney General of Zambia⁶⁵ that by virtue of the One Party State Act⁶⁶ which brought into existence the one party system, the appellant's fundamental rights were likely to be contravened. It meant that the move to establish one party state system was incompatible to the existing freedom under the Constitution to belong to a political party and was, therefore, contrary to the spirit of the Constitution and ultimately to the Universal Declaration of Human Rights.

Section 23 of the Constitution states:

'Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, i.e. to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interest.'

Article 20 of the Universal Declaration also provides:

'Everyone has the right of freedom of peaceful assembly and association.'

Oddly enough, the Court of Appeal of Zambia did not elaborate much on the infringement of the rights and freedom of an individual. While rejecting the applicant's petition, the Court found that the State had followed the correct procedures in effecting such a major constitutional change. It was further declared that the court had no power to prevent or question any bill, still less a constitutional bill, before it becomes law, even if it aims at removing fundamental rights of an individual.⁶⁸

But the important question still remains unanswered, i.e., by establishing a correct amendment procedure⁶⁹ does it necessarily mean guarantee of the rights and freedom of an individual? Obviously, it is difficult to come up with an outright answer. However, *prima facie*, one party participatory democracy does restrict the fundamental right of association of an individual. The Constitution provides that the UNIP shall be the only party⁷⁰ and that it is unlawful to form, belong or sympathise with any other political party.⁷¹ It means that there is a legal as well as moral compulsion on the citizens to join UNIP as it is the only party with legal validity and recognition. In other words, this provision acts contrary to the Article 20(2) of the Universal Declaration which states:

'No one may be compelled to belong to an association.'⁷²

UNIP has therefore not only acquired a constitutional existence but assumed a political monopoly for all the functions associated with political parties.

However, one cannot make a conclusive opinion on the infringement of political rights in a one party state. At first, democracy is not synonymous with two or multiparty system. On the other hand, a single party system, if given to work under certain conditions, can provide ampler scope to satisfy the essential requirements of democracy. In the words of President Nyerere of Tanzania:

'Where there is one party and that party is identified with the nation as a whole, the foundations of democracy are firmer than they can ever be where you have two or more parties, each representing only a section of the community.'⁷³

He explained further, that the two party system by its very nature imposes limitations on members' freedom to contest elections at any level or to speak in parliament for fear of giving 'accidental support or encouragement to the rival party by any lack of unity between the leaders and their back bench supporters.'⁷⁴

For the purposes of argument, President Nyerere's idea of democracy is as good as any because according to his definition, democracy is a form of government whereby the people directly or through their representative, settle their affairs through free discussions.⁷⁵ Tanzania's own experience, has shown that there is, subject to some restrictions and controls by the Party, freedom for the people to stand for elections to the National Assembly and there is also an equal freedom of speaking out in the Parliament.

The only serious argument against the one party state system seems to be that, by its very nature, restricts policy choice and people's freedom to associate for political purposes. But arguments can be raised against this point also. It is common knowledge that in a two party system the policies of the opposing party can rarely be distinguished in the real sense as different parties have similar policies and in practice, they pinch each other's programmes which may appear popular. It is also seen that party members often cross the floor when they have to consider making a policy choice.

X In Zambia, the proclamation of one party system was not a mere political rhetoric. The Government has optimistically looked forward to ensure that democratic principles are not violated through the establishment of a one party state. This means that the political rights of an individual which is an essential attribute of every free legislature, has to be guaranteed. Otherwise, 'there can be no assured government by the people.'⁷⁶ Subsequently, the National Commission's recommendations for competitive election to parliament and free debate have been included in the new Constitution.⁷⁷ The members of the Assembly are also entitled to privileges and immunities of the National Assembly.⁷⁸

Past record also indicates that there has been a steady commitment to the democratic process by the party in Zambia. In its determination to get fuller support and participation from the masses, the Zambian Government adopted the one party participatory democracy whose objectives are described:

'...especially not only to guarantee freedom but to increase and widen the scope of the involvement of all citizens in their various institutions which give expression to political, economic, social and cultural life in the transformation of their society in creating progress and prosperity.'⁷⁹

This represents the ethos of the Zambian democracy which President Kaunda has identified as having what he calls 'four pillars'. The first pillar is the election machinery of UNIP which makes it possible for the rank and file of the party to return and retain leadership of their own choice from the village or section level right through to the Central Committee. The second pillar comprises of parliamentary elections under the Constitution; the third pillar is at local government level. The fourth pillar is the election of the President of the Republic which takes place simultaneously with parliamentary general elections.⁸⁰

X Looking at the mode of election and the level of participation of the people in electing their leaders and selecting the government of their own choice, it goes a long way to show Zambia's commitment and determination to preserve broad and equal franchise.⁸¹ Every citizen who has attained the age of eighteen⁸² enjoys, therefore, fuller rights to institute a government which will assure him of his safety and happiness.

To give a further boost to the development of participatory democracy, the Village Registration and Development Act 1971, was enacted giving the village communities an even greater role to play in shaping their own future.

A more detailed discussion will be made in the Chapter on Economic Rights in Zambia. It is sufficient in the present context to mention that following the passing of the Act, all the traditional rulers in Zambia were enjoined to play a leading role in the formation and administration of Village Productivity Committees, Ward Development Committees and Ward Councils which would help in the socio-economic development in the rural areas.

Thus the Zambian experience in the field of political rights enshrined in the Universal Declaration of Human Rights convincingly demonstrates the faith and commitment of the State apparatus, both the legislative and executive, in furthering the standards of the Universal political rights. It has also been shown as to how one party state can equally have commitment to the achievement of just and equal society and Zambia for one can be credited with this endeavour.

Civil Rights in Zambia and the Universal Declaration of Human Rights

A notable feature of one party Presidential form of government in Africa is the limitation of human rights associated with the very wide powers to the President for the preservation of national security. In Zambia the Preservation of Public Security Act which was enacted in 1964, has been used on numerous occasions and for various reasons.

Article 13 of the Universal Declaration of Human Rights states:

'Everyone has the right to freedom of movement and residence within the borders of each state.'

This particular article is further strengthened by its incorporation in Section 24 of the Constitution of Zambia which provides:

X 'No person shall be deprived of his freedom of movement.'

But the same provision goes on to state further that nothing contained in or under the authority of any law shall be held to be inconsistent and contravene this article to the extent that the law in question make provision 'for the imposition of restrictions that are reasonably required in the interest of defence, public safety, public order, public morality or public health.'⁸³

The Constitution, therefore, secures to all citizens the right of freedom of movement and on the other hand, this right is balanced by the duties of the individual to the society towards social, economic and political justice. For fear of contravention of any rules against public security, the State is under the obligation to infringe upon some of the rights of the individuals. There is no denying the fact that a state must be vested with sufficient power to preserve itself.

The safety of the nation should have more priority because, as was said by Blagden G.J. in Kachasu v Attorney General of Zambia,⁸⁴ the right of the individual:

'depends for their very existence and implementation upon the continuance of the organised political society. The continuance of that society itself depends upon security, for without security, society is in danger of collapse or overthrow.'⁸⁵

In the contemporary Zambian society, national security encompasses not only the security of the state and its institutions, but also threats to the security of the Party.

This also extends to threat the President's tenure of office since the President represents the unity and preservation of the state itself. Initially, the Preservation of Public Security Act was used to quell a religious sect, the Lumpa Church, which had terrorised parts of Northern and Eastern Provinces, which was extended to the whole country. In 1966 and 1972 respectively two opposition parties formed by splinter groups from the ruling UNIP, the United Party and United Progressive Party, were banned in the interest of public security. The emergency powers of the President were also used in 1971, 1975, 1982 and 1984 to deal with a crisis at the University of Zambia which led to the closure of the University for several months.

In the above situations the emergency powers vested in the President by the Preservation of Public Security Act were used within the legal limits to maintain peace and security. But in preventive detention cases, the court has kept a close watch on the improper exercise of such powers. And on several instances where the grounds supplied are either vague, irrelevant or insufficient or even the statement showing grounds of detention is given later than fourteen days of the commencement of his detention, the detainee was entitled to be set free.⁸⁶

In Musala Chipango v The Attorney General of Zambia,⁶⁷ the applicant applied against a detention order made in respect of him by the President under Regulation 33 of the Preservation of Public Security Act. The facts of the case were that the detention of the applicant commenced on the 12th February, 1970 and the grounds for detention which were required by the Section 26 A(1) to be furnished to him, were given on the 28th February, 1970.

The publication of the detention order which were also required to be published in the Government Gazette within one month after the commencement of the detention, was made on 2nd April, 1970. Thus the grounds of his detention was given to him on the seventeenth day of his detention instead of fourteen days. On the other hand, the publication of his detention order in the Gazette was on 2nd April which means after more than six weeks when it was supposed to be done within four weeks.

It was held in the High Court and subsequently, in the Court of Appeal that the constitutional provisions were mandatory and if they are not followed, such non-compliance render further detention unconstitutional and an outright infringement of the fundamental rights of an individual.

Another important case which was determined on the same principles of law but with slight modification in the facts in issue was Robinson Puta v Attorney General of Zambia.⁸⁸

The Applicant was detained on 18th October, 1972 under the Regulation 31A of the Preservation of Public Security Act. Because of some defects in its presentation another order was made on 21st October, 1972 under Regulation 33(2), revoking the previous order. On the same date a fresh order of detention was made under Regulation 33(1).

On 29th October, the Applicant was served with a written statement specifying the grounds of his detention. He then contended that the grounds contained in the statement referred to his detention

under the original order made on 17th October and he claimed that he had not been furnished with the grounds for his detention under the order made on the 21st October and that his detention was, therefore, unconstitutional.

The Court held that any person detained, no matter how briefly, might expect to be and would certainly appreciate being furnished with the grounds for his detention. Cullinan J. concluded that the Chipango case had made a precedent and thus, if the provisions of paragraph (a) of Section 26 A(1) of the Constitution had not been complied with in respect of the order for detention signed on 21st October, 1972, the detention under that order was, therefore, unlawful and invalid.

Judges and legal scholars hold different views on the incorporation of detention provisions in the Constitution. Some of them have strongly opposed this idea, as Justice Mahajan has said:

'Preventive detention laws are repugnant to democratic constitutions and they cannot be found to exist in any of the democratic countries of the world.'⁶⁹

For this reason, a system of checks and balances have to be provided in the Constitution. In Zambia, as it is felt that the Constitution will retain the preventive detention provisions, it is necessary, therefore, that the Court keeps a vigilant eye on any misuse of emergency powers and preserve the right of freedom of the individuals.

There are other instances where extensive emergency powers have been used, though not with a view to interfere with the privileges of an individual. Article 12 of the Universal Declaration has provided that:

'No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence...'⁹⁰

and Article 17(2) states

'No one shall be deprived of his property.'⁹¹

These provisions have been reiterated in Sections 18, 19 and 22 of the Constitution of Zambia. By incorporating these provisions in the Constitution, the Zambian State has solemnly pledged to protect individuals against interference into privacy of home and other property,⁹² protection from deprivation of property⁹³ and protection of freedom of expression.⁹⁴

The case Jasbhai Umedbhai Patel v The Attorney General of Zambia⁹⁵ is an important pronouncement of the High Court in the matter of constitutional rights enshrined in Sections 18, 19 and 22 of the Constitution.

The fact of what has become known as the Patel Currency Case, may be briefly recounted here. The applicant, Mr. Patel, posted or caused to be posted between 3rd and 10th May, 1968 at the Ndola General Post Office, sixty five envelopes each containing eight ten-kwacha notes for transmission outside Zambia. A custom officer, Mr. Hilditch, took possession of the envelopes because he believed that it contained money going outside Zambia in violation of the exchange control regulations.

The question raised before the High Court were:

- (i) Did the opening, examination and seizure of the postal article constitute a contravention of the applicant's right to privacy of property as guaranteed by Section 19⁹⁶ of the Constitution?
- (ii) Did the opening, examination and seizure of the postal article constitute a contravention of the applicant's freedom of expression as guaranteed by Section 22⁹⁷ of the Constitution?
- (iii) Did the opening, examination and seizure of the postal article constitute a contravention of the applicant's right to protection from deprivation of property as guaranteed by Section 18⁹⁸ of the Constitution?

It was submitted on behalf of the Government that in seizing the postal articles, power had been exercised under the Exchange Control Regulations, framed under the Exchange Control Act,⁹⁹ to check the illegal export of large sums of money from the country and was within the permissible limits in the rights under Sections 18, 19 and 22 of the Constitution.

His Lordship, Magnus J., accepted the view that the Regulations were 'expedient', i.e., conducive to the purpose of securing 'the development or utilisation of that or other property for a purpose beneficial to the community'¹⁰⁰ as it was aimed at preventing the export of vitally needed foreign exchange.

Turning next to the question whether the opening, examination and seizure of the postal article constituted a contravention of the applicant's right to privacy of property as guaranteed by Section 19, his Lordship held that the regulation was 'reasonably required...in order to secure development or utilisation of property for a purpose beneficial to the community.'¹⁰¹ It was also noted that the Court was satisfied that the Custom Officer followed the right procedure reasonably required for the stated purpose.

Dealing further with the exception under subsection (2) of Section 18, i.e. 'except so far as that provision or, as the case may be, anything done under the authority thereof, is shown not to be reasonably justifiable in a democratic society,'¹⁰² his Lordship held that the action of the Custom Officer was justifiable on the basis that he was duly authorised, that his reasonable suspicion was objective and not subjective, that he formed his suspicion in respect of a particular postal packet before he entered the Post Office and that he satisfied somebody of the grounds of his suspicion.

As regards the decision of Justice Magnus on the third question, he held that the opening, examination and seizure of the postal articles did not violate the right of the applicant to the freedom of expression because the markings on the wrappers of currency notes did not convey any clear message and hence did not constitute correspondence. However, this part of the judgment needs further elaboration as it is not clear whether the act of the custom officer would have been held violative of the applicant's right under Section 22, if the currency notes had been wrapped in papers on which clear messages had been written. This is left entirely to judicial interpretation.

Another case which received prominence in the Supreme Court is Stanley Nyambe Liswaniso and the People¹⁰³ which is another milestone in the interpretation of constitutional rights of an individual in Zambia. Briefly, the facts were that the applicant, a 43 year old Assistant Inspector of Police, was convicted in the subordinate court of the First Class and charged of official corruption. The allegation against him being that he had corruptly received a sum of K80.00 cash from one Isaac Sithole for the release of his car, Peugeot 404, which was impounded for defective tyres.

The question raised was whether the cash which was found in the applicant's house was admissible as evidence although the search warrant obtained by the Police Officer was on a false declaration. The counsel for the applicant drew attention to the Article 19(1) of the Constitution which provides:

'Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.'

Thus the evidence obtained illegally as a result of such violation of constitutional rights should be excluded.

But the Court was placed in an embarrassing dilemma as it had to balance the interests of the individual to be protected from illegal intrusions of his liberties by the authorities on the one hand, and the interests of the state to bring to justice persons, in this case the Police Officer, guilty of criminal conduct on the other.

Relying on the facts of the case Cupp v Murphy¹⁰⁴ where, although the search warrant was unconstitutional in that the search preceded the defendant's arrest, the Supreme Court, nevertheless, upheld the validity of the search. It was the considered view of the Supreme Court judges that 'evidence illegally obtained, e.g., as a result of an illegal search and seizure or as a result of an inadmissible confession should, if relevant, be admissible on the ground that such evidence is a fact (i.e. true) regardless of whether or not it violates a provision of the Constitution (or some other law).'¹⁰⁵

Thus it was held that the evidence of search and seizure of the currency, although based upon an irregular search warrant, was rightly admitted by the local court because that evidence was a relevant fact. It does not matter here whether the constitutional rights of the individual have been violated. The Court is trying to give priority to the welfare of the State without which there would be improper administration of law and a disturbed social order.

Another aspect of individual freedom recognised by the Universal Declaration is the right to freedom of opinion and expression. Article 19 states:

'Everyone has the right to freedom of opinion and expression...'
Such a provision is also found in Article 22 of the Constitution of Zambia. It is stated:

'Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression...'¹⁰⁶

According to the provision an individual is assured of freedom of expression specially in the context of liberty of the press.

Primarily, one should consider that in a free democratic society, the liberty of the press should not have any restraint so as to encourage an individual to expose his real feelings before the public. To disallow this, it means to destroy the freedom to express oneself and stifle one's inner urge to contribute in any manner beneficial to the society. On the other hand, it is the fundamental right of every person to have full and free access to facts in all matters that directly or indirectly concern him. The members of the public should be constantly kept informed of any development pertaining to their environment and society.

But this right is not absolute and categorical. As in any advanced democratic society, Zambia has also imposed certain restrictions on the freedom of the press more specially when it concerns protection of thought to privacy. The general terms of Article 22 is qualified by subsection 2 which states;

'Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision -

- (a) that is reasonably required in the interest of defence, public safety, public order, public morality or public health; or
- (b) that is reasonably required for the purpose of protecting the regulations, rights and freedom of other persons....'

A close study of this provision shows that there is an attempt to cripple the absolute freedom of expression of an individual in Zambia. The Constitution has guaranteed freedom to a limited extent which should not prove injurious to another person's reputation and keep public safety and order. There is no specifically guaranteed freedom of the press. It is only a qualified right which confers no special rights or privileges on the press. It means, therefore, any individual should be able to publish whatever he likes subject to the ordinary laws of the land. The comment made by S.A. de Smith in this regard is most appropriate:

'The law does not concern itself with individual beliefs or disbeliefs unless a person propagates his views in scurrilous terms or in circumstances likely to give rise to a breach of the peace or in a place to which he is denied lawful access.'¹⁰⁷ Though an individual is allowed freedom of expression as a matter of constitutional right, his action cannot go unrestrained. If he publishes what is improper, or illegal, he must bear the consequences.

The prominent cases related to the issue are, Zambia Publishing Co. Ltd v Simon Kapwepwe,¹⁰⁸ Nalumino Munda v Wesley Nyirenda and Zambia Newspapers Ltd,¹⁰⁹ David Wachu v Zambia Printing Company Ltd,¹¹⁰ Anthony William Cobbett-Tribe v The Zambia Publishing Co. Ltd.¹¹¹

All these cases relate to defamatory statements made by the defendant companies with a view to castigate and spoil the public image of the individuals concerned.

This shows that despite the freedom of speech and press, people are supposed to show considerable restraint in their views and opinions as they may become provocative, which can disturb 'public safety, public order and public morality.'

A general comment on the rights of newspaper owners' freedom of expression of opinion, is perhaps desirable here. It is known that newspapers commonly advance varying political views and these reflect the opinions of the editors or proprietors concerned. It cannot be denied also that the proprietor of a newspaper is entitled to use it in order to promote his own political or other views. However objectionable it may appear to those holding different views, to deny the right to a newspaper owner to use his own account or on behalf of the political party he supports would be to deny the right of an individual's expression of opinion. On the other hand, this may stifle legitimate and reasoned controversy whether in the social, political or religious field.

Thus the above discussion maps out the various provisions of the Universal Declaration of Human Rights and their implementation in the Constitution of Zambia, in varying degrees.

C H A P T E R I I I

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND THE ECONOMIC, SOCIAL AND CUL- TURAL RIGHTS. THE ZAMBIAN EXPERIENCE

The Universal Declaration of Human Rights has not given a comprehensive elaboration of what would consist the economic rights of an individual. However, Article 22 has provided that:

'Everyone as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.'

A further delineation of Economic Rights have been made in the International Covenant on Economic, Social and Cultural Rights. Part II, Article 2 of the Covenant has stated:

1. 'Each state party to the present covenant undertakes to take steps, individually and through international assistance and co-operation specially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.'

2. The States parties to the present covenant undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present covenant to non-nationals.

It is seen that both the Universal Declaration and the International Covenant do not elaborate extensively on the economic right of an individual. From a rational point of view this right cannot be given a defined content because the option is left to a particular state to implement the economic rights an individual, which is obviously based on the extent of availability of natural and other resources. Economic rights, therefore, operates within a limited scope and the State cannot guarantee any direct conferment of economic right to an individual. In fact, one cannot say precisely whether such a right exists and whether the state is under the obligation to protect the economic right of an individual. However, it certainly does not mean that economic right is an unidentifiable term and that it cannot be realised under special circumstances. If the State cannot directly assure economic right to an individual, it can through various economic reforms and legislative instruments direct the economy for the benefit of the individual and help his participation in the economic development of the country.

This Chapter, therefore, attempts at focussing on those areas which are vitally instrumental in the economic development of the country. Economic rights of an individual will be discussed from the following perspectives:

1. The importance of the Trade Licensing Act, 1968 in helping Zambians to establish themselves as traders.
2. The mobilisation of resources through the creation of parastatals and statutory corporations and cooperative development for the benefit of the Zambian mass.

After independence, Zambia revolutionised its economic set up to suit into a democratic system whereby it could control its own resources for the benefit of the people. During the post independence era, therefore, the Government's pre-occupation had been with the policy of providing incentives for economic development of Zambia. Economic reforms were initiated by the President in 1968¹¹² and expounded and extended in 1969¹¹³ with a view 'to reorganise the Zambian economy so as to increase the capacity of Zambians to control their destiny.'¹¹⁴ There were major changes in the trading laws and company laws in Zambia. There were also nationalisation of many industries including the mines.

A. The Trade Licensing Act, 1968, Cap 707 and other statutes:

An effective Guarantee of Economic Rights in Zambia

The first and most important Act which was passed for the purpose of implementing the Mulungushi and the Matero reforms was the Trade Licensing Act, 1968, Cap 707.

The principal aim of the Act was to create conditions favourable to Zambian citizens who wanted to go for business. Under the Act, four types of trading licences are issued, namely

- (i) Retail Licence
- (ii) Wholesale Licence
- (iii) Commercial Travellers' Licence and
- (iv) Hawker's, pedlars', stallholders' licence.

Retail licence and Hawkers', pedlars' and stallholders' licences are issued to Zambians alone while the wholesale licence and commercial travellers' licence may be issued to any individual or any body corporate. This was purposely done with a view to ensuring the free mobility of trade and commerce throughout the length and breadth of the country. It also suits the essential condition for promoting economic rights of an individual and the country's economic health.

Many steps were taken to implement the suggested reforms of 1968 and 1969. In order to help the Zambian enterprises to develop, the Ministry of Finance was directed to limit local borrowing by expatriate enterprises. They had to go through the Exchange Control Authorities before they sought loans. The objective of this policy was that whatever excess liquidity that would occur in the banks, it would be made available to Zambians to develop enterprises. The President also directed that 'certain areas were to be monopolised by Zambian businessmen without competition from expatriate businessmen'.¹¹⁵ For this reason retail trading by resident expatriates was to be confined to the centre of big towns only.

However, it does not mean that any Zambian can be issued of a trading licence. The Act gives wide discretionary powers to the issuing authority¹¹⁶ to refuse issue of a licence for various reasons.¹¹⁷ One case can be cited here that has attracted judicial attention. It is Collins Nalumino Simioti v Municipal Council of Livingstone.¹¹⁸ The case dealt with an application for an order of Mandamus directed against the Municipal Council requiring them to hear and determine the application of Simioti for a Trading (retail) licence, or in the alternatives for an order of Certiorari to bring up and quash the decision of the Municipal Council for refusing to grant the applicant a Trade (retail) licence. The Court was satisfied that there was no bias on the part of the Municipal Council in the refusal to grant this licence. It was held that the issue of such a licence would operate against public interest.¹¹⁹

It is apparent from the decision of the High Court that human right to trade without restrictions is denied to an individual if there is a justifiable cause to believe that the issue of a licence may act against public interest. On the other hand, the Court has upheld the right of an individual to trade where it is satisfied that the refusal to issue such a trading licence was due to a bias. In the case of Cosmas Dwalya Chendaeka v Luanshya Municipal Council,¹²⁰ the Council turned down an application from Chendaeka to operate a market stall. He was not given any official reason for the refusal of a licence. The judge ruled in this case that a licensing authority must grant a licence unless it was able to refuse it under any of the subsections set out in the Act.¹²¹

The judge also considered that the applicant ought to have been given an opportunity to answer any possible objection by the licensing authority. The Court, therefore, quashed the council's order, and ordered the Council to hear the application again.

The rulings of the above cases show that the right to trade is not only confined to those who have their interest in and affiliations to UNIP but to any person who does not fall into the category listed in Section 15. The issuing authorities have to act in accordance with the provisions of the Constitution which guarantees:

'No person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.'¹²²

However, a close study of the Trade Licencing Act reveals traces of discrimination thereby stifling trading rights. As pointed out earlier, the aim of the Act was to give effect to the need for a large proportion of the retail trade to be in Zambian hands as announced by the President.¹²³ The first evidence of discrimination can be seen in the measures that the President advocated to help the Zambian enterprises to develop. The first one was to direct the Minister of Finance to limit local borrowing of expatriate enterprises. In the second instance, the President directed that 'certain areas were to be monopolised by Zambian businessmen without competition from expatriate enterprises.'¹²⁴ Retail trading by resident expatriates was, therefore, to be confined to the centres of the big town only. Additionally, this measure was to apply to only those expatriates who possessed licences prior to 1968. No new licences were to be issued. The other areas were to be exclusively for Zambian traders.

It can also be noted that the introduction of the Act had long been viewed with suspicion. In Parliament opposition members stood against it on the understanding that the discretionary powers which were left to the Minister and licencing officers would be used against them. Indeed, those fears were confirmed when the President said in his Kulungushi speech that he would fire Mr. Chimba from his post as Minister of Commerce and Industry if the latter issued licences to members of the Watch Tower Sect and those of the opposition.¹²⁵ The cases of Malumino Simioti and Chilufya¹²⁶ again confirm the denial of licences on account of membership to the opposition.

Under the Act itself, Section 17, the so-called 'heart' of the Act, carries much that can be described as discriminatory. Under this section, a reserved licence can only be issued to a non-citizen of Zambia with the written consent of the Minister. Here regard must be had to the possible abuse of discretion by the Minister. A reserve licence is any licence other than a commercial traveller's licence. The main distinction lies in the fact that the commercial traveller's licence is the only one under the Act that may be issued to any applicant regardless of citizenship status. But the most mischievous point appears when the Act goes to provide that if a licence is issued to a non-Zambian (apart from a trading (wholesale) licence), he must operate within a prescribed area and that at the time of applying the applicant must already be a holder of a similar licence. All these should be understood in light of Article 2 of the Universal Declaration of Human Rights which provides:

'...no distinction shall be made on the basis of the political jurisdictional or international status of the country or territory to which a person belongs...'

It clearly shows that the Act lays many hindrances against the expatriate businesses which cause major handicap to the freedom of trade.

The matter of fees payable also carries aspects of discrimination. The Schedule of the Act indicates that non-Zambians are required to pay higher licence fees for operating in their permitted areas. Thus, for instance, a trading (wholesale) licence costs K100.00 while a retail licence which can only be issued to a Zambian costs K50.00 in a prescribed area, and only K25.00 in any other area. A commercial traveller's licence costs K50.00 or K120.00 depending on the category of the holder.

The only justification upon which the discrimination that runs throughout the post-independence Zambian legislation can be based, is the one of constitutionality. Article 25 of the Constitution makes discrimination on the grounds of race, tribe, place of origin, political opinion or creed, illegal. But under clause (4) the Constitution does not offer protection against discrimination to non-Zambian citizens.

E. Economic Rights through the Instrumentality of Parastatals and Statutory Corporations

One of the major economic objectives of the post independence development plans of Zambia was to accelerate the rate of growth in the economy. This development strategy could only be achieved by a

greater mobilisation of resources which were not fully exploited during the colonial period. The 1968 economic reforms were meant to:

- (i) confine foreign retail trade to major cities and towns;
- (ii) ask owners of all large retail shops to sell to the state the controlling shares (power) of 51 per cent; and
- (iii) approach manufacturing and transport companies to offer the state 51 percent of the controlling means.

By the end of 1971 all the foreign insurance companies handed over most of their businesses to the Zambia State Insurance Corporation which now operates as a centralised institution catering for all the insurance activities. In 1974, the Government also took important steps to acquire 51 per cent shares in all banks and in the process formed two national banks - Barclays Bank of Zambia which emerged from the old Barclays Bank and the State-owned National Commercial Bank. These economic reforms were initiated solely for the purpose of re-organising the Zambian economy so as to increase the capacity of Zambians to control their own destiny.¹²⁷ As pointed out by the President:

'The Party and the Government have given the Zambians the widest possible opportunity to grow in stature and to expand their area of participation in the growth of the Zambian economy, in the improvement of the economic and social welfare of all the people. To any enterprising Zambians now, the sky is the limit in terms of improving their positions.'¹²⁸

The drastic move by the Government had an obvious impact on the economic set up of the country. Many industries were nationalised. For effective implementation of the nationalisation policy, the

Government took measures to amend the Independence Constitution which guaranteed ownership and proprietary rights. On 17th June, 1969, the State secured the requisite majority vote in a referendum, to amend Section 18 of the Constitution and set the stage for the implementation of the following reforms:

- (a) Termination of all rights of ownership of minerals, exclusive or otherwise and their reversion to and vesting in the President on behalf of the Republic.
- (b) Open procedures and means to control the granting, holding and termination of prospecting, exploration and mining rights by the State.
- (c) State acquisition of 51 per cent equity share capital in existing mining companies and state power to take a similar controlling interests in all future mines.
- (d) The granting to the minority shareholders of management, sales and marketing contracts with control over mineral production and marketing to the exclusion of the State.

The process of Government participation in privately owned companies in Zambia, therefore, began in 1968 when the President directed that Industrial Development Corporation Limited, (INDECO), a company wholly owned by the State, should enter into negotiations with the shareholders of major privately owned companies and strive to acquire for the Government at least 51 per cent of shares in the companies. These companies became known as 'parastatal bodies'.

Now, the parastatals are facing the challenge to effect changes in output, profit, management and other factors that call for economic development. It is considered that they will mobilise all development resources and inspire people to put greater efforts for the achievement of national policies. Within the limit of these perspectives, Mr Likando said:

'The parastatal organisations, like all participatory institutional structures which followed the 1968 Economic Reforms and thereafter, were geared to provide perspectives and avenues for both stimulating and mobilising means of production in the process of economic growth.'¹²⁹

It was thus on INDECO and later ZIMCO that laid the ponderous task of negotiating measures for nationalisation and instituting statutory corporations which could be responsive to the needs, aspirations of the newly independent nation. It was a most effective way of institutionalising Humanism as a national philosophy.¹³⁰ In a concise and accurate explanation of the philosophy, Dr. Mulwila observed that Humanism's main thrust was fair redistribution and the Government's ability to control the means of creating wealth.¹³¹ In practical terms it meant that by establishing statutory corporations, the Government could wrestle economic control from foreign entrepreneurs and place it in the State's receptacle. In so doing, it would ensure that 'the objects of Humanism and the interest of the Government prevailed and were not less in any hankering for massive profits and dehumanisation of the workers under state capitalism.'¹³² In such a system, therefore, there is no room for exploitation as every single Zambian is highly

committed to plan for the economic betterment of the country. Besides this, the people have fuller participation in controlling the economy of their State and thereby upholding their economic rights.

By establishing many statutory corporations, the Government pledged itself to keep a close watch on any development of capitalistic tendencies and fight all forms of exploitation and corruption which are elements of unproductive signs and a degenerated society. In fact, the fundamentals of this policy were achieved when many Zambians were issued trading licences and were benefitted from bank loans for commercial developments. To a certain extent the objectives of promoting Zambian companies and creating a classless society based on the philosophy of humanism and concepts of economic rights were achieved.

C. Cooperatives and Rural Development:

A Reinforced meaning to Economic Rights and Economic Development

It is not an unfair assessment of the present rural scene if the urban people identify rural life with poverty, lack of prospects and limited horizons. With a similar feeling Stephen A. Quick has written:

'Colonialism left a legacy of unbalanced and vulnerable economies in which the impoverishment of the rural areas made rational planning for growth and self sufficiency difficult, if not possible.'¹³³

The Zambian legislators accepted the necessity for immediate action to remedy this imbalance and cooperatives became essential to rural development. During the Matero Declaration, the President

encouraged a faster and more effective development of cooperatives in Zambia so as to enable the people to make a better life for themselves by their own efforts. He said:

'Government intends to introduce a new and comprehensive Cooperative Societies Act in the near future as the present Cooperatives Societies Ordinance is out of date and does not meet our current and future requirements. The new Act will spell out the services to be provided by the Department of Cooperatives for the organisation and the operation of cooperatives, indicate the preparations that are necessary before a society is registered, describe the different kinds of societies that can be organised to meet the economic and social needs of our people, particularly those in the rural areas.'¹³⁴

The Cooperative Act, 1970 was passed and it helped in consolidating the establishment of cooperatives in the country. Along with this, the Government put a lot of emphasis on programmes that are consistent to growth and economic development, such as transforming the economy from a subsistence to market economy, developing the land and introducing modern agricultural methods, industrialising and providing more employment opportunities.

This has been a calculated move by the Government to make cooperatives a way of life not only as a vehicle of democratic life but also as a best guarantee for the spread of benefits of economic prosperity and social improvement to the people. In the first place, a cooperative society has been given a legal recognition¹³⁵ through the Cooperative Societies Act and its distinctive character lies in its voluntary

association of members to provide for a commonly felt need. They have a democratic way of controlling the society by which each member has only one vote and there is equitable distribution of the society's net surplus to all the members according to the shares held by each member. And quoting the words of Stephen A. Quick,

'...the cooperative movement was the ideal vehicle for transforming rural Zambia because it can teach the norms and practices of democracy, improve the capacity of villagers to manage their own affairs, produce economic development without inequality.'¹³⁶

While it must be noted here that the aim in setting up cooperatives is to bring the producers together and give them effective control over the process of production, the fundamental ruling concept of the cooperatives remains to distribute wealth and provide equal opportunity for the people to develop themselves.

After Zambia's attainment of independence, there has been a visible impact on Zambians towards their involvement in commerce and industry in the form of cooperatives. The following table shows a favourable response from the people to establish new cooperatives:

T A B L E I

COOPERATIVE DEVELOPMENT 1964-1978				
YEAR	TOTAL NUMBER OF REGISTERED SOCIETIES	TOTAL MEMBER- SHIP	PAID-UP SHARE CAPITAL AND DEPOSIT	TURNOVER
			(K)	(K)
1964	220	43,697	1,677,854	11,534,914
1966	601	44,283	1,247,7189	9,892,054
1968	1,069	52,664	1,222,250	11,119,803
1970	1,096	43,737	712,292	7,835,714
1972	962	45,415	1,186,755	15,518,228
1974	780	55,392	1,413,336	17,392,039
1976	748	71,329	3,032,551	46,987,870
1978	757	96,849	3,599,578	65,846,046

SOURCE: Except for 1978 where the figures are from 'Cooperative Policy and Development', a paper presented to the Third National Cooperative Conference 18 - 22 August, 1980 by Mr. J.S. Ngwane, Acting Director of Marketing and Cooperatives, The rest of the data have been acquired from Mr. E. Mughandila's paper on 'Agriculture and Rural Development since Independence and Future Prospects,' at a seminar on 21st of June, 1980.

But soon after there was a downward trend and in 1972 only four societies were registered and eighty-nine of them got liquidated.¹³⁷ In 1974, one hundred and twenty eight societies were again liquidated. Mughandila says that in fact the increase in the number of cooperatives after independence was so astronomical that the department of cooperatives could not cope due to lack of staff to carry out proper supervision and consequently by the end of 1969, a large number of cooperatives were disbanded. He said that 'members who had no farming experience found the job very difficult and eventually left the farms and agricultural machinery and equipment abandoned.'¹³⁸ In fact President Kaunda was equally emphatic when he said that:

'one of the reasons why some cooperatives have failed is that most people do not understand the objectives of cooperative organisation. A cooperative organisation is regarded by some as an easy way of making themselves rich overnight partly for selfish reasons and partly because of ignorance.'¹³⁹

The President gave further reasons leading to the failure of cooperative movement in Zambia and, in fact, these have been the major causes. He said that:

'...our cooperatives lack the essential knowledge, managerial ability and skills of the trades in which they wish to venture and they have little or no knowledge of book-keeping or accounting to assess whether or not they are making progress or whether the management of the cooperatives is efficient or not.'¹⁴⁰

There was need, therefore, to diagnose the shortcomings and prescribe new measures to revamp the promotion and development of cooperatives

in Zambia. This in turn meant that there had to be changes in the law governing cooperative societies. The Cooperative Societies Act, 1970 considered the following points as measures for the successful running of the cooperatives:

- (a) that before any proposed cooperative society can be formed, there must be made an investigation to prove that there's a real economic need to form the society, that it has reasonable prospects for success and that it will be of benefit to members;
- (b) that prospective members require cooperative education and adequate information about the operation of the society before organisation takes place;
- (c) that members of the proposed society must contribute sufficient financial resources to the society for the commencement of operation;
- (d) that there must be assurance of competent management before commencement of operations for the new society;
- (e) that any plan to organise a new cooperative society should provide for continuous cooperative education and member information after, as well as before, the organisation of the society.¹⁴¹

A brief analysis of Table I shows a more regulated and calculated organisation of cooperatives in Zambia. In every respect there has been a marked increase in output and turnover. There is a deeper consciousness of the valid existence of cooperatives and there is a

visible increase in membership. This is an optimistic sign towards a better economic structure for the nation. The Government is also making tireless efforts to encourage Zambians to promote, consolidate and expand cooperative societies with a view to enable the people to make a better life for themselves by their own efforts. Zambian investors are given opportunities to participate in the Government's economic programmes, and many Zambian building contractors are being encouraged to take advantage of the economic reforms and grow to a position where they can compete with foreign private companies.

To set the pace for further development in the rural areas, the State created a new ministry, Ministry of Rural Development, with vast range of objectives and powers. It aimed primarily of improving and helping the rural population to improve their environment. It is also intended to help the farmers to achieve self sufficiency in staple foods through research, extension, demonstration and the provision of the technical services and credit. At the same time, it tries to encourage the production and consumption of a wider range of more nutritious, protein and vitamin rich foods throughout the country. The Ministry has also, as one of its objectives, to plan for the training of farmers and their families through the entire range of rural extension services so as to develop a self-reliant farming community with greater opportunity for a worthwhile living. The Ministry of Rural Development, therefore, is an important department to realise the strategy for desired social and economic development in the rural areas.

The Ministry is constantly being helped by the line-agencies such as the parastatals and the statutory corporations. Their services are

extensively being used in the rural sector so as to revitalise the existing system towards a realistic approach to rural economic development. For instance, among the aims of KAMBOARD, it has to provide a fuller service to producers and to the urban markets. It also provides marketing facilities to producers such as to buy from the producer and sell to the consumer at a price that is fair to the producer and that is acceptable to the consumer.¹⁴² The Tobacco Board of Zambia, in addition to operating the auction floors and packing plant, is also responsible for training Zambians in Virginia tobacco production and for developing medium scale tobacco farms, as well as establishing a large number of small producers, beginning with one acre schemes.¹⁴³ The Cold Storage Board besides operating the nation's abattoirs, is also charged with the vital task of operating the rural cattle sales which is aimed at providing a market close at hand for rural livestock producers and encouraging a greater take off from the traditional herd. The Dairy Produce Board has traditionally been concerned with the marketing, including processing and manufacture of milk and milk products along the line of rail. Now, the Board is playing a part alongside the Projects Division of the Ministry in the development of rural dairies.

The Rural Development Corporation is the latest addition to the rural sector parastatals. It is primarily designed to increase the production of crops and livestock products on a commercial basis. For effective implementation of rural development programmes, the Corporation has set up the following subsidiaries:

- (i) The Zambia Cattle Development Ltd., 1969 which has been established to develop the existing state ranches and dairy farms.
- (ii) Zambia Farm Development Ltd., 1969, formed to take over various existing Government projects and to operate them on a commercial basis. At present, these include a mixed farming unit, Mukuyu Farm and the Kalulu Pig Farm.
- (iii) Cattle Financing Company of Zambia Ltd., 1969, formed to manage the Grazier Scheme, taken over from the Cold Storage Board of Zambia.
- (iv) Agricultural Finance Company, 1970, replaced the Credit Organisation of Zambia as the principal source of agricultural credit.
- (v) Rural Air Services, 1970, which was primarily concerned with carrying out aerial spraying to eradicate tsetse infestation, is now moving into the field of crop spraying.
- (vi) Zambia Pork Products, 1970, formed for the marketing of pork meat.
- (vii) Nyama Farms Ltd., 1971, established to carry out large scale maize farming projects.
- (viii) Africa Farming Equipment Ltd., 1971, which supplies such machinery as tractors and associated implements.

These extension services are available to the rural mass in order to help them stabilise their economy and standard of production.

However, the Government has devised other means to provide satisfactory

living opportunities. In 1961, RUCOM Industries Ltd., a company under RUCOM Holdings, was formed to provide a vehicle for INDECO's interest in the rural areas. In independent Zambia RUCOM, turned its focus to small scale industrial and commercial concerns in the rural areas.

The role played by the small scale industries in the development process, is not only to reduce the disparity between rural and urban areas but also to provide an important basis for rural industrialisation. This implies the far reaching transformation of the social and economic structures, institutions, relationships and processes in the rural areas. It conceives the goal of rural development, not in a narrow sense of agriculture and economic growth, but as a balanced social and economic development, with emphasis on a more equitable distribution and creation of wealth. Among the other aims of rural development, are also the generation of new employment, widespread improvement in health, nutrition, housing, education and above all a strong voice for the rural people in decision making and actions affecting their lives.

While the intention of this dissertation is not to critically analyse the various set backs of rural industrialisation, it is suffice to say that the objectives of RUCOM Industries Ltd. were not achieved due to financial constraints. There was no financial assistance as the Industrial Finance Company which was formed by the Government to provide assistance on hire purchase basis to buy machinery, equipment and commercial vehicles, went bankrupt. The producers were expected solely to rely on their initial investments and rates of return from these investments. According to the survey carried out

and the observations made, it was found that the small scale industries in Zambia have not been a success in Zambia and it has had little impact on unemployment as well as social and economic development in the rural areas.¹⁴⁴

However, the Government has established another mechanism to give a further boost to the development of rural industries. The Small Industries Development Act, 1981 has given specific powers to the Small Industries Development Organisation to foster and encourage development of small industries. Besides other specific duties, it has also to formulate, co-ordinate and implement national policies and programmes relating to the development and promotion of small industries.¹⁴⁵ The creation of such an institution has not been free from controversies. It has similar objectives to those of KUCOM. Because of this duplication its efficacy has been considerably reduced. The justification of such an institution can only be proved in the due course of time.

In a summary analysis, the foregoing discussion shows that the Government has been consistent with growth and economic development of the country. It is providing education and training for Zambians to equip themselves for the efficient exercise of entrepreneurial and farm management functions. It is making capital available to people with small down payments and at low interest rates through many financial institutions. It is also stimulating large scale and small scale investment by providing incentives under the Industrial Development Act¹⁴⁶ and the Small Industries Development Act.¹⁴⁷ It is

promoting producer, marketing and consumer cooperatives and training people to run them so that larger opportunities are opened to Zambians with limited capital. The bulk of these efforts are, therefore, directed towards establishing Zambians in a firm position in the monetary sector by ensuring that a large share of the planned new expansion in the economy is Zambian owned and managed.

CHAPTER IV

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND THE IMPLE- MENTATIVE PROVISIONS ON SOCIAL RIGHTS IN ZAMBIA

A. The Right to work, leisure and Social Security

By incorporation Article 23 in the Universal Declaration of Human Rights, the United Nations has put an official seal as to the recognition to the right to work, the right to just and favourable conditions of work, the right to leisure and the right to social security. The Article states:

'Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.'

These rights have to be treated very cautiously because unlike the civil and political liberties which are directly related to personal freedom, they are concerned in an altogether broader way with freedom from fear, freedom from want and fuller opportunity. They are essentially programmatic rather than self-executory. The contents of these rights remain to be determined by law and legislations, collective agreements, arbitral awards, the common practice of the industry, the terms of employment of the person concerned or the benefits offered by the social security scheme of which he is a member.

It is not surprising to note that the Constitution of Zambia has not made any specific provision regarding the right to work. The reason is quite obvious. It requires a more dynamic and flourishing economy to establish comprehensive and adaptable measures to secure full employment for the people. Zambia having encountered many

economic recesses during the past years cannot guarantee employment to everyone seeking work.

However, the Government has not left the workers community to struggle for their own survival. Since 1929, when the Employment of Natives Ordinance was first enacted to regulate conditions of employment for the indigenous people, Government intervention in industrial relations has been on the increase; and, today there is hardly an area in the employment field which is not open to Government intervention. For many reasons such a move is necessary because there are large sections of industry which left to themselves, cannot remedy the hardships of the workers. Apart from humanitarian sympathies, the State has a direct interest in securing standards of living and other conditions necessary for a healthy population and one with good standard of education and industrial efficiency. This is the most important right of workers.

The introduction of legislation establishing the right of workers to organise. This is in conformity with Article 23(4) of the Universal Declaration of Human Rights which states:

'Everyone has the right to form and join trade unions for the protection of his interest'

This right has been distinctly spelt out in Article 23(1) of the Constitution of Zambia:

'Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular, to form or belong to trade unions or other associations for the protection of his interests.'

The importance of trade unions in industries was formalised when the Industrial Relations Act 1971, Cap 641 was enacted. Many measures were taken which have been incorporated in the Act and have become statutory requirements. For example, section 111 of the Act requires that every employer employing twenty five or more eligible employees must conclude a Recognition Agreement with the trade union representing the interests of the employees. Section 79 makes it compulsory for a Joint Council to be formed in an industry where both a trade union and an employers' association exist.

(1) Labour Welfare in Industry

The working in an industry was not attractive and conducive to workers before industrial revolution. Professor Seidman points the grim picture as:

'...hours of work were from dawn to dusk; few safety precautions existed; there was no job security or protection against injuries; illness and old age; children started work as early as the age of four; and no established avenues of political appeal existed. The situation was one of government by the few, sharp class distinctions, unfettered property rights, subsistence living standards for the masses, and exploitation of a large growing proletariat.'¹⁴⁸

It is not mere exaggeration to emphasize again Zambia's commitment towards removal of any dehumanising factors in industry and introduce through legal enactments, environments more conducive to the betterment of working and social conditions of the people. Zambia became the one hundred and eleventh member of the International Labour

Organisation in 1964 when it achieved its independence and has since ratified many conventions relating to labour welfare in industry. All the ratified conventions dealing with Workmen's Compensation are applied through the Workmen's Compensation Act. Those relating to the determination of minimum rates of pay and conditions of employment in industry and agriculture, are applied through the Employment Act. The Conventions relating to forced labour are applied through the Constitution of the Republic as well as the Penal Code. Those relating to minimum age, contracts and certain conditions of employment, social policy and medical examination of young persons are applied through the Employment Act, the Employment of Women, Young Persons and Children's Act, the Pneumoconiosis Act, the Medical Examination of Young Persons (Underground Work) Act, the Mines and Minerals Act and the Constitution of Zambia.

By ratifying the conventions, Zambia has not only demonstrated its faith in the work of the International Labour Organisation, it has also raised in an impressive way the working and living standards of the working class throughout the country. The State has also adopted many statutory measures to ensure minimum welfare needs of the labour class. The Factories Act 1967, Cap 514 makes it incumbent on the employers to provide welfare amenities to the workers so that they work under healthier and more conducive environment. It is, therefore, one of the directive principles of the State policy to include these welfare provisions in various legislative enactments in order to be in conformity with Article 23 of the Universal Declaration of Human Rights, thus, ensuring the right to just and favourable conditions of

work to the workers. Parts V, VI, VII, VIII, IX and X of the Factories Act deal more specifically with safety, health and welfare of the employees. These provisions impose a duty for the protection of the workers. In the event of injury caused by breach of these duties the employee is entitled for damages.¹⁴⁹

(11) Industrial Participatory Democracy

The concept of Industrial Participatory Democracy is related to the workers' rights of participation in the establishment and functionings of the institutions which are capable of taking decisions that bind them. It means that the workers have the right to share into the decisions which govern matters concerning their life. Through the Industrial Relations Act, the State has endeavoured to promote workers' participation in industry. In understanding the substantive nature of the right to participate, it is necessary to know the nature and degree of participation which the Act offers to the workers.

Part VII of the Act, Section 69 states that:

'The principal objectives of every council shall be to promote and maintain the effective participation of workers in the affairs of the undertaking for which such council is established and to secure the mutual cooperation of workers, management of the undertaking and the trade union in the interests of industrial peace, improved working conditions, greater efficiency and productivity.'

In general terms these objectives suggest participative management. The other sections of the Act are indicative of other forms of

'...a decision by management on a matter of policy in the field of personnel management and industrial relations shall be of no effect unless it is approved by the Council established in such undertaking...'. .

This implies that decisions in these areas can only be taken jointly by management and workers' representatives on the Council. Section 70 introduces elements of 'Joint Consultation' whereby the Works Council is entitled to be consulted upon and to participate fully and effectively in all the schemes and programmes relating to the health and welfare of the workers in the undertaking. At all stages, the co-operation of the workers and their views are fully taken into account before any policy is implemented.

Workers' participation does not only give them the right to decide their own affairs, it also gives them a sense of freedom which, as described in Article 22 of the Universal Declaration of Human Rights, is indispensable for their dignity and free development of their personality. Prior to the enactment of the Industrial Relations Act, the nature and degree of participation was to be found in a restricted form of collective bargaining. According to this concept, it was the employer's rightful duty to determine all the terms and conditions of employment. The role of the worker was merely to bargain, with the aid of a trade union, for employer's consent to terms and

conditions more favourable to the worker. Today, workers and employers are equal partners in business and are participating in managerial decisions. It can be seen, therefore, the worker's right to participate and influence decisions at management level is well defined and guaranteed. By making statutory provisions for trade unions, joint councils and work councils, the Industrial Relations Act has established sound infrastructures for ensuring that the right to participatory democracy in industry is available to all workers equally. What remains is to make all workers appreciate the extent of these rights and to educate the workers in the use and application of these rights.

(iii) Workers' Education

With the increasing tempo of industrialisation, it is important that educational institutions should organise workers' education programme with the aim to make workers more responsive to the problems of management as well as the unions, and to develop in them the capacity to arrive at correct judgments so that they may effectively defend their rights. In fact, extensive ground has been covered in this field by the trade unions and other educational institutions.

After independence all the national unions combined to form a new central organisation - the Zambia Congress of Trade Unions (ZCTU) and in 1968 it established a Department of Workers' Education within its headquarters. Since that time the ZCTU and other unions with their own Workers' Education Sections, have developed increasingly comprehensive workers' education programmes for all levels of trade unionists.

Other organisations also began to take an interest in workers' education and started to run their own programmes. These included the Mindolo Ecumenical Foundation, the Extra Mural Studies at the University of Zambia, and the President Citizenship College which began its course in 1973. In addition to these, the Zambian Government through the Ministry of Labour and Social Services and the Zambia Federation of Employers began to take an increasing interest in workers' education as a result of their concern for industrial peace and an orderly system of industrial relations. Moreover, this systematic scheme of workers' education will produce a useful generation of disciplined workers.

(iv) Right to Social Services

The aim of providing social services to the community is to make the day to day work and leisure of the inhabitants as easy as possible. These services such as the provision of medical help and treatment, an adequate standard of living during unemployment and old age pensions are most necessary for maintaining social justice and provide for better upliftment of the people.

General Welfare

Article 25 (1) of the Universal Declaration of Human Rights provides for the right to social services in the following terms:

'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of

livelihood in circumstances beyond his control.'

Zambia thoroughly influenced by the high ideals of the Declaration and the national philosophy of humanism, has committed itself to provide a certain minimum standard of decency in terms of provision of food, shelter and other social amenities. Within this scope Zambia is providing free medical and hospital services, old age and disability benefits and benefits for the unemployed. This is evident as more and more programmes and schemes are being designed to do away with practices that perpetuated social class inequality. There are now increasing chances for an ordinary person to have access to free medical facilities and satisfying jobs all of which contribute directly or indirectly to rights which are 'indispensable for his dignity and the free development of his personality.'

There is no comprehensive social security scheme in Zambia to cater adequately for all categories of disadvantaged persons. However, there have been already organised efforts to deal to some extent, with human deprivation by introducing a few social security schemes.

These are:

- (a) Government's Pension Scheme catering for civil servants.
- (b) Zambia National Provident Fund which takes care of most categories of workers including domestic servants.
- (c) Workmen's Compensation Fund which caters for workers disabled in the course of their work.
- (d) Pneumoconiosis Compensation Scheme which caters for some category of workers in the mining industry.

(e) Superannuation Scheme which caters for workers in the Local Authorities.

(f) University of Zambia Superannuation Scheme.

It is not encouraging to note that these schemes leave out a large number of people such as the unemployed, self-employed and those who cannot support themselves because of some handicap or other factors. But in the absence of a comprehensive national security scheme, the State operates a non-statutory but humane public assistance scheme which is administered for the relief of destitutions. This intermediate measure is called Public Assistance Programme which is administered by the Department of Social Welfare. The programme is not covered by an Act of Parliament but the Parliament has made annual financial provisions for the ensuing expenses. The programme allows sufficient amount of flexibility to enable the Department to use ways and means, which, while providing material assistance, should also help recipients of such assistance to become self-reliant. Thus, wheelchairs and other orthopaedic appliances are issued to handicapped persons to improve their mobility. The programme which is essentially intended to tide recipients of assistance over their difficult period, encompasses the provision of material relief of destitution in the form of rations, clothing, bedding accommodation, rent payments, electricity bills, rates, school requirements and fuel. In addition, cash grants, tools and equipments are sometimes given to clients in order to enable them to establish small business enterprises.

In 1977, nineteen persons received small cash grants to enable

them to run small enterprises vegetables and food kiosks, while others were issued with sewing machines to enable setting up small dress-making and tailoring businesses. In all, the following tools, equipments and appliances were issued to handicapped and destitute persons as a way of putting them on the road to self reliance: seventeen wheel-chairs, seven sewing machines, four hoes, two fishing nets, two issues of fertiliser, two sets of carpentry tools, one set of leather work tools.¹⁵⁰

B. Homes for the Aged

Although the Department of Social Welfare discourages institutional care of aged persons in preference to family and community care which is in line with the Party and Government policy, however, in practice it has been realised that due to factors such as urbanisation, childlessness and certain cultural taboos connected with ageing, there is always some aged persons for whom the only mode of care is in an institution. It is out of this realisation that the Department is continuing to maintain three Homes for the Aged.¹⁵¹ These are:

Maramba House (Livingstone)

Chibolya House (Mufulira)

Mitanda House (Ndola)

But one of the problems faced by the aged persons living in these institutions, is the feeling of loneliness, isolation and boredom. It is encouraging to see the local communities expressing keen interest in the affairs of the Homes for the Aged and there is an attempt to revive the old interests such as gardening, crocheting, knitting, mat making and story telling so as to occupy the aged persons.

C. Family and Child Welfare

The Department of Social Welfare has again taken up the responsibilities to provide essential services geared towards family happiness. One of the aims of the Department has been to strengthen the family unit and assist other supporting institutions in an effort to resolve problems of family breakdowns, parents child conflicts, child neglect, delinquency and other social evils.

D. Committal and Adoption of Juveniles

In the cause of humanism and promoting human welfare, the Department of Social Welfare is also committed to render some statutory services as provided in the Juveniles Act, Cap 217 (Committal Orders) and Adoptions Act, Cap 218 (Adoption Orders).

In carrying out these responsibilities, the Director of Social Welfare assisted by the Juveniles Inspectors identify the children at risk, investigate for committal to care or adoption of children. They provide a valuable service by working closely with families and communities in order to ensure that as much as possible children in need of care are catered for within the family and community set up and institutional care is applied only as a last resort and for a short duration as possible.

The Department provides counselling services to children with disruptive behaviours such as conflict with parents, maladjustment to school environment, truancy and vandalism so as to help promotion of an orderly society. The delinquents are given opportunities to overcome their behavioural problems.

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Insakwe Probation Hostel cares for and rehabilitates probationers committed there by the Courts in accordance with the provisions of section 11(2) of the Probation of Offenders Act (Cap 142) which provides for a residential probation for a period not exceeding twelve months.

The Chilenge Remand House in Lusaka has been a transit institution for juveniles ordered to approved schools by the Court. They have to wait there until the orders have been confirmed by the High Court after which they proceed to Nakambala Approved School in Mazabuka. The boys are engaged in gardening and other recreational activities and the community is encouraged to integrate the boys in the local community so that they do not feel themselves as social outcasts.

The Nakambala Approved School in Mazabuka offers residential correctional and rehabilitation services to delinquent juveniles committed there by various juvenile Courts throughout the country. In order to ensure that juveniles of school going age continue their education, the Approved School runs classes for Grade IV - VI. Those needing Grade VII and secondary education are admitted in ordinary local schools. This arrangement is mutually beneficial to the boys and the community as it facilitates integration for the former while allowing the latter to participate in the rehabilitation process.

In addition to academic education, trade instructions are offered in woodwork, metal work and bricklaying, as well as farming. Trades Training forms an important component in the correctional and rehabilitation process since it provides useful skills that can be utilised after release from the institution. The delinquents are also made to

participate in recreational activities such as boxing and soccer. This has tremendously helped the training and rehabilitation programme.

An aftercare service is provided to ex-inmates of both Nakambala Approved School and Katombona Reformatory School, who are released from the two institutions so that they spend part of their detention period in the open community. The discharged youths continue to receive professional guidance and help to readjust themselves to their families and to the society's demands.

E. Children's Homes

Due to family tragedies such as sudden death of a mother during or immediately after child birth or due to death of both parents, children become orphans. These children are looked after by the Home that have been established in various places. These are:

Kasisi Mission	(Lusaka)
St. Martin's Home	(Kitwe)
Falconer Home	(Kabompo)
Hillwood Farm	(Mwinilunga)

These homes do not necessarily have only orphans but also such other children whose parents may have been hospitalised for chronic illness or are otherwise considered incapable of exercising their parental responsibilities. This is a laudable step taken by the Government to realise the ideals incorporated in Article 25 (2) which is '...All children, whether born in or out of wedlock, shall enjoy the same social protection.' Such a care is needed so as to remove the social stigma that orphaned children are outcasts of society which in the

long-run may prevent such children from normal adjustment in the open environment or discharge from such institution.

F. Legal Aid

In clear recognition of Human Rights and dignity in society, it is expressly provided in Article II (1) of the Universal Declaration of Human Rights that:

'Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.'

It has become incumbent on every State, being a member of the United Nations, to uphold this principle and to take necessary steps in its effective implementation. Zambia has made vigorous attempts, inspite of its crippling economy to provide to anyone charged with an offence, civil or criminal, with all assistance possible necessary for his defence. As a right befitting human dignity, he is presumed innocent and he has all the right to seek legal advice and employ legal counsel to represent his case. If he belongs to a lower income bracket, i.e. if he earns K300.00 per annum, he is entitled to Legal Aid Scheme. As the majority of workers in Zambia earn less than this figure, most of them fall within the category.

When introducing the Legal Aid Bill in the National Assembly, the Vice President, Honourable Kamanga said:

'This (Bill) is designed to put the common man on a footing of equality, as far as possible with his more fortunate and affluent brother in all matters relating to access to and representation before the court of justice.'¹⁵²

The scheme provides legal aid to any person who is a resident in Zambia or any Zambian citizen who is without means or of moderate means. The scheme, therefore, recognises everyone 'as a person before the law and' all are equal before the law and are entitled without any discrimination to equal protection of the law.'¹⁵⁴

To look after the effective implementation of the Legal Aid Scheme, the Government has created a Department of Legal Aid which is headed by a Director. It is trying to provide assistance to individuals in meeting their obligations. Thus by providing equal opportunities of representation in a court of law, the Department has made a substantial contribution in establishing an egalitarian society where there is no 'distinction of any kind.'¹⁵⁵ This is one of the essential features of a humanist society which being man centred, demands equality and protection of inherent rights of man.

G. Problems and Setbacks

It is seen from the foregoing discussions that Zambia is trying whatever possible to realise the lofty ideals of a democratic welfare state. However, it is also significant to note that Zambia has had many pressing economic problems which have made realisation of the social rights arduous and difficult. The Government's capacity to achieve its desired social objectives is, therefore, restricted by lack of domestic capital, trained, educated and experienced manpower and foreign exchange. Many of the departments are under-utilised because of staff shortage, lack of adequate office and housing accommodation, inadequate funds, lack of official transport and closure of credit facilities to the departments by suppliers of goods and services.

The Department of Social Welfare had to close the Amputees Hostel in Lusaka which had been catering for amputees awaiting fitting artificial limbs at the University Teaching Hospital, and the Mongu Home for the Aged. Due to the restriction^{of} staff establishment, stations such as Choma, Chinsali, Mbala, Kasempa, and Senanga continued to run as one man stations, a situation which also in various ways prevented the Department from transferring officers according to administrative needs.¹⁵⁶

The Legal Aid Department has also to survive through very many constraints and limitations. Because of lack of sufficient funds only few District Secretaries can process legal aid applications in their districts. Most of the applicants in civil matters suffer undue delay in the completion of their cases. The Department is experiencing an exodus of qualified Zambian personnel thus causing rejection of many cases. Lack of living accommodation has been a major reason for such resignations. Proper administration is suffering greatly because of lack of transport. It is impossible for counsels to tour Kalomo, Choma and Namwala because the Livingstone office has no transport. Thus the Department is quite helpless unless roadworthy vehicles are allocated.

II. The Right to Effective Remedy and Fair Hearing within the Perspective of Ensuring Administra- tive justice

As a welfare State, Zambia has always sought to improve the physical, moral and economic welfare of its citizens. Increase in the State functions has, therefore, inevitably resulted in investing

large discretionary powers in the administrator. This has subsequently given rise to continuous tendencies of impinging on the individual, and in the process, affecting the rights and liberties of the individual.

In such circumstances the Constitution of Zambia provides for remedies for contravention of the fundamental rights. In conformity with the right to effective remedy¹⁵⁷ and fair and public hearing¹⁵⁸ as laid down in the Universal Declaration of Human Rights, Article 29 of the Constitution has made provision for the High Court to review administrative and judicial actions where if satisfied on an application that the rights or freedom of the applicant as set out in Articles 13 to 27 of the Constitution has been contravened.

Grievances are mainly channelled through the courts in the following circumstances:

- (i) when the powers that have been vested in a particular administrative authority are ultra vires the Constitution;
- (ii) mandatory procedures for the exercise of a discretionary power has not been followed;
- (iii) the discretionary powers have been exercised in bad faith;
- (iv) relevant considerations have been disregarded and irrelevant considerations have been taken into account in the exercise of this power;
- (v) the rule of natural justice have not been observed.

Whenever there has been an infringement of human rights and liberties occasioned by excessive use of administrative powers, the

High Court, in its original jurisdiction, has determined applications made by the individuals or determined questions referred to it by a lower court. The High Court does this by determining whether the purported exercise of power is authorised by the Constitution or by any statute. If it is not, it is therefore, ultra vires and void.

At Common Law, the ultra vires principle is well recognised and primarily makes any act which purports to step outside the powers conferred by the statute, ultra vires and void. In the Zambian Constitution, Article 29 provides:

'Subject to the provisions of Clause (h), if any person alleges that any of the provisions of Articles 13 to 27 inclusive, has been, is being or is likely to be infringed in relation to himthat person may apply to the High Court for redress.'

The question that immediately arises here is whether this article gives the court power to strike down powers imposed by statute as being ultra vires the Constitution. The Court of Appeal in Harry Nkumbula v The Attorney General,¹⁵⁹ for example has indicated that it has such powers although this was not the issue for discussion in the case. It was, particularly, argued first that the appointment by the President of a Commission of Inquiry under Section 2 of the Inquiries Act, Cap 181 was ultra vires and void because the matters to be inquired into could not be 'for the public interest' within the meaning of the Section.

It was argued for the appellant that the setting up of the commission could not be for the 'public welfare'. The Court pointed out that the words 'in the opinion of the President' contained in the

Inquiries Act, made the matter of public welfare one of the subjective decision of the President. The Court went further to state the law as regards this kind of discretion and said:

'It has never been doubted that a decision made under power expressed in such terms cannot be challenged unless it can be shown that the person vested with the power acted in bad faith or from improper motives or on extraneous considerations or under a view of the facts or the law which could not reasonably be entertained. For this ground of appeal to succeed, therefore, it must be shown that to regard the inquiry as being for the public welfare was a view of the law which could not be reasonably entertained.'

It was decided that what was for the public welfare was purely a question of the President's subjective determination and it was, therefore, not right for the court to probe into what was for public welfare and what was not for public welfare. Indeed such an exercise sets a precedent for a situation when the Court will conclude that a particular commission set by the 'President was not for the public welfare. Such an outcome will inevitably lead to a clash between the executive and the judiciary - something that should be avoided at all costs.

Judicial remedies are again available to an individual if in the exercise of adjudicative discretion, or what is generally called the quasi-judicial functions of the administrative bodies and tribunals, certain established rules of natural justice are not observed. Lord Haldane, L.C., has defined the rules of natural justice in the following way:

'When the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must become to the spirit and with the sense of responsibility of a tribunal whose duty is to mete out justice.'¹⁶⁰

So where there is a breach of the rules of natural justice, the High Court is empowered to make orders, issue writs or give any directions as it may consider appropriate.¹⁶¹ For instance the High Court may issue the prerogative order of mandamus which is an order to any person or body, commanding it to carry out its public duty. Or, the High Court may issue the order of certiorari to an inferior court in order to have the record of its proceedings reviewed. The High Court in its jurisdiction may quash these proceedings if they are found to be against the established procedures of natural justice.

It was found from several judicial decisions that the High Court in Zambia has the residual power to check upon the administrative officials in their exercise of discretionary powers. In the case of Chilufya Kangombe v Attorney General,¹⁶² the applicant was a teacher in the Teaching Service and was dismissed pursuant to a direction of the President, purporting to act under Section 115A (10) of the Constitution. The brief facts of the case were that, the Permanent Secretary in the Ministry of Education had written to the Teaching Service Commission that the applicant be dismissed. The Teaching Service Commission replied that they had found no justifiable cause

for dismissal and directed that the applicant be restored to his substantive rank and be transferred to a Boys' Secondary School or to the Ministry Headquarters. The Acting Permanent Secretary, Education, wrote to the Teaching Service Commission asking them to reconsider their decision and they replied that they could still find no justifiable cause for dismissing him and recommending that since he was no longer acceptable in the Ministry of Education, the applicant be transferred to another Ministry. At this stage, the Secretary General to the Government wrote to the President recommending the dismissal of the applicant and set aside the decision of the Teaching Service Commission, whereupon, the President wrote directing the dismissal of the applicant. It was held, however, that the President could only take decision in a matter which is still pending the decision or still under the consideration of the Teaching Service Commission and now that the case had already been dealt with by the Teaching Service Commission, the President could no longer deal with the case. The dismissal was, therefore, declared a nullity and of no effect.

In yet another case, Cosmas Bwalya Chendaeka v Luanshya Municipal Council,¹⁶³ the applicant applied for a relief in the form of an order for mandamus and an order of certiorari against the Luanshya Municipal Council for their refusal to grant him a stall at the Mikarafwa Municipal Market. The applicant stated that he had not been given an opportunity to give evidence before the Council or answer any objections to the application. In fact, one councillor had told him outside the Council Chamber that he would not get a stall because he was a Jehova's witness and that he did not vote in the Council

elections. Counsel for the applicant argued that the Council did not act in accordance with the rules of natural justice and asked the Court to quash the decision and order the Council to hear the application in accordance with the law.

The Court accepted the application for mandamus because the remedy of appeal to the Minister was not convenient, beneficial or effective as by way of appeal to the High Court. It was held that, the decision to refuse to grant a licence to the applicant was taken outside the provisions contained in the Trade Licensing Act Section 15(1), the applicant should have been given an opportunity to answer the objections to his application. And the Municipal Council was ordered to go and determine forthwith the application by the applicant for a stall licence according to the terms stipulated in Section 1(1) of the Trade Licensing Act.

Further to this in Chilufya v City Council of Kitwe,¹⁶⁴ the applicant, a market stallholder was an ANC candidate in September 1966 Kitwe Municipal election. During the election campaign his stall was badly damaged by a group of women. Shortly afterwards his licence renewal application was refused by the Council because he had become so unpopular in the market that his presence was a source of unrest. Chilufya appealed and the Court decided that a Council which terminates a trader's licence to occupy a market stall by a resolution influenced by political considerations is acting unreasonably, unfairly, and contrary to the principles of natural justice and therefore, ultra vires.

The three cases quoted in the preceding paragraphs illustrate the point that courts essentially act as a watchdog and provides a proper

safeguard for the interests of the people against any abuse of authority. In other words, the courts have a general power to determine the existence and extent of executive or prerogative powers. They also have to see whether a discretionary power has been abused or misused and whether the judicial or quasi-judicial powers have been exercised in observance of the principles of natural justice.

In order to provide a further safeguard to ensure that fundamental human rights are not infringed, different institutional safeguards have been established. The Government has provided various remedies by law. Some of them have been provided by the Constitution, some by statute, some by common law and equity and some by the extra-judicial remedy of self-help.

Before making a statutory instrument, it has to undergo through the scrutinising committee as provided by the Parliamentary Standard Orders. Again, in order to be of some statutory force, the delegated legislation authorising the power to make statutory instruments must be *intra vires*.¹⁶⁵ Otherwise, it may be challenged in the court as being *ultra vires* the enabling Act. Thus, although according to Section 16 of the State proceedings Act, Cap 92, the Court is prohibited to make an order of injunction or specific performance against the Government, the Court is allowed to make declaration orders. Besides this, under the provision made in Article 28 of the Constitution, where a statutory instrument is in violation of any provisions of the Constitution, the President, after receiving a report from a tribunal appointed by the Chief Justice, will declare such statutory instrument void from the date it was made.

reassurance in Government dealings.

The exact reason, therefore, for the Zambian Government to establish such an institution appears very plausible from the fact that good administration should not only depend on the provision of adequate safeguard against abuse of power by the executive, but also on the existence of efficient Government capable of maintaining law and order and of ensuring adequate and equitable social and economic conditions of life for the society.

CHAPTER V

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND ITS IMPACT ON THE CULTURAL RIGHTS IN ZAMBIA

The Universal Declaration of Human Rights recognises cultural rights only after recognising economic rights and social rights. It is necessary to deal with those human rights which protect man against the arbitrariness and injustice of society and government. However, in societies where the fundamental rights against arbitrariness have begun to be protected, men have, as a result of the growing industrialisation and mechanisation of the world and the increase of their leisure time, begun justly to demand the effective guarantee for all the right to participate in the cultural life of the community.

The concept of cultural rights appear in Article 22 of the Declaration, which states that:

'Everyone, as a member of society,...is entitled to realisation, through national efforts and international co-operation and in accordance with the organisation and resources of each State, of...cultural rights indispensable for his dignity and the free development of his personality.'

Though cultural right has been placed at the end of other rights, its importance cannot be minimised. To use the words of the Declaration, it is essential for 'the full development of human personality.'

Due to limited space and vastness of the topic, it is intended to approach cultural rights under two separate headings, namely the right to education and the freedom of religion.

(1) Right to Education

Article 26 of the Declaration requires governments to give every individual the opportunity to acquire knowledge and to provide the necessary facilities. Education must, moreover, be free. It states that 'Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.'

Quite contrary to these principles the schools were operated in Zambia before independence, the then Northern Rhodesia. In contrast to the restricted, inadequately financed system of education for Africans in Northern Rhodesia, European education was more efficiently organised and more adequately provided with funds during the colonial government's control of the territory. Mr. Mwanakatwe writes:

'Rigid separation of races in education was enforced. There were separate schools for Africans, separate schools for Asians and Coloureds and segregated school for Europeans. All these schools formed watertight compartments of education.'¹⁶⁷

On independence Zambia launched a series of reforms in the educational system that would meet the demand of the people. The major aim of education in the educational reform document has been the creation of a humanist socialist society which would allow fuller participation and equal access to education by every citizen. It has been mandatory, therefore, on the Government, as a commitment to the ideals of social justice for and in all fields of human activity, to give every citizen equal education opportunity regardless of sex or other social considerations.

The Ministry of Education has been given the responsibility for all formal education such as primary and secondary education, education

for the handicapped, adult education, technical education and vocational training, teacher training and university education. The Ministry is also responsible for all supplementary education in general, through the Zambia Library Services and the Educational Broadcasting and Television Services.

Parents also being conscious of their duties towards children's education are quite willing to co-operate with the Government in implementing the policy of compulsory elementary education. Statistics show a considerable increase in the enrolment and number of classes. In 1976 eight new secondary schools were completed under the World Bank Educational Project. This allowed the country to achieve its enrolment target established for the Second National Development Plan.

'At form I level, 549 classes with an enrolment of 21,709 students was achieved in 1976. 252 classes enrolling 8,645 students were achieved at form IV level. The S.N.D.P. had projected a total of 2,053 secondary school classes by 1976 with a total enrolment of 74,500 students. The actual figures by 1976 were 2,032 secondary schools and classes enrolling 77,337 students.'¹⁶⁸

This shows a sustained effort made by the Government to provide more and better facilities for the schooling of the children. But the real weakness of the education system in Zambia is not at the lower primary school level but above. The educational pyramid allows more grade VII drop outs than providing continuity in education. No significant advance towards universal secondary education has been made till now. As pointed out by Mr. Mwanakatwe:

'Even in the foreseeable future, there cannot be realistic optimism that the situation will arise when every child who

completes primary course will easily find a place in form I.¹⁶⁹ At present very little can be done to alleviate the situation as it will be rather too strenuous on the Zambian economy to achieve compulsory secondary education.

The problem has, however, not escaped the attention of the political leaders who are quite aware of the potential source of social trouble. They know that the primary school leavers are migrating to towns for seeking employment and they are straining housing and water supply facilities, burdening ill paid relatives, and turning to delinquency. Still, very little can be achieved as any scheme to expand facilities for secondary schooling beyond present target would impose a heavy burden on the financial resources of the nation.

Though this problem has been left mostly unattended, the Government has to some extent, tried to alleviate the position by allowing private fee paying school to be opened.¹⁷⁰ It means, again, that only parents who can afford will send their children to school and if the fees are high, the central policy of mass education will be frustrated.

To give the primary school leavers a further scope of continuing their studies, the Ministry has devised schemes in the form of Adult Education. Its activities are carried out under the following programmes:

- (i) Evening classes
- (ii) Classes in Adult Education Centres
- (iii) Supervised Study Groups
- (iv) Classes in prisons
- (v) Correspondence courses
- (vi) Courses for owners of small businesses

All these programmes, though fee paying, aim at objectives ranging from preparing students from academic point of view to technical and vocational training. It has proved to be highly beneficial to the student as they are able to improve their standard of education and be more productive to society. More important is that they feel that they have not lost their opportunities to be on the school bench again to increase their knowledge.

Under the Department of Technical Education and Vocational Training students are registered for the following programmes: Secretarial, Paramedical, Applied Arts, Teacher Training, Business Studies, Civil Aviation, Industrial/Engineering, Technician/Technologist, Crafts/Trades and Hotel Management. It is not surprising that girls have accepted the challenge of the demands of modern society and they have registered themselves for technical courses which were at one time more apt for men. The following table shows the increasing trend in girls' enrolment to various courses.

FEMALE STUDENTS AS A PERCENTAGE OF TOTAL D.T.E.V.T. OUTPUT

1975-9

PERIOD	TOTAL D.T.E.V.T. OUTPUT	FEMALE OUTPUT	MALE OUTPUT	FEMALE OUTPUT AS A PERCENT- AGE OF COL. 2
1975	1,274	242	1,132	18
1976	1,678	290	1,388	17
1977	1,628	348	1,280	21
1978	1,645	369	1,276	22
1979	1,992	577	1,415	29

SOURCE: D.T.E.V.T. Educational Statistical Reports, 1975, 1976, 1977
1978, 1979

The analysis of the enrolment trends show a major disparity as girls are mostly under-represented. Prima facie, this would be negating the high ideals of non-discrimination of sex, as expounded in the Declaration. But a logical explanation can be given that girls in Zambia are new comers to education in general and technical education as they were traditionally the custodians of the kitchen industry. Now, with proper motivation and the demands of the social and economic conditions, it is imperative that girls's participation in education have to be increased. There is no doubt that the Government is making all efforts to meet this social obligation.

The University of Zambia is engaged in training and production of high skilled manpower in Zambia. In furtherance to its

educational policies, the Government offers free education at the University level except for those who are already employed and foreign students. Although providing free educational facilities has proved to be a very costly measure, the Government has not failed in its sincere commitment to educating the mass.

The Ministry of Education has extended its services and is providing increased facilities to develop education for blind, physically handicapped, deaf and partially hearing and the mentally handicapped children. The programme has had many set backs because there are insufficient and inadequately trained staff for teaching the mentally handicapped. There is also lack of teaching facilities. Schools for the deaf, blind and physically handicapped are inadequately catered for as there are many untrained teachers on their staff.¹⁷¹

The Zambia Library Service has been very instrumental in promoting literacy in Zambia. Among its various functions, it has to establish and run a public library network throughout the country. More specially, it is to provide free public library facilities at selected centres in the rural areas. On the other hand, the Educational Broadcasting Services offers programmes of learning through the media of radio, television, films and magnetic tapes. The programmes produced are aimed at assisting both the learner and the teacher in their respective fields of learning and teaching as to help improve the quality of education in the country. It is an effective medium of providing supplementary instructions in key subjects for the benefits of pupils and students in upper primary and secondary schools as well as teachers' training colleges.

Such enormous emphasis on the propagation of sound education is well intended for a cherished aim. As pointed out in Article 26(2) of the Declaration, it is 'directed to the full development of human personality and to the strengthening of respect for human rights and fundamental freedoms.' Education has a more important and vital role to play. Education should produce a well balanced personality. The idea here is to train the individual to become a good citizen. The school, therefore, as one of the important social institutions should offer an environment and atmosphere which will be conducive to each child's development. It is only a good individual who can understand the rights and duties of citizenship. Article 26(2) is an important provision as it stresses on the role of education in the maintenance of peace and the promotion of understanding among all nations, racial or religious groups. This is a sound base to build a common future for humanity. On the other hand, from the point of view of national-development, a large number of illiterate can pose a serious obstacle to the government's desire to improve the living conditions for all the citizens and promote rapid economic progress.

The programme of mass education has somehow been thwarted on many occasions due to lack of funds and ^{un}availability of trained professional staff. The works of most of the sections and departments had to be slackened which is not a sign of reassurance and optimism. With a growing population and an ever-increasing demand Zambia has to shoulder bigger projects for effective implementation of its educational programmes. Although the world bank has been of tremendous assistance in smoothing over many problems, still a lot has to be achieved

in order to meet the expectations of the people and translate the right to education into workable actions.

(ii) Freedom of Religion

Religious freedom is a vital provision in every democratic constitution and it has not been unduly recognised in the Article 27 of the Declaration which states:

'Everyone has the right freely to participate in the cultural life of the community.'

This provision must be read along with the Article 21 of the Constitution of Zambia which guarantees the freedom of conscience in the form of 'freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.' This provision embraces two principles. It ensures that the Government be secular and it has to respect an establishment of religion. The other is addressed to the individual and to the religious institutions he creates. By the terms mentioned here, the Government is to make no law prohibiting the free exercise of religion. The Constitution has left every person free to worship God according to the dictates of his conscience.

The Constitution has qualified this provision by another term which restricts freedom of religion in the interest of defence, public safety, public order, public morality or public health.¹⁷²

The case of Feliya Kachasu v Attorney General has attracted judicial attention. The facts of the case were that the applicant had

been brought up in the religion of Jehovah's witness and she had been taught that it is against God's law to worship idols or to sing songs of praise or hymns to other than Jehovah God himself. She and her father and many other Jehovah's witnesses regard the singing of the National Anthem as the singing of a hymn or prayer to someone other than Jehovah God Himself. They also regard the saluting of the National Flag as worshipping an idol. To them the singing of the National Anthem and the saluting of the National Flag are religious ceremonies or observances in which they cannot actively take part because these ceremonies are in conflict with their own religious views and beliefs.

Under Section 25 of the Education Act, the Applicant is entitled to be excused from participation and attendance at any religious ceremony or observance. But concerning the singing of National Anthem and saluting the National Flag, Blagden C.J. referred to Sheldon v Fanin and said that:

'The singing of the National Anthem is not a religious but a patriotic ceremony intended to inspire devotion to and love for a country. By religious references therein are incidental and expressive only of the faith. We brought out a fine dichotomy between worshipping an idol and observing official ceremonies at school.'

He said:

'These ceremonies are instituted on the directions of the State and not of any church or religious organisation. They form part of the instruction which is to be provided in Government schools in how to behave on formal occasions at which the National Anthem is played or sung or the National Flag flown.'

Thus, although the freedom of conscience is guaranteed to every individual so that he may hold any belief he likes, his actions in pursuance of these beliefs may be liable to restrictions in the interest of the community at large. In a progressive society the need of public order, morality and health or social reform have a constantly changing content and the sphere of law will inevitably tend to encroach on the hitherto preserves of religion, and with the achievement of higher standards of living and literacy there will definitely be interference into the public conscience.

Since its adoption in 1948, the Universal Declaration of Human Rights has been recognised as embodying the Universal Standards of human rights to be pursued and achieved by the international community. Till the present day the international effort for rendering content results and viability to human rights, has been continuous and sustained. And in the context of international law the legal regime of human rights has achieved a universal acceptance, so much so that they are recognised as customary principles of international law and are, therefore, binding on all member states.

Zambia being one of the signatories of United Nations Charter and to the Universal Declaration of Human Rights, has through concerted efforts and legislative enactments tried to implement the provisions regarding civil, political economic social and cultural rights embodied in the Universal Declaration. It has been, therefore, the effort of this thesis to evaluate the impact of the Universal Declaration of Human Rights vis-a-vis the human rights and fundamental freedoms as seen from the Zambian perspectives.

In Chapter I of the thesis an effort has been made to look at the important role the Universal Declaration has played since its adoption, in fostering a universal conception of the human rights at the international level. Although the

Universal Declaration is not a treaty, nevertheless, it represents a very large degree of international agreements and it has a great reinforced status not only as "a common standard of achievement for all peoples and nations," but also as a generally accepted principles of law which all states should observe.

It may be noted that there are basically two conflicting views about the legal force of the Declaration. Some jurists have seen the Declaration purely as a document interpreting the charter and, therefore, vested with the same mandatory force as the charter itself.¹⁷⁴ On the other hand, several other jurists consider the Declaration as a purely formal document of no legal consequence.¹⁷⁵ However, whatever may be the arguments voiced for and against the legal force of the Declaration, many decided cases in international law and international relations point towards the fact that the Declaration has come to be established as "a common standard of achievement for all peoples and nations." Member States have accepted the gradual influence of the Declaration and the constitutions of various member states have expressly incorporated the provisions of the Declaration. By so doing they have pledged to uphold the principles of human rights and keep the Universal Declaration as the highest objective to be achieved. Furthermore, international covenants¹⁷⁶ have been drafted with a view to implementing the

provisions of the Declaration. Thus it may be concluded that the Declaration has a lot to offer in the future, in terms of helping in the eradication of social inequality and preserving human dignity.

Zambia has tried to give content to the Universal Declaration with particular reference to civil and political rights and the thrust of Chapter II accordingly, has been to bring to the fore the various measures which the Government of Zambia has formulated to give effect to. During the discussion, problems confronting the implementation of civil and political rights in Zambia have been brought out. It is also shown that the entrenched provisions in the constitution have laid down the framework and institutions for tackling the problems.

The chapter further deals with the concept of one party state and the constitutional protection of human rights in Zambia. Though the adoption of a single party system impinges on enjoyment of certain rights and freedom, especially those of political nature, in fact, many of the guaranteed rights continued to exist and operate effectively. The bill of rights has guaranteed rights such as the right to life, personal liberty, freedom from slavery forces labour, inhuman treatment and deprivation of property, right to privacy of the home and freedom of conscience.

The above observation leads to the conclusion that most of the rights and freedoms are not incompatible with one party state. It should be emphasised here that provided UNIP and its government share a genuine commitment to value the respect for individual liberties, there is no reason why the rights and freedoms should not be consistent with the framework of a one party state. In relation to Zambia, the introduction of the one party state in 1972 did not in any substantial way alter^d the substance of most^{of} the rights and freedoms that had existed in the Independence Constitution. With the exception of freedom of assembly and association, all the rights and freedoms have been reproduced and safeguarded in the one-party constitution.

The introduction of a single party system has to a major extent stifled the freedom of association of an individual and only one party is allowed to operate. This means that an individual either joins the party or is left without any political association. In other words the right of an individual to form or to belong to any other political party is restricted. On the other hand, only members of the ruling party are entitled to participate in the political processes of the country. Thus those persons who fundamentally disagree with the ruling party, on the points of principles or ideology or in the conduct of the government, are not free to form rival political associations.

Chapter III highlights how and in what respects Zambia through various economic reforms backed by legislative enactments, has tried to conform to the economic standards of human rights as spelt out in the Universal Declaration. Thus the chapter tries to interpret that, economic right in a restrictive sense, means the right to an individual to participate fully in the economic development of his country. Unlike the civil and political rights, economic rights, is not self executory and its implementation depends entirely on changes in economic circumstances and social conditions. Thus economic right cannot be conferred directly on an individual. It is only through the mobilization of the available resources that the state can provide avenues for economic development. In the past years, Zambia has diversified in economy and there is greater emphasis on the exploitation of means of production that is, land and its resources, besides copper.

Every possibility is being looked into to boost up the economy in Zambia. Measures have been taken to mobilise the urban and rural resources in the form of nationalisation of industries, setting up co-operatives, allowing private companies to grow, and giving incentives to local as well as foreign investors to establish big and small

scale industries. By implementing the provisions of the Industrial Development Act and the Small Scale Industries Act, Zambia has tried to produce a range of intermediate goods and services and generating fairly substantial employment. With more concerted efforts perhaps, Zambia may be able to build a better economic infrastructure which will enable the nation to have a better means of livelihood and realise a far reaching implication on economic rights of an individual. The main stand of social rights enshrined in the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights, is to help the establishment of a welfare state. Zambia, as any other developing countries in Africa, is facing identical problems concerning the form in which social rights of an individual should take in the contemporary society. In Chapter IV, problems on this area have been looked from the point of view of workers' working conditions in industry, availability of legal aid to those underprivileged who cannot make a fair representation in a court of law, and the role of the Zambia National Provident Fund with emphasis on social security measures in order to assure adequate standard of living during unemployment, retirement or death.

It may however, be concluded, that Zambia has formulated several economic and social policies so as to protect the individual from fear and want. There is also an attempt to guarantee a minimum standard of living which

is sufficient to ensure the health of an employee and the well being of his family. Thus being a social welfare state, Zambia has tried, inspite of its limited resources to secure a better standard of living for the individuals. Another essential aspect of human rights is the right of fair hearing and administrative justice. With the advent of the concept of social welfare state, there has been a contemporaneous rise in the approach to administrative justice. This gives a fair opportunity and equal right to an aggrieved individual to seek remedy through an ordinary court of law, administrative tribunals and appeal to a minister or through the extra legal remedies of an ombudsman.

Unsound base in education and culture may be detrimental to a country's fair chance to progress and development. Chapter V deals with Zambia's compliance of the Universal Declaration provisions and briefly analyses her commitment to the right to education and culture of an individual. Reference has been made in the Chapter of the fact that Zambia has been striving relentlessly since its independence to give a better educational and cultural standard to its citizens. Many new primary and secondary schools have been opened in past years and there are more tertiary institutions for academic vocational and technical training. Classes for the blind and handicapped children are being run in the country with a view to providing them with

opportunities for fruitful living. Day workers attend evening classes conducted by the Ministry of Education, so that they can improve their educational background. Besides this, Zambia being a secular state, allows an individual the free association with any religious sect (except the Watch Tower Sect) and practice any religion. The right to education and freedom of religion are guaranteed in Part III of the Constitution of Zambia. The driving force behind encouraging mass literacy and freedom of religion to individuals is to help in "the full development of human personality" and preservation of human dignity.

In conclusion it may be stated that Zambia has always looked forward to preserve the human rights and fundamental freedoms of the individuals. But due to limitations and constraints many projects had to be shelved. However, with the sufficient availability of resources such as local capital, professionally trained manpower and above all foreign exchange allocations, Zambia can open a large vista and give a new dimension to civil, political, economic, social and cultural rights.

Footnotes & Bibliography

1. General Assembly Res. 217 (III), U.N. DOC A/810, (1948) at 71.
2. The United Nations and Human Rights, XXX Anniversary, United Nations Publications, New York, 1978, Page 2.
3. The Preamble to the Universal Declaration of Human Rights, 1948.
4. Article 1, Ibid.
5. General Assembly Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) at 49, U.N. DOC. A/6316 (1966).
6. General Assembly Res. 2200 (XXI), 21 U.N. GAOR, (No. 16) at 52, U.N. DOC. A/6316 (1966).
7. Preamble to the European Convention for the Protection of Human Rights and Fundamental Freedom signed at Rome, 4th November, 1950.
8. American Convention on Human Rights, November 22, 1969, 262A.S. No. 36, at 1, O.A.S. off. Rec. DEA/Ser. L/V/11, 23 doc., rev. 2.
9. Preamble to the African Charter on Human Rights and Peoples' Right adopted in 1981 at Nairobi Summit Conference.
10. Ibid.
11. Article 2, Part I, Chapter I, Ibid.
12. Preamble Ibid.
13. Article 20, Part I, Chapter I, Ibid. See also E. G. Bello, Human Rights: The Rule of law in Africa. The International and Comparative law Quarterly, (1981), Vol. 30, Part 3, pp 628 - 637.
14. General Assembly, Res. 285 (III), 25, April, 1949, General Assembly off. Records, Third session, Part II, Resolutions (A/900), pp 34 - 35.
15. General Assembly, Res. 265 (III), 14th May, 1949. General Assembly, off. Records, Third session, Part II, Resolutions (A/900), p. 6.
16. General Assembly, Res. 1142 B (XII, 25 October, 1957, General Assembly, off. Records, Twentieth session,

17. General Assembly, Res. 721 (VIII), 8 December, 1953; General Assembly, Official Records, Eighth Session, Supp. 17 (A/3805) pp. 6 - 7.
18. Security Council, Res. 182 (1963), 4 December, 1963 Res. and Decisions of the Security Council, 1963 (S/INF/18/Rev. 1) pp. 8- 10.
19. General Assembly, Res. 1510 (XV), 12 December, 1960; General Assembly, off. Records, Fifteenth Session, Supp. 16 (A/4684) pp. 21 - 22.
20. General Assembly, Resolution 1514 (XV), 14 December, 1960; General Assembly Official Records Fifteenth Session, Supp. 16 (A/4684), pp. 66 - 67.
21. General Assembly, Res. 1904 (XVIII) 20 November, 1963; General Assembly, Official Records. Eighteenth Session, Supp. 15 (A/5515), pp. 35 - 37.
22. The Resolution of the Security Council, 16 December, 1966, U.N. DOC. S/RES/23..
23. U.N. DOC. E/CN. 4/82 Add. 9 (10 May, 1948), p. 2.
24. U.N. DOC. E/SR. 50 (4 June, 1948), pp. 3 - 5.
25. Final Act of the International Conference on Human Rights 3, at 4, para, (U.N. DOC. A/CONF. 32/41; U.N. Publ. E68 XIV. 2.
26. U.N. DOC. A/245 at 196.
27. U.N. DOC. E/CN. 4/82/Add. 1 (16 April, 1948), p. 3.
28. General Assembly, Official Records, Third Session Part I, Third Committee, pp. 32, 3J, JI, 199 - 200.
29. Montreal Assembly of Human Rights in March, 1968. DOC. A/CONF. 32/28, p. 2.
30. G.I.A.D. Draper, Human Rights and the laws of the War, Vol. XII Virginia Journal of International law (1971 - 1972), pp. 326 - 42 at p. 336.
31. The proclamation, Universal Declaration of Human Rights.
32. Report of the Secretary General to the General Assembly, 1972 - 1973, U.N. DOC. A/9001/Add. 1 (VII).
33. Ibid.

34. Louis B. Sohn, The Universal Declaration of Human Rights, Special Issue, Journal of the International Commission of Jurists, 1968, Page 26.
35. H. Grotius, De Jure Belli Ac Pacis (1625); T. Hobbes, Leviathan (1651); J. Locke, of Civil Government: Two Treatises (1690); C. Montesquieu, L'esprit de Lois (1748); J. Rousseau, Discours Sur l'Origine et les Fondements de l'inegalite' parmi les hommes.
36. Olimpiad S. Ioffe, Human Rights, Vol. 15, No. 4, Connecticut Law Review (1983) p. 710.
37. Sir Waldock, Human Rights in Contemporary International Law and the significance of the European Convention, Supp. No. 11 International Comparative Law Quarterly, 1965, p. 15.
38. Anthony D'Amato, The concepts of Human Rights in International Law, Vol. 82 No. 6, Columbia Law Review (1982), pp 1110 - 1159.
39. Article 2 of the Charter of the United Nations.
40. UNIP Policy and Manifestos Govt. ZAM 02 1964/1 "The Constitution shall contain fundamental safeguards guaranteeing freedom of the individual and providing against abuse of power by the executive. These fundamental laws will not alone safeguard the member of the minority groups but all the people of the country. They are not a concession to any one group or community but rather an expression of UNIP's belief in dignity and freedom of the individual, and in the principles of justice and charity to all."
41. Member of the Legislative Council; Northern Rhodesia (Legislative Council) Hansard No. 106, 1963 Cols 260 - 261.
42. Sections 1 - 13, Northern Rhodesia Constitution, 1963.
43. Ibid Section 80.
44. K. D. Kaunda, "Humanism in Zambia and a Guide to its implementation." Government Printer 1967, page 7. "This high valuation of Man and respect for human dignity which via legacy of our tradition should not be lost in the new Africa."

See also Henry S. Meebelo, *Main Currents of Zambian Humanist Thought*, Oxford University Press (Lusaka) 1973 pp. 1 - 14.

45. Article 2 Subsection 2, Charter of the United Nations. "All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
46. Robin Fincham, "Economic Dependence and the Development of Industry in Zambia", Vol. 18, No. 2. *The Journal of Modern African Studies*, (1980) pp. 297 - 313.
Also see David M. Todd and Christopher Shaw, "The Informal Sector and Zambia's Employment Crisis," Vol. 18 No. 3. *The Journal of Modern African Studies*, (1980) pp. 411 - 425.
47. Kenneth Kaunda, *Letter to my Children*, p. 2.
48. Report and Recommendations of the National Symposium of Industrial Participatory Democracy in Zambia, held at the President's Citizenship College, Mulungushi - Kabwe from 12th to 22nd July, 1976. (1977) Government Printer, Lusaka, Page 1.
49. Forward by Dr. K. D. Kaunda, October 24, 1964 - October 24, 1971, seven years of Progress, Government Printer, Lusaka, 1971.
"Zambia is a country with special problems. In a brave effort to maintain its economic and political independence, she virtually had to turn the whole economy upside down, altering the traditional pattern of trade inherited at independence with the white dominations to the South."
50. Henry S. Meebelo Op.Cit. Page 1
51. Ibid Page 1.
In a broader spectrum, African Socialism in Tanzania means familyhood (Ujamaa) and draws from its traditional heritage the recognition of "society" as an extension of the basic family unit. Malagasy's socialism, according to former President, P. Tsiranana, is based on work, equality, fraternity and love for our Fatherland in the awakening of our ancestral socialist

- traditions. And Tom Mboya saw African socialism as mainly consisting of "those proven codes of conduct in African societies which have, over the ages, conferred dignity on our people and offered them security regardless of their station in life." African socialism has also been described conceptually as egalitarianism, p. 6, hospitality or generosity, p. 7, self reliance and hard work, p. 8, the respect for human dignity, respect for age and respect for authority, p. 9. See also Humanism in Zambia, A Guide to the Nation by Dr. K. Kaunda, Government Printer 1967, Page 5.
52. Lionel Cliffe: "Democracy in a One Party State. The Tanzanian Experience." Socialism in Tanzania An Interdisciplinary Reader, Vol. 1 Politics, East African Publishing House, p. 241.
 53. Ahmed Mohiddin. "Ujamaa na Kujitegemea" Ibid, Page 168.
See also: Dr. K. D. Kaunda: Mulungushi Conference and A Guide to the Implementation of Humanism in Zambia, Government Printer, Lusaka, 1967. Page 29.
 54. Kenneth Kaunda: Humanism in Zambia, Part I Page 7.
 55. Mulungushi Conference, Government Printer, Lusaka 1967, pp. 4 - 5.
 56. The Constitution of Zambia, Cap. 1, 1973, Section 14
 57. Ibid Section 15
 58. Ibid Section 20
 59. Ibid Section 21
 60. Ibid Section 22
 61. Ibid Section 23
 62. Ibid Section 24
 63. Ibid Section 19
 64. Ibid Section 18
 65. Harry Nkumbula v A.G (1972) ZLR 205 and 111
 66. Constitution Amendment (NO5) Act of 1972
 67. The Constitution of Zambia, 1973 Cap. 1, Section 23

68. The Constitution of Zambia, 1964, Section 28 (5)
69. Constitution Amendment (No. 3) Act, 1969.
It removed the requirement of a popular referendum in addition to a 2 parliamentary majority. In the light of the 3 1969 national referendum to end all referenda gave the parliament power to pass the Amendment (No. 5) making Zambia One Party State on 15th December, 1972.
70. Constitution of Zambia, 1973 Section 4(1)
71. Ibid, Section 4(2)
72. The Universal Declaration of Human Rights, Article 20(2).
73. J. K. Nyerere: Democracy and the One Party System, Government Printers Dar-es-Salaam, 1969, Page 7.
74. Ibid, Page 6.
75. Ibid, Page 2.
76. White: English Constitution, Page 400.
77. The Constitution of Zambia, 1973, Section 87
"Members of the National Assembly shall be free to speak and vote on any issue in the Assembly."
78. Ibid, Section 91.
79. M. C. Chona, "Participatory Democracy; An Approach to Government in Humanist Society," Page 3. Appaper presented to a District Governors' Workshop, Lusaka, 24/6/7.
80. Mulungushi Conference, Op.Cit. pp. 5 - 9.
81. Constitution of Zambia, Section 72
82. Ibid
83. Constitution of Zambia 1973, Section 24 (3) (a)
84. Feliya Kachasu V Attorney General of Zambia 1967 (HP) 273.
85. Ibid.
86. Constitution of Zambia, 1973, Section 27.
87. SJZ No. 12 of 1971 Page 10
88. 1973/HP/319; 1973 (ZLR) 133.

89. A. K. Gopalan V State of Madras (1950), S.C.J., 263.
90. Universal Declaration of Human Rights, Article 12.
91. Ibid, Article 17(2).
92. Constitution of Zambia, 1973, Article, 19.
93. Ibid, Article 18.
94. Ibid, Article 22.
95. HP/Const./Ref.1/1968.
96. Section 19 Reads:

(1) Except with his own consent, no person shall be subjected to the search of his person on property or the entry by others on his premises.
97. Section 22 provides:

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with his correspondence.
98. Section 18 reads:

(1) No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired.
99. Regulation 35 of the Exchange Control Regulations states:

(1) Where any authorised officer (defined in sub-regulation(5) as "any person for the time being authorised by the Minister as an authorised officer" and including any customs officer, immigration officer or police officer, reasonably suspects that any postal article contains foreign currency, currency of Zambia or any other article is being or may be imported into or exported from Zambia in contravention of those Regulations, he may open and examine such postal article and may seize any foreign currency, currency of Zambia or other article found therein which he reasonably believes to be intended for import into or export from Zambia in contravention of these regulations

100. Constitution of Zambia, 1973 Section 18(1) (A)(ii)
101. Ibid, Section 19(2)(a)
102. Ibid, Section 18(2)
103. SCZ Judgement No. 58 of 1976
104. (1973) 412 U.S., 29.
105. Stanley Nyambe Liswaniso V People, SCJ Judgement No. 58 of 1976.
106. Constitution of Zambia, 1973 Article 22(1).
107. S.A de Smith, Constitutional and Administrative Law (1973).
108. SCZ Judgement No. 44 1974, Appeal No. 11, 1974
109. 1969/HP/678.
110. 1974/HP/220
111. 1971/HP/ No. 1232.
112. Zambia's Economic Revolution: Address, by President Dr. K. D. Kaunda to UNIP National Council at Mulungushi - 19th April, 1968 Government Printer, 1968.
113. Towards Complete Independence: Address by President Dr. K. D. Kaunda to UNIP National Council at Matero Hall, 11th August, 1969, Government Printer, 1969.
114. Ibid
115. Bastian de Gaay Fortman. After Mulungushi. The Economics of Zambian Humanism. East African Publishing House, 1969. P. 53.
116. Trade Licencing Act, Section 9 1(a).
117. Ibid IJ 1 (a-e).
118. S.J.Z. No. 9 of 1969.
119. Ibid 15 1(e).
120. S.J.Z. No. 14 1969.
121. Supra: n. 116 15 1 (a-e).
122. The Constitution of Zambia, Article 25(2)
123. See Mr. Chimba's Speech, Hansard Vol. 15 1968 P. 379.

124. Supra fn. 1.
125. John Mulwila: Economic Independence in Zambia and the Role of Law in Economic Development. LL.M thesis 1976, Page 108.
126. (1967) Z.R 115.
127. Supra fn 1.
128. Supra fn 2.
129. The Role of Parastatal Organisation in the Third National Development Plan: A Challenge in change, Likando, Director of Research and Development, NIEC Ltd., NIEC News January, 1980.
130. Kenneth Kaunda: Humanism and A Guide to its Implementation, Part 1.
131. John Mulwila: Parastatal Companies and the law in Zambia Ph.D. thesis, 1980, London University, Page 46.
132. Paulsen A. Himwinga: Public Control of Statutory Corporations. Business Law Seminar Paper, 1st March, 1982.
133. Stephen A. Quick: Bureaucracy and Rural Socialism in Zambia, Journal of Modern African Studies, Vol. 11, No. 3, 1977, Page 279.
134. Supra nu. 133.
135. Section 13 Co-operative Act, 1972 Cap 689.
136. Supra nn. 22 P. 381.
137. R. Kakomba, Research and Planning Officer with the ZCF Ltd., "A General Overview of Co-operatives in Zambia", a paper presented at the ILO/DINIDA, East African Subregional Seminar on 'Trade Union and Co-operative Activities', Lusaka 25th January - 8th February, 1981.
138. E. Munghandila, Director of Marketing and Co-operatives, 'Agriculture and Rural Development since independence and Future Prospects.'
139. K. D. Kaunda, "Take up the Challenge." Speeches to the UNIP National Council in Lusaka 7 - 10 November, - Published by Zambia Information Services, Page 48.
140. Ibid.

141. Co-operative societies Act,, Cap. 689, Section 5(a - e).
142. The National Agricultural Marketing Act, 1969, Cap. 356.
143. The Tobacco Act, 1968, Cap. 354.
144. Felix Chimfwembe: The Development of and Financing of Small Scale Industries in Zambia - The case of Rucom Industries. Occassional Paper No. 8. The UNZA Business and Economic Association - April, 1980
145. Small Industries Development Act. 1981.
146. Section 23, The Industrial Development Act, 1977, Cap. 674.
147. Section 19, The Small Industries Development Act, 1981.
148. Robert B. Seidman: Law and Social Change in Africa. Statutes, cases and Materials Page V - 67.
149. Bonnington Castings Ltd. V Wardlaw, 1956 A.C., 613 as per Lord Reid.
150. Annual Report Development of Social Welfare, Government Printer, Lusaka, 1979.
151. Ibid.
152. An Explanation of the Main Features of the Legal Aid Scheme, Published by the Directorate of Legal Aid, 1967.
153. Article 6, U.D.H.R
154. Ibid, Article 7
155. Ibid, Article 2
156. Supra n. 150
157. Article 8 U.D.H.R
158. Ibid Article 10
159. 1972 S.J.Z P. 40
160. Local Government Board V Arlidge (1971) A,C 120 at P. 132
161. Art 109 (J) Constitution of Zambia
162. 972 (HP/511

163. (1969) S.J.Z 138
164. (1967) Z.R 115
165. Article 81 Constitution of Zambia.
166. Ibid Part IX, Articles 177 117
167. J. M. Mwanakatwe: The Growth of Education in Zambia since Independence, Page 26.
168. Annual Report, 1976, Ministry of Education, Government Printers, Lusaka, 1979 Page 12 ^{corrected 1968}
169. Supra fn 56, Page 71
170. Section 13(2) The Education Act, 1966
171. Supra n. 168, Page 20
172. Article 21 5(a) Constitution of Zambia
173. (1967) HP 273
174. U.N. DOC E/CN, 4/82. Add. 1(16 May, 1948) P. 3
175. U.N. DOC E/CN, 4/82. Add. 9 (10 May, 1948) P. 2
176. The International Covenant on Civil and International Covenant on Economic, Social and Cultural Rights.

TABLE OF CASES

1. A. K. Gopalan V State of Madras (1950), S.C.J., 263.
2. Attorney General V. Chipango, (1971), S.J.Z., No. 55.
3. Anthony William Cobett Tribe V. Attorney General (1976) Z.L.R. 139.
4. Bonnington Castings Ltd V Attorney General (1956), A.C., 613.
5. Chilufya V City Council of Kitwe (1967) L.R. 115.
6. Chilufya Kangombe V Attorney General, 972 (H.P.) 511.
7. Cosmas Bwalya Chendaeka V Luanshya Municipal Council, (1968) S.J.Z. No. 14.
8. Collins Nalumino Sinioti V Municipal Council of Lingstone, 1969, S.J.Z. No. 9.
9. Cupp V Murphy (1973) 412 V.S. 29.
10. David Wacha V Zambia Printing Co. Ltd., (1974)/HP/220.
11. Gilbert Mutale V Attorney General (1976) Z.L.R. 139.
12. Kapwepwe Kaenga V Attorney General, (1972) Z.L.R. 248.
13. Liswaniso Stanley Nyambe and the People, (1976), S.C.Z. Judgement No. 58.
14. Local Government Board V Arlidge, (1975) A.C. 120, 132.
15. Nalumino Mundia V Wesley Nyirenda and Zambia Newspapers Ltd., (1969)/HP/678.
16. Nkumbula V Attorney General (1972) Z.L.R. 205 and 111
17. Patel Currency Case 1968 Z.L.R. 99.
18. Re Puta (1973) Z.L.R. 133.
19. Russian Case, General Assembly, Res. 285 (III) 25 April, 1949: General Assembly, Off. Records, Third Session, Part II, Res (1/900), pp. 34 - 35.

20. Zambia Publishing Co. Ltd. V Simon Kapwepwe,
S.C.Z. Judgement No. 44, 1974, Appeal No. 11,
1974.

International and Regional Documents on (or referring to) Human Rights.

A. United Nations.

- (i) Relevant provisions of the U.N. Charter 1945.
- (ii) The Universal Declaration of Human Rights, 1948.
- (iii) General Assembly Resolution, 217 A(III), U.N. DOC. A/810, 1948.
- (iv) U.N. DOC. E/CN. 4/82 Add. 9, 10 May, 1948.
- (v) U.N. DOC. E/CN. 4/SR. 50, 4 June, 1948
- (vi) U.N. DOC. E/CN. 4/82/Add. 1, 16 April, 1948.
- (vii) General Assembly, Res 285 (III), 25 April, 1949.
- (viii) General Assembly, Res. 265 (III), 14 May, 1949.
- (ix) General Assembly, Res. 721 (VIII), 8 December, 1953.
- (x) General Assembly Res. 1142 B(XII), 25 October, 1957.
- (xi) Declaration of the Granting of Independence to Colonial Countries and Peoples, 1960.
- (xii) General Assembly Resolution 1510 (XV), 12 December, 1960.
- (xiii) General Assembly, Resolution 1514 (XV), 14 December, 1960.
- (xiv) Security Council Resolution 182, 4 December, 1963.
- (xv) General Assembly Resolution 1904 (XVIII) 20 November, 1963.
- (xvi) International Covenant on Economic, Social and Cultural Rights, 1966.
- (xvii) International Covenant on Civil and Political Rights, 1966

- (xviii) General Assembly Resolution 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16). U.N. DOC. A/6316 (1966).
- (xix) The Resolution of the Security Council, United Nations DOC. S/RES/232. 16 December, 1966.
- (xx) U.N. DOC. A/CONF. 32//41; U.N. Publ. E68 XN. 2.
- (xxi) U.N. DOC. A/CN 2/245
- (xxii) Montreal Assembly of Human Rights in March, 1968. DOC. A/CONF. 32/28.
- (xxiii) Report of the Secretary General to the General Assembly, U.N. DOC. A/9001/Add. 1 (VII), 1972 - 1973.

B. Regional Documents

- (i) The European Convention on Human Rights 1950.
- (ii) The American Convention on Human Rights 1969.
- (iii) The Charter of the Organisation of African Unity.
- (iv) African Charter on Human Rights and Peoples' Rights 1981.

Legislative Documents Including Acts, Regulations, Orders in Council and Statutes

(i) Statutes

- 1968 United Kingdom Bill of Rights
- 1963 Rhodesia and Nyasaland Act
- 1964 Zambia Independence Act
- 1972 Republican Constitution of Zambia

(ii) Orders in Council

- 1953 Rhodesia and Nyasaland Order in Council
- 1963 Rhodesia and Nyasaland (Constitution) Order in Council

1964 Zambia Independence Order in Council

(iii) Constitutional Amendments:

1966 Constitution (Amendment No. 30) Act

1966 Constitution (Amendment No. 47) Act

1967 Constitution (Amendment No. 3) Act

1968 Constitution (Amendment No. 2) Act

1969 Constitution (Amendment No. 3) Act

1969 Constitution (Amendment No. 4) Act

1969 Constitution (Amendment No. 5) Act

1970 Constitution (Amendment No. 6) Act

1972 Constitution (Amendment No. 3) Act

1972 Constitution (Amendment No. 1) Act

1975 Constitution of Zambia (Amendment) Act
No. 22

Republic of Zambia Act/Regulations (Including Northern Rhodesia Ordinances/Regulations)

- 1933 The Employment of Women, Young Persons and Children Act Cap. 505
- 1948 Minimum Wages, Wages Council and Conditions of Employment Act, Cap. 506
- 1949 Industrial Counciling Act, Cap. 508
- 1949 Industrial Relations Act Cap. 517
- 1949 Trade Unions and Trade Disputes Act, Cap. 507
- 1950 The Pneumoconiosis Act, Cap. 326
- 1958 Societies Act, Cap. 105
- 1964 Emergency Powers Ordinance, Cap. 108
- 1964 Penal Code, Cap. 146
- 1964 Probation of Offender Act, Cap. 147
- 1964 Workmen's Compensation Act, Cap. 509
- 1966 Employment Act, Cap. 512
- 1966 Local Courts Act, No. 20
- 1966 Education Act
- 1966 National Provident Fund Act Cap. 513
- 1967 Legal Aid Act, Cap. 546
- 1967 Referendum Act
- 1967 Factories Act, Cap. 514
- 1968 Trade Licensing Act, No. 41
- 1968 The Tobacco Act Cap. 354
- 1969 The Trade Licensing (Amendment) Act, No. 41
- 1969 The National Agricultural Marketing Act, Cap. 356
- 1970 Mines and Mineral Act, Cap. 329

- 1971 Trade Licensing (Amendment) Act, No. 22
- 1972 Co-operative Societies Act, Cap. 689
- 1973 Trade Licensing (Amendment) Act No. 27
- 1976 Referendum Act, No. 39
- 1977 The Industrial Development Act, Cap. 674
- 1980 Corrupt Practices Act
- 1981 The Small Industries Development Act

Other Countries:

- The Constitution of Ghana, 1969
- Tanzania Interim Constitution, 1965
- Tanzania Permanent Commission of Enquiry Act, 1966
- Nigerian Constitution, 1963
- Constitution of India, 1949
- Indian Preventive Detention Act, 1950

BOOKS

1. Bostock and Harvey, Economic Independence and the
Zambian Copper, Cambridge
University Press, 1972
2. Baldwin, R. E. Economic Development and
Export Growth, University of
California Press, 1966
3. Ben, T., Development in Zambia, Zed Press,
Press, London, 1979
4. Cervenka, Z., The O.A.U. and its Charter,
C. Hurst & Co., London, 1968
5. De Smith, S. A. Constitutional Law and Administ-
rative Law, 1973
6. Elias, T. O. Africa and the Development of
International Law, Sijthoff/Oceana,
1972
7. Fortman, B. de Gaay, After Mulungushi, The Economics
and Zambian Humanism, East Africa
Publishing House, 1979

8. Faber and Potter, Towards Economic Independence
Cambridge University Press, 1971

9. Gray and David, Pre-Colonial Trade, Essays
on Trade in Central and Eastern
Africa, before 1900, Oxford
University Press London, 1970

10. Hirshman, A. O. The Strategy of Economic Develop-
ment, Yale University Press, 1958

11. Hoffer, E., Reflection on the Human Conditions,
Harper and Row, New York, 1973

12. Henry, R. A., Human Rights in the world
Manchester University Press, 1972

13. Kaunda, K. D., Letter to My children, London,
Longman, 1973

14. Kaunda, K. D., Zambia Shall be free, London
Longman, 1962
15. Kaunda K. D., A Humanist in Africa, Longmans
1966

16. Leah, L., Human Rights, Questions and
Answers, Paris, UNESCO (02)
1981/33

17. Martin, A., Minding their Own Business,
Zambia's struggle against
Western Control, Penguin Books,
1975

18. Heebelo, N. S., Main Currents of Zambian Humanist
Thought, Lusaka, Oxford, U.P.
1973

19. Mulwila, J. M., Parastatal Companies and the law
in Zambia, Ph.D. thesis, London
University, 1980 (Unpublished)

20. Mulwila, J. M., Economic Independence in Zambia
and the Role of Law in Economic
Development, LL.M thesis,
University of Zambia, 1976
(Unpublished)

21. Munker, H. H., New Trades in Co-operative Law
of English Speaking Countries of
Africa Barburg, 1978

22. Mwanakatwe, J. M., Growth of Education in Zambia
since Independence, Oxford, U.P.,
1968

23. Mwanakatwe, J. M., Adult Education and Political and
Social change, Neczam, 1970

24. Nwabueze, B. O., Presidentialism in Commonwealth Africa, 1974, London, C. Hurst & Co., 1974.

25. Nyerere, J., Ujamaa, The Basic of African Socialism, Dar-es-Salaam, O.V.P., 1968

26. Pal, R. B., International Law in a Changing World, Oceana, 1963

27. Pollis and Schwab, Human Rights: Ideological and Cultural Perspectives, Draeger Press, 1979

28. Robert, A. H., Human Rights in the World, Manchester University Press.

29. Seidman, R., Law and Development, A Theory of Law as an Instrument & Social Change in Africa, Lusaka, 1973 (mimeographed)

30. Sohn, L. B. and Buergenthal, T., International Protection of Human Rights, Bobbs - Merrill, 1973

JOURNALS

1. D'Amato Anthony, "The Concepts of Human Rights in International Law." Vol. 82, No. 6, Columbia Law Review, 1982
2. Aihie, D. O., 'Neo-Nigerian Human Rights in Zambia', Vol. 3 and 4, Zambia Law Journal, 1971 and 1972
3. Bellow, E. G., Human Rights: The Rule of Law in Africa, Vol. 30, Part III, The International and Comparative Law Quarterly, 1981
4. Cowen, D., Human Rights in Contemporary Africa, Vol. 9 - 10, Natural Law Forum, 1964 - 1965
5. Cliffe, L., Democracy in a One-Party State: The Tanzanian Experience, Vol. 1, Politics, East African Publishing House.
6. Cassin, R., 'Twenty Years After the Universal Declaration, Vol. VIII, No. 2 International Commission of Independent Jurists, December, 1967

7. Despande, V. S., 'Rights and Duties Under the Constitution' Vol. 15 No. 1, All Indian Law Institute, 1973
8. Fincham, R., 'Economic Dependence and the Development of Industry in Zambia, Vol. 18, No. 2, The Journal of Modern African Studies, 1980
9. Herrera, F., 'The International Social Order and Human Rights, Vol. IX, No. 1, The Journal of International Commission of Jurists, June, 1968
10. Humphrey, J., 'Human Rights, the United Nations and 1968, Vol. IX, No. 1, Journal of the International Commission of Jurists, 1968
11. Ioffe, O. S., 'Human Rights', Vol. 15 No. 4 Connecticut Law Review, 1983
12. Mdtino, R., 'Zambia and the One Party State, Vol. 9, No. 2, East African Journal, February, 1972

13. Mubako, S., 'Zambia's single-party Constitution: A Search for Unity and Development' Vol. 5, Zambia Law Journal, 1973
14. Ocran, T., 'Law, African Economic Development and Social Engineering: A Theoretical Nexus', Vols. 3 and 4, Zambia Law Journal, 1971 and 1972.
15. Pettman, J., 'Zambia's Second Republic: The Establishment of a One Party State', Vol. 12, Journal of Modern African Studies, 1972
16. Quick, S. A., 'Bureaucracy and Rural Socialism in Zambia', Vol. 15, No. 3 Journal of Modern African Studies, 1977
17. Roberts-Wray, Sir. Kenneth, Human Rights in the Commonwealth', Vol. 17, International and Comparative Law Quarterly, 1968
18. Rogge, V. J., 'Equal Rights and women', Vol. 21 No. 2, Howard Law Review, 1978
19. Todd, D.M., and Shaw, C., 'The Informal Sector and Zambia's Employment crisis', Vol. 18, No. 3, The Journal of Modern African Studies, 1980

20. Sohn, L. B., 'The Universal Declaration of Human Rights, Vol. VIII No. 2, Journal of the International Commission of Jurists, 1968.
21. Valticas, N., 'The I.L.O.: Its contribution to the Rule of Law and the International Protection of Human Rights', Vol. IX No. 2, The Journal of the International Commission of Jurists, December, 1968
22. Vasak, K., 'The European Convention and Human Rights: Beyond the Frontiers of Europe', Vol. 12, International Comparative Law Quarterly, 1963
23. Waldock, 'Human Rights in Contemporary International Law and the Significance of the European Convention, Spp. No. 11, The International and Comparative Law Quarterly, 1965
24. Wold, T., 'The Right to Social Services, Vol. IX, No. 1, The Journal of the International Commission of Jurists, 1968

OTHER MATERIALS

1. UNIP Policy and Manifestos, Govt. ZAN. 02 1964/1
2. K. D. Kaunda, 'Humanism in Zambia and Guide to its Implementation, Part I and II, 1968, Part II 1974
3. Report and Recommendations of the National Symposium of Industrial Participatory Democracy in Zambia, 1972
4. Seven Year Progress, Government Printer, Lusaka 1971
5. Mulungushi Conference, Government Printer, Lusaka 1967
6. J. K. Nyerere: "Democracy and the One Party System", Government Printers, Dar-es-Salaam, 1969
7. M. C. Chona, "Participatory Democracy", An Approach to Government in Humanist Society, Paper presented to a District Governors' Workshop, Lusaka
8. Zambia's Economic Revolution: Address by President Dr. K. D. Kaunda to UNIP National Council at Mulungushi, Government Printer, Lusaka, 1968

9. Towards Complete Independence: Address by President Dr. K. D. Kaunda to UNIP National Council at Matero Hall, Government Printers, Lusaka, 1969
10. Chimba's Speech, Hansard, Vol. 15, 1968
11. The Role of Parastatal Organisation in the Third National Development Plan: A Challenge in Change, NIEC News, 1980
12. 'Take up the Challenge', Speeches to the UNIP National Council, Zambian Information Services, Lusaka
13. Felix Chimfwembe: The Development of and Financing of Small Scale Industries in Zambia, Occasional Paper No. 8. The University of Zambia Business and Economics Association, 1980
14. Robert B. Seidman: Law and Social Change in Africa, Statutes and Cases and Materials
15. Annual Report, Department of Social Welfare, Government Printers, Lusaka, 1979
16. An Explanation of the Main Features of the Legal Aid Scheme, Published by the Directorate of Legal Aid, 1967

17. Report of the National Commission on the Establishment of a One Party Participatory Democracy (Government, 1971)
18. Annual Report, 1976, Ministry of Education, Government Printers Lusaka, 1979
19. Take up the Challenge, Zambia Information Services, Lusaka, 1970
20. This completes Economic Reforms: Now Zambia is Ours: Speech to the National Council of UNIP by President Kaunda, 10th November, 1970.
21. Participatory Democracy, Social Justice and National Defence: Speech by President Kaunda to the Zambia Defence Forces, 18th - 20th February, 1971
22. Annual Reports, Ministry of Education
23. Annual Reports, Department of Social Welfare
24. Same aspects of Zambian Labour Relations, Vol. 1 No. 1, published under the Auspices of the Interdisciplinary Research Group on Zambian Labour Relations, The University of Zambia, 1975

25. Africa's Economic Independence, Address by
Dr. K. D. Kaunda, Lusaka, Zambia Information
Services, 1979
26. Economic Reforms, The Reorganisation of the Nations
Wealth since Independence, A Progress Report,
Lusaka, State House, 1972
27. Dr. K. D. Kaunda, Education for Revolution, Lusaka,
Zambia Information Services, 1975
28. The Imperative of Human Dignity, Dr. K. D. Kaunda
Lusaka, Zambia Information Services, 1968