

**A CRITICAL EVALUATION OF THE LAW DEALING WITH THE  
INSTALLATION AND RECOGNITION OF CHIEFS IN ZAMBIA**

By

**CHILWANA ILIAMUPU**


**(27024504)**

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Partial fulfillment of the requirements for the Award of the Bachelor of Laws (LLB) Degree.

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**THE UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

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**CHILWANA ILIAMUPU**

(Computer No. 27024504)

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## ABSTRACT

The purpose of this dissertation was to critically evaluate the laws that deal with the installation and recognition of chiefs. Through research, it was found that generally these laws need some reform so that they can be applicable to the present state of chiefs' affairs in Zambia. An evaluation of the adequacy of the laws dealing with the institution of Chiefs has also been done and a general conclusion has been reached that there are a number of shortfalls in the laws that govern the installation and recognition of Chiefs.

The paper has revealed that there is no statute that expressly addresses the issue of installation of chiefs and resolution of succession disputes especially in light of the number of succession disputes ravaging many chiefdoms in Zambia. Furthermore, the Chiefs Act has no provision dealing with mechanisms of eligibility for succession to the Chieftainship in times when there is a vacancy. The essay has recommended that these issues should be included in legislation dealing with chiefs.

The research has further shown that the institution of chiefs has been given the pride of place in the Constitution of the Republic of Zambia which recognises the institution as does the 1965 Chiefs Act. In addition, an outline of the history of the institution of chiefs and the foundation of the law that deals with this institution has been given. This has been done by showing the development of the law dealing with the institution of chiefs from colonial times to present day Zambia. It has been also been established that there is need to codify laws that deal with the relationship of persons *inter se* who claim to be part of the royal lineage in case there is vacancy in the Chieftainship office.

This paper has also shown how the courts play a role in settling succession disputes and that this enables the government to give recognition to persons who succeed in such litigation. It has also been established that the government tries to facilitate the maintenance of order and peace in rural areas by empowering chiefs to do this on their behalf. It has been shown that the Constitution also establishes the House of Chiefs which is an advisory body to the Government on traditional, customary and any other matters referred to it by the President.

## ACKNOWLEDGEMENTS

I would like to thank the Almighty God for making the successful completion of this dissertation possible. My journey through law school has been tough, but through his grace, I have had the strength to keep going.

I thank Mr. John Sangwa, my supervisor for his understanding and guidance throughout the research. It has been a privilege to have been taught and supervised by you. May the Lord God continue blessing you.

I am grateful to my parents for their financial and moral support. You have always encouraged me to study hard and never to give up no matter what happens. Thank you very much for always being there for me.

To all my good friends, and the entire 4<sup>th</sup> Year Law School Class of 2012. I say thank you for the support, advice, guidance and encouragement you have rendered to me throughout my entire stay in the law school and for always being there for me. We have been through a lot together but we always encouraged each other. I thank God for bringing you into my life.

Lastly, but not the least I would like to thank the House of Chiefs for their support and all those who contributed to the successful completion of this work.

## **DEDICATION**

This paper is dedicated to my parents Mr. Ronald. M. Iliamupu and Mrs. Victoria. C. Iliamupu, my brothers Liwakala, Alistair, Misheck and sister Anita.

Mum and Dad, I would like to express my sincere gratitude for your sacrifice, guidance and care you have given me throughout my life. It is so hard to express how much I love you. You have always encouraged me to work hard and you have always believed in me even at times when things are so hard that I feel like giving up. I would also like to thank you for your financial and moral support you have always given me whenever I need it. Had it not been for you I would not have reached this far. You have been a great inspiration to me and I shall forever be grateful to you. Thank you and May the Almighty God continue to richly bless you.

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The Chiefs Act, Cap 287 of the Laws of Zambia

The Subordinate Courts Act, Cap 28 of the Laws of Zambia

The Local Government Act, Cap 281 of the Laws of Zambia

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The Development and Registration of Villages Act, Cap 289 of the Laws of Zambia

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**LIST OF ABBREVIATIONS**

BSA	British South Africa
UNZA	University of Zambia
HOC	House of Chiefs
NA	National Assembly
SCZ	Supreme Court of Zambia

CHAPTER 1  
GENERAL INTRODUCTION

1.0 INTRODUCTION

The institution of chiefs is conspicuous in Zambian society. This institution is one of the oldest and as a result it has been viewed as obsolete and a remnant of the pre-colonial times. However, this view of chiefs is erroneous because they have a very important role to play especially in rural society therefore the law relating to their installation and recognition should help to enhance this role. It is important to note that Zambia operates a dual system of law these being; civil and customary law. The Subordinate Courts Act<sup>1</sup> provides that customary law is applied in civil causes and matters as long as it is not repugnant to justice, equity or good conscience, or incompatible with any written law in force in Zambia. This is one of the provisions that show the existence of the dual legal system in Zambia.

Local customary laws apply to the majority of indigenous Zambians. These are primarily recognised by the Chiefs Act<sup>2</sup> and also the Constitution through provisions relating to the House of Chiefs and the non-discrimination clause.<sup>3</sup> In light of these provisions, it is further established that the law in Zambia incorporates customary law in civil causes and matters between Africans *inter se* and non-Africans, where it appears to a Court that substantial injustice would be done to any party by any strict adherence to the rules of any law or laws other than African customary law. This application of customary law in civil causes covers various matters that are before courts including the resolution of succession disputes to the throne of chief.

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<sup>1</sup> .Section 16 of the Subordinate Courts Act Chapter 28 of the Laws of Zambia.

<sup>2</sup> .Section 3 of the Chiefs Act Chapter 287 of the Laws of Zambia.

<sup>3</sup> .Article 127 and Article 23(4) (d) of the Constitution Chapter 1 of the Laws of Zambia.

## 1.1 STATEMENT OF THE PROBLEM

In most cases dealing with customary law, the Zambian courts are faced with the problem of determining whether in certain instances they can entertain causes that deal with it. Zambian Courts that is, excluding the local courts, have not applied or exercised their jurisdiction extensively in the area of the customary law that deals with the institution of a chief despite the vast number of indigenous Zambians that are usually affected. Because of this, the higher Zambian courts should endeavour to put in place measures so that they entertain and adjudicate more in this area of the law and not leave this function predominantly for local courts.

The law dealing with the installation of chiefs is customary law, which is sometimes not accepted by some jurists to be law.<sup>4</sup> The problem with customary law is that it is not written down into abstractions or carefully constructed analogies as it is just oral tradition passed down through generations therefore, it leads to uncertainty and that is why in Africa so little has been done to codify it.<sup>5</sup> The law dealing with the recognition of chiefs is primarily the Chiefs Act<sup>6</sup> which provides that the President may recognise by Statutory Order a person in Zambia to be a chief while its Section 4 provides for the withdrawal of this recognition. However, this provision shows that recognition is exclusively at the President's own discretion which should not be the case as the President can always be influenced by political considerations in making such decisions such that such power can be abused.

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<sup>4</sup>.Margaret M. Munalula, *Legal Process Zambian Cases, Legislation and Commentaries* [Lusaka: UNZA Press, 2004], 47.

<sup>5</sup>.Ibid.

<sup>6</sup>.Section 3 of the Chiefs Act, Chapter 287 of the Laws of Zambia.

## 1.2 OBJECTIVES OF THE RESEARCH

The ultimate objective of the research will be to focus on assessing the Zambian laws that relate to the recognition and installation of chiefs using a critical approach that is to say, looking at the merits and flaws of these laws.

The following will be the specific objectives of the research;

- i. To establish the nature and extent of the law governing the installation and recognition of chiefs.
- ii. To outline the history of the law that deals with the institution of chiefs.
- iii. To evaluate the arguments for and against the use of the law relating to the installation and recognition of chiefs in Zambia and to establish the basis of this law.
- iv. To analyse the approach taken by the Zambian Courts and the role of state and non-state institutions in dealing with the recognition and installation of chiefs and the rules governing the resolution of such disputes with emphasis on the exercise of their jurisdiction and how they should treat such cases in future.

## 1.3 RATIONALE AND JUSTIFICATION OF THE RESEARCH

Despite the existence of laws governing the recognition and installation of chiefs as seen from the Chiefs Act and certain adjudicated cases,<sup>7</sup> the High Court has not had much opportunity to extensively exercise their discretion in relation to this field of the law. However, this is not because there are no such disputes but because there are no specific laws codified to provide for how the courts will be guided to properly deal with chiefs' succession disputes.

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<sup>7</sup> .Such as *John Malokotela v. Majaliwa Sitolo Muwaya and Thaha Odemu Chiwala* 2009/HN/194.

The study is justified and timely as there is need to ascertain the rules that should specifically govern the courts in adjudication on issues in this area of the law that deals with installation of chiefs especially in the event that there are succession disputes and further to offer recommendations on how this could be done. Additionally, the research is justified as it will provide a benchmark on how the relevant state institutions should deal with this novel research area of the law that is to say, the law on installation of chiefs and it will also outline certain recommendations that would remedy the flaws if any in the Chiefs Act dealing with the recognition of chiefs.

#### 1.4 SPECIFIC RESEARCH QUESTIONS

- i. What is the nature and extent of the law governing the installation and recognition of chiefs?
- ii. What are the arguments for and against the use of the law governing the installation and recognition of chiefs?
- iii. What is the approach that has been taken by the Zambian Courts, government and non-government institutions in dealing with the law relating to the installation and recognition of chiefs with regard to the exercise of their discretion and how they can proceed towards a new dimension?

#### 1.5 RESEARCH METHODOLOGY

This study will be based on both primary and secondary data. The primary data will include interviews with officials at the House of Chiefs and the newly established Ministry of Chiefs and Traditional Affairs. Secondary sources will include Statutes, Judicial decisions, textbooks, Law Journals, articles, internet and published reports.

## 1.6 OPERATIONAL DEFINITION OF TERMS

- i. **Local Courts Act** – The Local Courts Act chapter 29 of the Laws of Zambia
- ii. **Chiefs Act** – The Chiefs Act chapter 287 of the Laws of Zambia
- iii. **Subordinate Court Act** – The Subordinate Courts Act chapter 28 of the Laws of Zambia
- iv. **African Customary Law** – African customary law is basically the traditional laws of African tribes and cultures
- v. **House of Chiefs** – The House of Chiefs is a body complimentary to parliament and not entirely unlike the House of Lords in the Westminster Tradition. This is a way of reserving a place for chiefs at the National Level

## 1.7 THE CONCEPT BEHIND THE LAW DEALING WITH INSTALLATION AND RECOGNITION OF CHIEFS

The law that deals with the installation and recognition of chiefs has long existed in the Zambian legal fraternity despite not getting the amount of attention it deserves. The law dealing with installation of chiefs relates to the practice of traditional authorities setting out how ascension to a chief's throne will be done and finding solutions to succession disputes when people disagree on who should succeed a deceased, degazetted or banished chief. On the other hand, the law that deals with the recognition of chiefs relates to the practice by the republican President of recognising chiefs of a particular chiefdom recommended by the traditional Electoral College after going through their traditional practice of choosing the rightful heir to the throne.

The courts of law in Zambia entertain matters involving succession disputes starting at the Local court level and this can also be done in the higher courts on appeal. In the case on

which this research is based, *John Malokotela v. Majaliwa Sitolo and Thaha Odemu Chiwaya*,<sup>8</sup> an injunction was obtained against the defendant so that he could not complete the installation procedure. However, the defendant proved that he was a member of the Chiwala Royal family and that he was properly selected in terms of the practices, customs and tradition of the Lamba people as evolved in the Chiwala Chiefdom but the plaintiff and intervenor failed to prove their royal lineage. Therefore, the injunction earlier obtained was discharged and the defendant was at liberty to complete the coronation in accordance with Lamba Customs and Tradition. This case is an example of a succession dispute matter that was exclusively resolved by the High Court.

#### 1.8 CONCLUSION

This chapter has laid the foundation upon which the whole essay shall proceed, and has also presented an outline of the foundations of the institution of chiefs in Zambia as well as showing the basis upon which the law relating to their recognition and installation is being derived. In a nutshell, the tone of this research paper has been set by the chapter.

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<sup>8</sup> .2009/HN/194

## CHAPTER TWO

### HISTORY OF THE LAW DEALING WITH THE INSTITUTION OF CHIEFS

#### 2.0 INTRODUCTION

Chapter one gave a general introduction to the research thus it served as a synopsis of how it will proceed. Chapter two will discuss the history of the law relating to the institution of chiefs and its foundation in Zambia. The chapter will then give the institution's basis, the reasons and justification for the use of the laws that are in place to deal with the installation and recognition of chiefs.

#### 2.1 BACKGROUND INFORMATION AND HISTORY OF THE INSTITUTION OF CHIEFS AND THE LAW DEALING WITH IT IN ZAMBIA

One of the most important roles of a chief is to administer and enforce customary law which is also the basis upon which their chieftaincy is founded and depends. It is important to give the background information of African customary law in Zambia for one to have a more comprehensive understanding of the institution of chiefs and the history the law relating to it. African customary law has been in existence in Zambia since time immemorial, way before European settlers came to this part of Africa. When the British colonialists arrived in the part of Africa today known as Zambia they had to apply British Law because they wanted their status to remain British in character.<sup>1</sup>

The administration of justice was done by the courts setup by the settlers but regard had to be given to the African customary law especially where the application of English law was likely to cause injustice to a native litigant. This was according to Article 14 of the 1889 BSA Company Charter which stated that:

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<sup>1</sup> .Max Gluckman, *Politics, Law and Ritual in Tribal Society* (Oxford: Basil Blackwell, 1965), 146.

In the administration of justice to the said people or inhabitants, careful regard shall always be placed on the customs and laws of the class or tribe to which parties respectively belong but subject to British laws which may be in force in any of the territories aforesaid and applicable to the peoples or inhabitants thereof.<sup>2</sup>

A piece of legislation which shows the British policy of recognising African customary law at the time they came to Zambia was clause 21 of the 1900 Order in Council of North Eastern Rhodesia which stated that:

There shall be a court of record styled the High Court of North Eastern Rhodesia with full jurisdiction on civil and criminal, over all persons and over all matters within North East Rhodesia subject to the provision contained hereinafter with regard to native law and custom.<sup>3</sup>

The recognition of customary law in Zambia was given by Orders in Council and Customary law applied as the law in all native courts while a separate court system applied statutory law and English common law to the settlers.<sup>4</sup> From the inception of colonialism, customary law existed side by side with the introduced English law and the situation has remained the same even in present day Zambia. Presently, matters based on customary law are heard by Local Courts and on appeal by Magistrates Courts, the High Court and even the Supreme Court as was seen in the case of *chibwe v. chibwe*<sup>5</sup> in which the appellant rosemary chibwe appealed against a local court decision dissolving her customary law marriage to the petitioner, all the way to the Supreme Court where her appeal was upheld.

The historical background given above is important to this research because it gives a timeline of how the law relating to the institution of chieftaincy has evolved. Before Zambia became independent, chiefs' authority was restricted and they were merely regarded as agents

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<sup>2</sup>.Muzambalika Simwatachela, "The Dual Legal system and its effects on the Administration of justice in Zambia." (School of Law Obligatory Essay, University of Zambia, 2006), 19.

<sup>3</sup>.Ibid.

<sup>4</sup>.Ibid.

<sup>5</sup>.SCZ Judgment No. 38 of 2000.

of the state whose chieftaincy was subject to government approval because whenever they wanted rights to their status they had to render their services to the state and not the people. This is why in 1964 government decided to assume the responsibility of administering the affairs of chiefs and to achieve this enacted the Chiefs Act<sup>6</sup> in 1965 but this further restricted the powers they had enjoyed under African customary law. It must be noted here that the House of Chiefs which is solely responsible for the affairs of the institution of chiefs was initially under the Ministry of Local Government but is presently under the Ministry of Chiefs and Traditional Affairs.

In colonial Zambia, local chiefs and their officers in the Native Authorities used Native Treasuries to enrich themselves.<sup>7</sup> Although these privileges have somewhat diminished, chiefs maintain preferential access to significant revenue through their ability to use royal influence to exact concessions from investors and other tributes given to them. Chiefs also benefit from significant privileges as conferred by the state. These include motor vehicles, subsidies and other financial inducements.

The above point is further buttressed by section 8 of the Chiefs Act which provides that:

There shall be paid to every Chief and Deputy Chief, for the purpose of enabling him to maintain the status of his office and to discharge the traditional functions of his office under African customary law in a fit and proper manner, such subsidies as the President may determine.

Further, this is another incentive that prompts individuals to desire ascension to the throne of chief, thus interested individuals end up in fierce disputes for the position. The fact that the

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<sup>6</sup>.Chapter 287 of the Laws of Zambia.

<sup>7</sup>.Lewis H. Gann, *A History of Northern Rhodesia: Early Days to 1953* (London: Chatto and Windus, 1964), 86.

majority of chiefs are not educated, and thus are predominantly not self-reliant economically does not help matters.

## 2.2 THE BASIS OF THE INSTITUTION OF CHIEFS

The institution of chiefs is capable of adaptation to modern politics even though it has been an appendage to government machinery. Vans Bins states that:

The base of chiefs' political power lies in their local areas where the institution of chieftaincy is strong. The selection of a new leader through the traditional procedure more or less as an automatic guarantee of his popularity and it is for this reason that political parties seek to captivate local support through chiefs because it is essential for winning both local and general elections. This explains why clandestine grooming of qualified candidates whose loyalty is unquestionable is undertaken by the nationalists.<sup>8</sup>

Chiefs command a lot of influence in their local areas which is the bastion of their traditional authority because to their subjects what they say is 'Bible truth'. This is why it is not unusual for political parties to put up candidates that have a chief's stamp of approval. In the first republic UNIP's initial success in the Western Province was as a result of the backing they had from the elders who thought the party would restore power to chiefs through their campaign against the corrupt regime of Mwanawina.<sup>9</sup> However, the 1968 nationalist reforms brought confrontations between the government and chiefs thus they lost the province to the opposition.<sup>10</sup> From this therefore, it can be concluded that chiefs up to date still are a very important factor in society especially in the rural areas.

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<sup>8</sup>.Jules W. Vans Bins Bergen, "Chiefs and the Independent State in Zambia: Exploring the Zambian National Press," *Journal of Legal Pluralism, Special Issue of Chieftainship in Africa* (1987): 25-26.

<sup>9</sup>.Susan Chibomba, "The relevance of a house of chiefs in a democratic society; A case study of Zambia." (School of Law Obligatory Essay, University of Zambia, 2004), 13.

<sup>10</sup>.Ibid.

## 2.3 REASONS AND JUSTIFICATION FOR THE USE OF THE LAW DEALING WITH THE INSTALLATION AND RECOGNITION OF CHIEFS IN ZAMBIA

Invariably, under customary law the rules and procedures dealing with the installation of chiefs are there to regulate succession to the chieftaincy ensuring that this is done in an orderly manner. Succession disputes may arise for various reasons such as, the fact that chiefs retain a lot of influence in their chiefdoms as they continue to retain significant de-facto power over land and also because politicians would almost always want their backing during election campaign periods.

The main legal provisions that regulate the way recognition, appointment and functions of Chiefs are found in the Constitution<sup>11</sup> and the Chiefs Act.<sup>12</sup> These laws are there for purposes of recognising, withdrawing recognition and expelling chiefs in specified areas for various reasons.

The customary rules, practices and procedures under the customary law that relates to the installation of chiefs ensure that whenever there is a vacancy in the chieftaincy, there is a way of filling the vacancy in an orderly fashion. This is justified by the number of succession disputes going on in Zambia some of which have lasted for years thus impeding progress.

Another point to note is that historically, chiefs did not allot land directly to their subjects who used it. Rather, land was allocated to sub-chiefs who in turn allotted shares to village headmen. He could transmit his rights to heirs, but could not transfer them to anyone else

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<sup>11</sup>.Chapter 1 of the Laws of Zambia.

<sup>12</sup>.Chapter 287 of the Laws of Zambia.

without the permission of his seniors meaning that if rights are vacated, they rest in the next senior in the hierarchy.<sup>13</sup>

In many parts of Zambia, this practice continues but increasingly, with the lure of cash from “foreign investors”, chiefs have resorted more to direct allotment. The lure of men in brief cases has clearly turned out to be too hard for the existing system to resist. The other thing it has done of course is that it has given some chiefs opportunities to change their own economic standing. This becomes self-evident when we observe the main land and succession disputes ravaging various chiefdoms. The increasing lucrative nature of land has increased the attractiveness of chieftainship and the desire for some chiefs to go beyond their existing boundaries thus leading to land and succession disputes.

In spite of legislative changes in the Zambian land law,<sup>14</sup> chiefs’ de facto position remains broadly unchanged as they were not replaced by effective structures. Indeed, in 1985, partly to gain favour with the chiefs and partly in recognition of their custodianship of customary law and rights, government decided that the chiefs ought to be formally consulted when customary land was being granted for leasehold purposes.<sup>15</sup> These powers are confirmed by the Lands Act (1995),<sup>16</sup> which continues to be the substantive land law in place. Customary land accounts for 94% of all land in Zambia, giving chiefs a significant amount of influence. This power is often leveraged through the way chiefs operate and this includes the allocation of land.

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<sup>13</sup>.Gann, *A History of Northern Rhodesia: Early Days to 1953*, 92.

<sup>14</sup>.Ibid.

<sup>15</sup>.The Zambian Economist, “Traditional Authorities,” <http://Zambian-economist.blogspot.com/2008/06/traditional-authorities-blog-specials.html> (accessed February 8, 2012).

<sup>16</sup>.Chapter 184 of the Laws of Zambia.

Article 130 of the Constitution of Zambia which establishes the House of Chiefs provides that it is an advisory body to the Government on traditional, customary and any other matters referred to it by the President. This article shows that recognition is important because it affords chiefs an opportunity to participate in National Affairs and this can lead to the development of tradition and culture as well as the extension of development to rural areas.

Furthermore, in view of sections 4(b), 7 and 11 of the Chiefs Act, it is important to note that one of the functions of recognised chiefs is to ensure that public peace is preserved in his area and that reasonable measures are taken to quell any disorder which may occur in that area. It is incumbent upon Chiefs to ensure there is reasonable peace and security and in practice it has been seen that some Chiefs have taken steps to ensure that is achieved. Presumably the idea is for the Chief to rely on the “ba kapaso” (messengers), however in recent times Chiefs have often been forced to “contract out” these services.

Not so long ago Chieftainess Mwenda of Mazabuka hired four retired Police officers in her chiefdom to train 14 vigilantes whose duties were to among other things maintain law and order in the chiefdom. Her Royal Highness had taken such steps because in her view Police in Mazabuka had lamentably failed to provide security to her subjects. She stated: “There is lawlessness in my chiefdom. I can’t trust Police in Mazabuka to protect lives and property of my subjects, so these vigilantes will assume the role of police.”<sup>17</sup> Such actions are only too common in the absence of ineffective centrally provided police services.

Further, it is important to recognise the institution of chieftaincy in order to integrate the chiefs into the development process thus improving the lives of the rural populations. Taken

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<sup>17</sup> .The House of Chiefs, “Chiefs, Law and Order,” <http://www.houseofchiefs.com> (accessed January 4, 2012)

together the Local Government Act (1995)<sup>18</sup> and the Development and Registration of Villages Act (1971)<sup>19</sup> provides the main institutional framework on how chiefs are supposed to be integrated in the development process at the local level. The Local Government Act (1995) provides for representation of chiefs at the council level while the Development and Registration of Villages Act provides for the development and registration of villages but this is deficient as it is best suited for One Party State ethos for which it was designed. Additionally, the incentives for chiefs to get involved in development also appear weak because their participation is not meaningful at present as a result reform is needed.

#### 2.4 CONCLUSION

Based on what has been discussed above, it can be concluded that chapter two has given the history of the institution of chiefs and the foundation of the law that deals with this institution in Zambia. In a nutshell, the chapter has shown the basis of the institution, the reasons and justification for the use of the laws that deal with the installation and recognition of chiefs in Zambia.

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<sup>18</sup> .Chapter 281 of the Laws of Zambia.

<sup>19</sup> .Chapter 289 of the Laws of Zambia.

## CHAPTER THREE

### THE NATURE AND EXTENT OF THE LAW GOVERNING THE INSTALLATION AND RECOGNITION OF CHIEFS IN ZAMBIA

#### 3.0 INTRODUCTION

Chapter three will discuss the nature and extent of the law governing the installation and recognition of chiefs in Zambia. This will be done by analysing the law dealing with recognition and some of the cases involving the installation of chiefs, showing the mechanisms used and giving the reasons for the use of the laws currently in place to deal with these issues in Zambia.

#### 3.1 THE LAW DEALING WITH THE RECOGNITION OF CHIEFS

Chiefs are formally recognised in the Zambian laws through the Chiefs Act and the Constitution. The Chiefs Act (1965)<sup>1</sup> defines a chief as a person who is recognised by the President under the provisions of the Act<sup>2</sup> as the Litunga of Western Province, a Paramount Chief, Senior Chief, Chief or Sub-Chief or a person who is appointed as Deputy Chief. This recognition by the President is done through a statutory order and a gazette is issued to recognise the chief. Usually this is done after the chief has been properly installed according to his respective traditional customs and practices.

For example, the recognition of Chief Nkula had followed Mr Ng'andu's selection to ascend to the Nkula throne in line with the Bemba Tradition and Custom. President Sata signed the Recognition Order on December 13, 2011 under the authority of the Chiefs Act, under Statutory Instrument number 137 of 2011. As a result, the government directed Maxwell Kafula Mucheleka, who was alleged to have been masquerading as Senior Chief Nkula of the

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<sup>1</sup> .Section 2 of Chapter 287 of the Laws of Zambia.

<sup>2</sup> .Ibid, Section 3.

Bemba people in Chinsali district, to vacate the palace and facilitate the smooth ascension of the rightful heir to the Nkula throne.

The Chiefs Act in section 4 also empowers the President with the ability to withdraw recognition of Chiefs. In practice, this does not mean someone stops being a chief, but it does mean that the said chief would not enjoy certain privileges. These include withdrawal of “subsidies” set out under the Chiefs Act, as well as other entitlements such as subsidised vehicle loans. In addition, chiefs have a responsibility to maintain public order in their area of influence. The Chiefs Act requires them to preserve the public peace in their areas and to take reasonable measures to quell any riot, affray or similar disorder which may occur in that area.<sup>3</sup>

The Zambian Constitution, since 1965 has always contained provisions for the chieftaincy. The current constitution, amended in 1996, specifically defines the institution of chief as: “a corporation sole with perpetual succession and with capacity to sue and be sued and to hold assets or properties in trust for itself and the peoples concerned”, it also makes reference to the Chiefs Act (1965) in terms of defining who might be recognised as chief.

### 3.2 THE LAW ON INSTALLATION OF CHIEFS

The law on installation of chiefs is customary law. Customary law has to always be considered in issues to do with installation of chiefs whether or not there are disputes. Further, recourse should always be had to the customary law governing parties to a succession dispute when attempting to resolve it whether by the courts or by the House of Chiefs if sanctioned by the executive.

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<sup>3</sup>.Section 11 of Chiefs Act Chapter 287 of the Laws of Zambia.

It is important to note that Article 130 of the Constitution of Zambia states: “There shall be a House of Chiefs for the Republic which shall be an advisory body to the Government on traditional, customary and any other matters referred to it by the President.” While section 5 of the Chiefs Act provides that:

The President may appoint a person or persons to inquire into any question relating to the recognition of any person under this Act or the withdrawal of the recognition accorded to any such person and, on the completion of the inquiry, to report and make recommendations thereon to the President.

The above mentioned provisions when read in consonance can be construed to mean that whenever there are succession disputes the President can engage the House of Chiefs to investigate the wrangles. This was exemplified when there was a protracted succession wrangle in Petauke and Nyimba districts. This wrangle prompted the late president Levy Mwanawasa to direct the House of Chiefs on April 15 in 2008 to investigate the wrangles. The House constituted a team to investigate and propose to him the solution to the wrangles that had engulfed the Nsengaland for years. The committee conducted its business in Katete, Nyimba and Petauke districts where it received both written and oral submissions between May 18 and 30. On October 16, 2008, the House of Chiefs presented its report to State House. After this the President cautioned the parties to stop the wrangles and settle the dispute amicably which they did.<sup>4</sup>

### 3.3 A CRITICAL ANALYSIS OF THE LAW DEALING WITH THE RECOGNITION AND INSTALLATION OF CHIEFS IN ZAMBIA

Chiefs are recognised by the president in section 3 of the Chiefs Act which provides that, “the President may, by statutory order, recognise any person as being a chief, within the area in Zambia specified in the order.” In addition, section 4(1) of the Chiefs Act provides that;

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<sup>4</sup> .The Times of Zambia, “Nsenga Wrangles,” <http://www.times.co.zm> (accessed January 4, 2012)

The President may, by statutory order, withdraw the recognition accorded to any person under this Act if, after due inquiry, he is satisfied that (a) The person has ceased to be entitled under African customary law to hold the office in respect of which recognition was accorded; or (b) the withdrawal of the recognition accorded to the person is necessary in the interests of peace, order and good government.

However, it is important to note that the powers given to the President in instances of withdrawing recognition are not to be exercised arbitrarily and the act of withdrawal should be preceded by an inquisition and not a presumption. However, experience has shown that the President can sometimes undermine the requirements of the Act by showing that he can withdraw recognition solely by Presidential decree.

President Michael Sata had recently written to chiefs Madzimawe and Nzamane of Eastern Province warning that he may remove the two from their chiefdoms in the interest of public order. According to documentation obtained by the Times of Zambia, Mr. Sata warned Senior Chief Nzamane and Chief Madzimawe that they risked having their recognition as chiefs withdrawn as well as removed from their respective chiefdoms if their presence would be inimical to the maintenance of order.<sup>5</sup> Here it can be noted that the President concluded that the Chiefs could be removed but there was no inquiry to warrant the purported right to withdraw the recognition thus this was not in conformity with the requirements of the Chiefs Act.

When it comes to the law dealing with the installation of Chiefs, Courts in Zambia have the power to entertain succession disputes in instances where they are moved to deal with them. Such actions are usually instituted at the Local Courts and may go all the way to the Supreme Court on appeal. Situations of competition for installation in which rivals strive for identical

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<sup>5</sup> .The Times of Zambia, "Nzamane, Mazdimawe Risk Removal," <http://www.times.co.zm> (accessed 20 February 2012)

aims are often complicated by conflicts in which competitors ignore institutionalised means to resolve the conflict thus making the dispute spiral, drawing into its orbit large segments of society.<sup>6</sup> In such situations traditional norms and values are steadily undermined and lose their hold on the actors and this is where courts are needed to compel them to comply with the traditional conceptual models and structures of achieving an orderly installation of individuals to the chieftaincy.

For example, the Kalindawalo wrangles that were between the Mundikula and Nsangu families triggered off in 2004 when the Mundikula family dragged the Nsangu family to court in a bid to wrestle traditional power from them. The Supreme Court ruled in favour of the Mundikula family and subsequently Michael Nsangu Tembo's recognition as senior chief Kalindawalo was withdrawn. The Mundikula family selected Everson Mumba, after some heated differences among royal family members at Paramount Chief Gawa Undi's Mkaika palace and the committee recommended retention of Chief Kalindawalo Mundikula (Everson Mumba).<sup>7</sup>

This was the beginning of worsening trouble in Petauke as Mumba's recognition was unreservedly rejected by the majority of the local people, among them headmen and traditional loyalists who were in total support of Nsangu's rein. This shows that despite the courts of law resolving succession disputes, the subjects may not always be satisfied with their decisions rendering them legal but without legitimacy.

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<sup>6</sup>.Gluckman, *Politics, Law and Ritual in Tribal Society*, 176.

<sup>7</sup>.The Zambia Daily Mail, "Kalindawalo Wrangles," <http://www.daily-mail.co.zm> (accessed January 10, 2012)

However, the situation is not always that judicial decisions will lack legitimacy and this was seen in the case of *John Malokotela v. Majaliwa Sitolo Muwaya & Another*<sup>8</sup> in which an injunction was obtained against the defendant so that he could not complete the installation procedure. However, he proved that he was a member of the Chiwala Royal family and that he was properly selected in terms of the practices, customs and tradition of the Lamba people as evolved in the Chiwala Chiefdom while the plaintiff and intervenor failed to prove their royal lineage. Here, the injunction earlier obtained was therefore discharged by the High Court and the defendant was at liberty to complete the coronation in accordance with Lamba Customs and Tradition and this brought the wrangles to a conclusion.

However, despite having a few succession dispute cases that are and have been adjudicated upon by the courts of record, the bulk of these cases are resolved in the local courts. The current approach of higher courts towards resolving succession dispute cases should change so as to increase the number of precedents in their record system, and these will serve as a source of law whenever similar cases arise. This will be a departure from the current situation where cases are handled by local courts that do not have a record system which exacerbates uncertainty.

The institutionalised mechanisms, conceptual models and structures that exist under the customary law of the installation of chiefs for purposes of guiding the Courts should be codified so as to clarify their position and introduce greater predictability in the choice of laws to be applied in a regional specific manner. There are indications that this was attempted by the Zambian government in 1964 when a commission was appointed to record and

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<sup>8</sup> .2009/HN/194.

consider as far as possible the unification and codification of customary law.<sup>9</sup> However, in 1975<sup>10</sup> a government report showed that the policy of codifying was not necessary, however, there was no indication whether it was impossible or undesirable to do so. This demonstrates the lack of political will by the government.

Codification seems difficult as it is hard to do away with the received law which forms the base of our present legal system.<sup>11</sup> However, it is possible and Zambia can borrow from other African countries like Botswana and Ghana which codified customary law in a way similar to the evolution of the Common Law. If done in urban areas it can be as Epstein mentioned: “a system which is an Urban Native Common law.”<sup>12</sup> However, if implemented in present day Zambia, the situation could be a little different from what was done in the aforementioned African countries.

### 3.4 CONCLUSION

In conclusion, chapter three has shown the nature and extent of the law governing the installation and the recognition of chiefs in Zambia. This has been done by analysing the relevant legal regime on recognition and some of the cases involving the installation of chiefs, showing the mechanisms that are, and can be used and reasons for the use of the laws currently in place to deal with these issues in Zambia. The law governing installation of chiefs is customary law which is considered in litigation while that dealing with recognition is primarily the constitution and the chiefs Act.

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<sup>9</sup> .*Annual Report of the Judiciary and Magistracy in the year 1964.*(Lusaka: Government Printer, 1965)

<sup>10</sup> .*Report of the Adhoc Committee on Legal Reforms, Appointed 1<sup>ST</sup> June, 1975.*(Lusaka: Government Printer, 1975)

<sup>11</sup> .Anthony N. Allot, *New Essays in African Law* (London: Butterworths, 1970), 67.

<sup>12</sup> .Ibid.

## CHAPTER 4

### CONSTITUTIONAL AND LEGISLATIVE PROVISIONS RELATING TO THE INSTITUTION OF CHIEFS

#### 4.0 INTRODUCTION

Chapter four will focus on discussing the salient constitutional and legislative provisions relating to the institution of chiefs. This will be done by critically looking at the relevant legal provisions that relates to the institution of chief and how the relevant state and non-state institutions can help resolve some of the problems affecting the law dealing with the installation and recognition of chiefs in Zambia.

#### 4.1 A CRITICAL EVALUATION OF THE RELEVANT CONSTITUTIONAL AND LEGISLATIVE PROVISIONS RELATING TO THE INSTITUTION OF CHIEFS

##### 4.1.1 CONSTITUTIONAL PROVISIONS

The Constitution of the Republic of Zambia<sup>1</sup> in Article 127(1) provides that:

Subject to the provisions of this Constitution, the institution of Chief shall exist in any area of Zambia in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.

The effect of this provision is to recognise the institution of chiefs in the supreme law of the land thus giving it a pride of place therein and a very important legal backing with the effect that no other law in Zambia can purport to take away this recognition.

The other important constitutional provision relating to the institution of chiefs that is relevant here is Article 129 which prohibits a chief from joining or participating in partisan politics. Despite the controversy that surrounded the introduction of this provision in the 1996 Constitutional amendments, it is important to state that it serves as a divide between

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<sup>1</sup>.Chapter 1 of the Laws of Zambia.

traditional authority and political authority thus avoiding a situation where a chief can unfairly use the influence he has in a local area to win elections for himself or his preferred candidates.

However, in spite of the fact that Article 129 prohibits a chief from joining or participating in partisan politics, it provides for no mechanism of compliance or any form of sanctions that may be faced by any a chief who does not conform to this constitutional provision. The lack of any mechanism that can compel chiefs to refrain from participating in partisan politics is an issue that needs to be addressed because in any case chiefs actually benefit from their participation in party politics which goes against the spirit of the constitution. On the other hand, for reasons of conforming to democratic tenets embraced in Zambia, Chiefs should be allowed to choose if they want to join politics but there should be a condition that one who chooses partisan politics will be deemed to have vacated their throne.

The other provision is Article 130 which establishes the House of Chiefs, an advisory body to the Government on traditional, customary and any other matters referred to it by the President. However, Article 130 should be construed together with Article 131 because the latter stems from the former and is an extension of what is provided for in Article 130. Article 131 provides that the House of Chiefs may:

(a) consider and discuss any Bill dealing with, or touching on, custom or tradition before it is introduced into the National Assembly; (b) initiate, discuss and decide on matters that relate to customary law and practice; (c) consider and discuss any other matter referred to it for its consideration by the President or approved by the President for consideration by the House; and (d) submit resolutions on any Bill or other matter referred to it to the President, and the President shall cause such resolutions to be laid before the National Assembly.

However the National Assembly and the government have no obligation to adopt any advice and resolutions it is given by the House of Chiefs. Therefore, whatever is submitted to the

National Assembly or to the government is merely considered and can be discarded as there is no legal obligation for it to be adopted. In addition, the functions and role of the House of Chiefs are constricted as they are just limited to the functions outlined in the Constitution. There is need to extend the role of the House of Chiefs and this should be done by including this in the legislation relating to the institution of chiefs.

#### 4.1.2 LEGISLATIVE PROVISIONS

The Chiefs Act in section 3(1) provides that the President may, by statutory order, recognise any person as being, within the area in Zambia specified in the order as a chief. Subsection (2) provides the requirements needed for recognition as being, within the area in Zambia specified in the President's order and if the President is satisfied that such person is entitled to hold the office under African customary law. However, this requirement is open ended and is solely within the President's discretion and can possibly be abused.

Section 4 (1) of Chiefs Act provides that:

The President may, by statutory order, withdraw the recognition accorded to any person under the Act if, after due inquiry, he is satisfied that (a) the person has ceased to be entitled under African customary law to hold the office in respect of which recognition was accorded; or (b) the withdrawal of the recognition accorded to the person is necessary in the interests of peace, order and good government.

These requirements must be adhered to by the President and he should not withdraw recognition as if he has blanket authority to do so. Subsection (2) of section 4 provides that;

Where the President deems it expedient to inquire into the question of the withdrawal of the recognition accorded to a person under the Act, he may, by statutory order, suspend the recognition until such time as the inquiry has been completed and the President has made a decision on the question.

This implies that inquiry is at the President's discretion and not a mandatory requirement, but it should be made mandatory so that the President does not withdraw recognition at his own credence.

The Chiefs Act is silent on the traditional roles of chiefs and the House of Chiefs. In addition, these traditional roles are not written down and there is need to include them in the new Act dealing with the affairs of Chiefs in a written form. Further, there is need to specify in the Act dealing with chiefs the penalties for their involvement in politics. On this point it is encouraging to hear from parliamentary debates and government policy statements advocating for change in legislation with regard to the introduction of penalties against chiefs that are found openly participating in partisan politics.

In one of the parliamentary debates the Minister of Chiefs and Traditional Affairs Mrs Inonge Wina stated:

The Constitution is the supreme law of this country. It is in the Constitution that it is specified that chiefs should not participate in partisan politics. Currently, our ministry is revisiting the Chief's Act with a view to bringing a Bill to Parliament to specify some of the penalties that will be meted on the chiefs who may go beyond their call of duty.<sup>2</sup>

This is the current position of the Chiefs Act, but this is at present being effectively repealed to usher in a new Act to be called the Traditional Leaders Act which will address a number of problems in the current Act.

The author had occasion to speak with Dr. P. F. Manda the research officer at the House of Chiefs who said that the current Chiefs Act is undergoing change that will address its

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<sup>2</sup> .Parliament of Zambia, "National Assembly Debates: Chiefs and Politics," <http://www.parliament.gov.zm/debates> (accessed December 6, 2012)

deficiencies with regard to a plethora of issues pertaining to Chiefs that had been overlooked when enacting the 1965 Chiefs Act.<sup>3</sup> He further said that the new Act (Traditional Leaders Act) will be a product of wide consultation and currently a number of new provisions are being considered and debated in Parliament.

It is important at this point to note that order is vital in society as it provides the basic foundation for social relations. Properly understood, order embodies a broader concept not just maintenance of rule of law but also the presence of security and general orderliness. In rural Zambia, the limited reach of the formal state has placed a great burden on the chieftaincy to be the source of order.<sup>4</sup> As the power of the state has eroded over time through poor governance and sustained high poverty levels, traditional authorities have increasingly become prominent in maintaining safety and security of rural areas.

This role of traditional authorities maintaining security in rural areas is played out within the context of post-colonial reform of the Chiefs Act (1965) which placed explicit responsibility on chiefs to maintain public order. According to Section 11 of the Chiefs Act a chief is supposed to preserve the public peace in his area and to take reasonable measures to quell any riot, affray or similar disorder which may occur in that area. These provisions though stated loosely have in practice given chiefs sufficient pretext to be more proactive in the area of public order.

However, for many chiefs direct provision of alternative policing, as a way of tackling local insecurity, is beyond their budget, hence they rely heavily on advocacy. Chiefs ensure law and order is maintained by agitating for better provision of policing services from the centre.

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<sup>3</sup> .Dr. P.F. Manda, interview by author, Lusaka, February 9, 2012.

<sup>4</sup> .Susan Chibomba, "The relevance of a house of chiefs in a democratic society; A case study of Zambia." (School of Law Obligatory Essay, University of Zambia, 2004), 14.

At the top of the agenda is the need for “permanent policing presence.”<sup>5</sup> Chief Sikufule (Kabompo) has been at the forefront calling for permanent police presence in his chiefdom to “combat crimes in the area.” As the local population has grown and illegal smuggling of fire arms from neighbouring countries increase, the area has become vulnerable to criminals due to scarce resources. Many criminals attack his subjects with impunity because there is no visible police presence, particularly in Manyinga, where the nearest police station is 30kilometres away at Kabompo.<sup>6</sup>

Practical experience has shown that the general trend across chiefdoms is that of traditional leaders having to fill the large gap in law enforcement often at personal expense, and within a poor policy vacuum. Though chiefs are doing their best they are ill equipped, at times and indeed there have been moments when their eagerness to fill the void has led to devastating consequences. In 2010 there were distressing developments in Chilubi when five men were killed within four months over suspicions of witchcraft. The people accused them of “transforming themselves into crocodiles and attacking people caught swimming”. The men were stoned and burnt to death.<sup>7</sup> All these events appeared to have happened at the watch of the local traditional leaders.

The key in this area is for Government to set out more clearly what the role of the chiefs should be in maintenance of law and order at the local level. If chiefs are going to have to retain some level of engagement in “local policing” as envisaged by the Chiefs Act (1965), it is necessary that budgetary arrangements are put in place. There is also need for Government to recognise that chiefs cannot safeguard cross border security. These issues are best handled

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<sup>5</sup> .Ibid., 15.

<sup>6</sup>.House of Chiefs, “Chiefs, Law and Order,” <http://www.houseofchiefs.com> (accessed February 9, 2012)

<sup>7</sup>.The *Zambian Economist*, “Traditional Authorities,” <http://Zambian-economist.blogspot.com/2008/06/traditional-authorities-blog-specials.html> (accessed February 8, 2012)

through permanent police posts. Greater priority should also be placed on educating chiefs and their subjects regarding the proper interface between individual and group rights. Much of the conflict that goes on at the local level stems from general misunderstanding of the extent to which individual freedoms are expressed within community relations.

The current law reform being carried out also has an important role play in the area of Chiefs providing for order and security in that the Act dealing with Chiefs should clearly state the extent of the authority of Chiefs in maintaining public order and security.

The constitution does not cover the institution of chiefs in depth and the onus is on parliament through legislation to address some of the issues that seem to be deficient because changing constitutional provisions is an inexpedient way of addressing the issues. A critical look at the Chiefs Act leads the author to point out certain key areas that have not been covered by the Act and need the serious attention of the legislature.

The first such area that needs to be included in the Chiefs Act is that of eligibility of succession. The issues and challenges of succession to the chieftaincy in times of vacancy are very conspicuous and need to be given the attention they deserve thus the Act dealing with chiefs should have a provision relating to them. Such a provision would be there to guide all stakeholders as to the channels they should follow whenever there is a vacancy in the chieftaincy such that the traditional rules, customary laws and traditional lineage of the chieftaincy are followed.

Further the powers and duties of chiefs including the limitation of these powers should be clearly provided for in the Act. This can be done by setting out provisions on the discharge of

power and its extent. The Act can also expressly provide that in the discharge of the powers of the office of chief, the Constitution, written law, morality and natural justice shall not be contravened.

In addition, the Chiefs Act did not and should address another important issue of the holding of political office by a chief or a head of a traditional community in depth. This can be done by providing that every chief or head of a traditional authority elected or appointed to a political office shall be deemed to have taken leave of absence from the office of chief and any chief openly supporting a political party should be penalised according to the extent of his behaviour.

#### 4.2 THE ROLE OF THE RELEVANT STATE AND NON-STATE INSTITUTIONS IN RESOLVING SOME PROBLEMS FACING THE INSTITUTION OF CHIEFTAINCY FROM A LEGAL PERSPECTIVE

The role of state institutions is going to be analysed by looking at the functions of the three organs of government in relation to the institution of chiefs and also the House of Chiefs for the Republic. Further, a non state institution will also be looked at. The first organ to be considered is the legislature that is to say, parliament in its function of enacting legislation. Regarding the institution of Chiefs, parliament has fulfilled its role by enacting the Chiefs Act (1965) and it can do more by replacing it with another Act that is more comprehensive on issues and challenges facing the chieftaincy.

The second state institution is the executive. In section 3 of the Chiefs Act the President is empowered to recognise chiefs by statutory order and in section 4 it provides that he may withdraw this recognition. Where recognition is withdrawn from a Chief the President is

empowered in section 7 of the Chiefs Act if satisfied that the presence of such person in any area would be prejudicial to the maintenance of public order in that area, to prohibit by notice such person from being within the area specified in the notice. Thus the role of the executive is to do most of the day to day functions that help keep the institution of chiefs in order and active.

The third state institution to be considered is the judiciary which has the function of adjudication. With regard to chiefs, the judiciary performs a very important function of resolving succession disputes. It should be mentioned that the Local Courts Act (1996)<sup>8</sup> separated Chiefs from the Local Court since they can no longer sit and hear cases with the court justices appointed by government. Non-involvement in the administration of justice in the local courts by chiefs has undermined their traditional authority in their local areas because they have traditionally been the custodians of their customs and tradition. Chiefs must be given the opportunity to sit in the local courts so that they can be able to preserve their traditional heritage because they are its custodians.

The role of the House of Chiefs is to advise the government on traditional, customary and any matters referred to it by the President such as resolution of succession disputes. This is important because the views of Chiefs are heard when the house gives its position after considering and discussing Bills touching on, custom or tradition before it is introduced into the National Assembly. The house also discusses and decides on matters that relate to customary law and practice and after all this they submit resolutions that are later laid before the National Assembly by the President.<sup>9</sup>

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<sup>8</sup> .Section 6 of Chapter 29 of the Laws of Zambia.

<sup>9</sup> .House of Chiefs, "Chiefs, Law and Order," <http://www.houseofchiefs.com> (accessed March 24, 2012)

One outstanding non state institution that needs to be mentioned is the traditional community. The traditional community is an indigenous, homogeneous, endogamous social grouping of persons comprising of families deriving from exogamous clans which share a common ancestry, language, cultural heritage, customs and tradition.<sup>10</sup> This is a group that recognises a common traditional authority and inhabits a common communal area, and may include the members of that traditional community residing outside the common communal area.

Within the traditional community are certain people who are given leadership positions and are responsible for several functions. For example in the case of *John Malokotela v Majaliwa Sitolo Muwaya and Another*<sup>11</sup> a case that involved a succession dispute to the throne of Chief Chiwala there were the Queen Mothers who had the responsibility of coming up with the name of a person who should succeed. The selected name would be passed on to the elders of the royal family who would then pass it to the person in charge of enthroning the chief. This is basically the traditional electoral college of the traditional community and it plays a very important role in the installation of a Chief.

#### 4.3 CONCLUSION

In conclusion, Chapter four has looked at the salient provisions of the constitution and legislation on the institution of chiefs. This has been done by critically looking at the law responsible for recognising the institution of chief and the law that deals with installation of chiefs. The chapter has shown how the relevant state and non-state institutions can help resolve some of the problems affecting the law dealing with the installation and recognition of chiefs in Zambia.

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<sup>10</sup> Jules W. Vans Bins Bergen, "Chiefs and the Independent State in Zambia: Exploring the Zambian National Press," *Journal of Legal Pluralism, Special Issue of Chieftainship in Africa* 1(1987): 30.

<sup>11</sup> .2009/HN/194.

## CHAPTER 5

### CONCLUSION AND RECOMMENDATIONS

#### 5.0 INTRODUCTION

Having discussed the law relating to the installation and recognition of Chiefs in some depth, this chapter gives the general conclusion and recommendations on the possible areas of reform in the legal framework governing the installation and recognition of chiefs in Zambia. The chapter will show in a nutshell how the paper has progressed from its start to its conclusion.

#### 5.1 GENERAL CONCLUSION

The focus of this research paper has been to discuss and critically evaluate the law that deals with the installation and recognition of chiefs in Zambia. An evaluation of the adequacy of the laws dealing with the institution of Chief has been done and it has been established that generally these laws need reform so that they can effectively be applicable to the current state of affairs relating to chiefs in Zambia. Therefore, a general conclusion has been drawn that there are a number of shortfalls in the laws that govern the installation and recognition of Chiefs.

The paper has revealed that there is no statute that expressly addresses the issue of installation of Chiefs and resolution of succession disputes especially in light of the number of succession disputes ravaging many Chiefdoms. Furthermore, the Chiefs Act has no provision dealing with mechanisms of eligibility for succession to the Chieftainship in times when there is a vacancy. However, this issue has been considered for inclusion in the new Act that will replace the current Chiefs Act.

The paper has further shown that the institution of Chief has been given the pride of place in the Constitution of the Republic of Zambia which recognises the institution as does the 1965 Chiefs Act. In addition, an outline of the history of the institution of chiefs and the foundation of the laws that deal with this institution has been given. This has been done by showing the development of the law dealing with the institution of chiefs from colonial times to present day Zambia. It has also been established that there is need to codify laws that deal with the relationship of persons *inter se* who claim to be part of the royal lineage in case there is vacancy in the Chieftainship office.

This paper has also shown how the courts play a role in settling succession disputes and that this enables the government to give recognition to persons who succeed in litigation. It has also been revealed that the government tries to facilitate the maintenance of order and peace in rural areas by empowering chiefs to do this on their behalf. It has been discussed that the Constitution also establishes the House of Chiefs which is an advisory body to the Government on traditional, customary and any other matters referred to it by the President.

The salient provisions of the legislation relating to the institution of the chiefs have been critically analysed. It has been established that the current state of this legislation is inadequate to address all the issues and challenges the institution of chief and traditional society is facing currently. In addition, the paper has outlined the role of state and non-state institutions in helping resolve some of the problems affecting the law dealing with the installation and recognition of chiefs in Zambia.

## 5.2 RECOMMENDATIONS

It should be noted that the institution of chiefs has been somewhat an inferior appendage of the modern government and this has been the case from colonial times through the one party state period up to the present day. The paper has come up with a number of recommendations in light of what the research has focused on.

The first recommendation is that more chiefs need to be educated so that they may in turn educate their subjects and can also get involved in the development process of the country. When chiefs are educated they will be able to understand complex concepts of modern democracy, good governance and also be able to discuss the Bills referred to them with greater understanding than at present.

Secondly, section 9(1) (b) of the Local Government Act<sup>1</sup> provides that a chief is not part of the council and does not attend council meetings. However, the paper recommends that the section must be amended to enable two or four chiefs to be part of the council so that they can participate at district level and this involves them in the development process.

The third recommendation is that in constitutional review Article 130 of the Constitution should be amended so as to widen its application which is currently restricted to the function of chiefs to discuss mainly proposed Bills on matters relating to tradition and customs. In addition the role of chiefs must be clearly defined and so should their relationship with parliament and the central government. For the rural population to meaningfully participate in and benefit from the development process the role and functions of Chiefs and the House of Chiefs also need to be critically addressed so as to have a proactive House of Chiefs.

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<sup>1</sup>.Chapter 281 of the Laws of Zambia.

The fourth recommendation is that chiefs should be involved in the development process especially of the rural areas through consultation. This involvement can further be enhanced by the government if they can engage in a program of decentralisation that involves chiefs but this should not lead to conflict of interest between the chiefs and central government. To further enhance decentralisation, the Chiefs Act should include a provision for a Village Council and a Provincial Council.

The Village Council should be in every village and it should be composed of persons above 18 years of age and a chairperson. Such a council should determine all matters relating to succession disputes to the chieftainship, cultural matters, ensuring good governance of the village in compliance with the Act, issues relating to land and to bring matters of national interest to the attention of the community which affect the inhabitants. The Village Council should be meeting at the instance of the chairperson of the council.

The Provincial Council should be composed of all the chiefs in that province. It can be under the supervision of the President who would also determine when and where they should meet. However, this council should elect their leader who should be presiding over meetings. Such a council should be reporting and considering matters referred to it by the House of Chiefs and to discuss any matter of national interest which affects the inhabitants of the province concerned or any part thereof which concerns their interests or well-being.

There is also need for the creation of substructures for the purpose of feedback between the House of Chiefs and the substructures thus improving co-ordination among Chiefs in the House and will involve those who are not in the House. Further the number of Chiefs elected

to the House of Chiefs should be increased by two from each province so as to enhance the levels of participation.

The fifth recommendation is that as regards chiefs' participation in partisan politics, Article 129 of the Constitution which prohibits this behaviour must be amended so as to allow those chiefs who wish to join politics to do so but on condition that they will be deemed to have taken leave of absence from the office of chief. The Chiefs Act must also clearly state in more detail the sanctions that would follow a chief who participates in partisan politics for effective compliance.

The sixth recommendation is that the institutionalised mechanisms, conceptual models and structures that exist under the customary law of the installation of chiefs for purposes of guiding the Courts should be codified so as to clarify the position and introduce greater predictability in the choice of the laws to be applied in a regional specific manner. Eligibility of succession is an area that needs to be included in the Chiefs Act. The issues and challenges of succession to the chieftaincy in times of vacancy are very conspicuous and need to be given the attention they deserve thus the Act dealing with chiefs should have a provision relating to them. Such a provision would be there to guide all stakeholders as to the channels they should follow whenever there is a vacancy in the chieftaincy such that the traditional rules, customary laws and traditional lineage of the chieftaincy are followed.

The Chiefs Act in section 8 provides for payment of subsidies as the President may direct but the Act does not state whether the money should come from other sources or from government as appropriated by parliament. It is submitted that this provision should be amended so that the money should go to the royal establishment instead of it going personally

to a chief because chiefs end up being like employees of the government and owe their allegiance to the President. This causes subjects to lose loyalty to an unaccountable chief therefore it is recommended that subsidies should be done away with and replaced with grants that should be given the royal establishment through local councils. In addition, the giving of official gifts to chiefs by the government should be prohibited because it shows inequity, however, subjects should do more of this giving.

The seventh recommendation is that the Local Courts Act<sup>2</sup> should be amended so as to allow chiefs to sit with local court justices as opposed to the current situation where this is not allowed. Chiefs are the custodians of their traditions and customs so they have to be given an opportunity to protect their traditional and cultural lineage.

The Ministry of Chiefs and Traditional Affairs should be working in liaison with the Ministry of Justice for the purposes of having a more efficient system for review of statute that deals with the institution of chiefs.

### 5.3 CONCLUSION

It seems modern society has to a larger extent condemned the institution of chiefs to an archaic institution of leadership such that the important role it plays in society has been undermined. However, this institution is important for the progress of African society in many respects as has been shown in this research paper and adherence to the aforesaid recommendations would enhance the important the institution of chiefs plays. In a nutshell, this paper has endeavoured to give a critical evaluation of the law that deals with the

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<sup>2</sup> .Section 6 of Chapter 29 of the Laws of Zambia.

installation and recognition of chiefs in Zambia with the result that there is need for more work in terms of its improvement and reform.

## BIBLIOGRAPHY

### BOOKS

Allot, N. Anthony. *New Essays in African Law*. London: Butterworths, 1970.

Gann, H. Lewis. *A History of Northern Rhodesia: Early Days to 1953*. London: Chatto and Windus, 1964.

Gluckman, Max. *Politics, Law and Ritual in Tribal Society*. Oxford: Basil Blackwell, 1965.

Munalula, Margaret. *Legal Process Zambian Cases, Legislation and Commentaries*. Lusaka: UNZA Press, 2004.

### STATUTES

The Chiefs Act, Cap 287 of the Laws of Zambia.

The Constitution of Zambia, Cap 1 of the Laws of Zambia.

The Development and Registration of Villages Act, Cap 289 of the Laws of Zambia.

The Lands Act, Cap 184 of the Laws of Zambia.

The Local Government Act, Cap 281 of the Laws of Zambia.

The Local Courts Act, Cap 29 of the Laws of Zambia.

The Subordinate Courts Act, Cap 28 of the Laws of Zambia.

### CASES

*Chibwe v Chibwe S.C.Z Judgment* No. 38 of 2000.

*John Malokotela v. Majaliwa Sitolo Muwaya and Thaha Odemu Chiwala* 2009/HN/194.

### ARTICLES AND REPORTS

*Annual Report of the Judiciary and Magistracy in the year 1964.* Lusaka: Government Printer, 1965.

*Report of the Adhoc Committee on Legal Reforms, Appointed 1<sup>ST</sup> June, 1975.* Lusaka: Government Printer, 1975.

Vans Bins Bergen, Jules W. "Chiefs and the Independent State in Zambia: Exploring the  
Zambian National Press." *Journal of Legal Pluralism, Special Issue of Chieftainship in Africa*  
1, (1987)

### OBLIGATORY ESSAYS

Chibomba, Susan. "The relevance of a house of chiefs in a democratic society; A case study  
of Zambia." School of Law Obligatory Essay, University of Zambia, 2004.

Simwatachela, Muzambalika. "The dual legal system and its effects on the administration of  
justice in Zambia." School of Law Obligatory Essay, University of Zambia, 2006.

## INTERVIEW

Interview with Dr. P.F. Manda, Research Officer at the House of Chiefs, 4<sup>th</sup> January, 2012.

## WEBSITES

The Zambia Daily Mail. “Kalindawalo Wrangles.”<http://www.daily-mail.co.zm> (accessed January 10, 2012).

House of Chiefs. “Chiefs, Law and Order.” <http://www.houseofchiefs.com> (accessed March 24, 2012).

Parliament of Zambia. “National Assembly Debates: Chiefs and Politics.”  
<http://www.parliament.gov.zm/debates> (accessed December 6, 2012).

The Times of Zambia. “Nsenga Wrangles.” <http://www.timesofzambia.com> (accessed January 4, 2012).

The Zambian Economist. “Traditional Authorities.” <http://Zambian-economist.blogspot.com/2008/06/traditional-authorities-blog-specials.html> (accessed February 8, 2012).