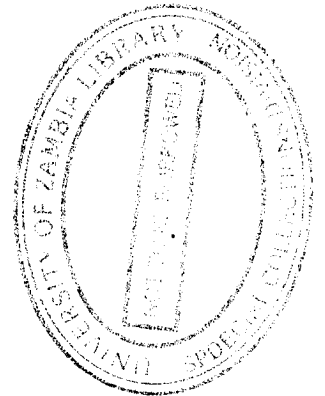
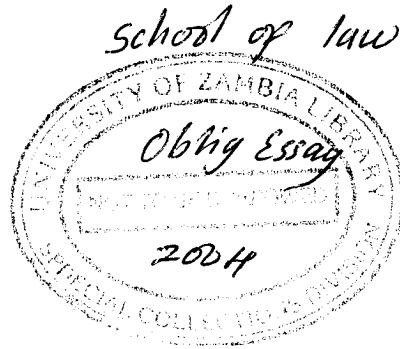


**THE APPLICATION AND RELEVANCE OF JUDGES RULES IN OBTAINING
VOLUNTARY CONFESSIONS IN ZAMBIA: A CRITICAL ANALYSIS**



BY

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UNZA

2004


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I therefore bear the absolute responsibility for the contents, errors, defects and any omission therein.

Date...23rd December, 2006. Signature.....*Mwusi*.....

DEDICATION

This work is dedicated to my mother Mrs K Muyambango, and to my sisters Christine, Christabel and Mate.

ACKNOWLEDGEMENTS

First and foremost I would like to thank my God and my father, whose grace mercy and providence has seen me excel through out the years.

Special thanks are tendered to Mr. Mumba Malila, the Obligatory Essay Co-ordinator.

My heartfelt gratitude goes to Retired Judge Kabazo Chanda, for supervising this work, for his patience, guidance, and availability for consultation.

I would also like to express my thanks to the following people for their perseverance, generosity and kind assistance during my research; my sisters Christine, Christabel and Mate for their unconditional love and support, the staff at Woodlands Police Station, and for the people at Legal Resources Foundation, especially Mrs Beauty Ngoma, for having assisted me with a number of materials.

Finally, to my friends Banji, Susan, Kabuswe, and Sylvia who made my stay at UNZA, memorable, and not forgetting the numerous friends and colleagues who helped me.

PREFACE

The main essence of this Directed Research is to analyse the main importance and efficacy of Judges Rules in obtaining free and voluntary confessions from accused persons in Zambia. The study shall also endeavour to show the effectiveness of judges rules in this respect as well as to point out the factors underlying their non compliance.

This research is broken down into four chapters. The first chapter focuses mainly on the background analysis of the statement of problem as well as the significance of the study. This chapter also deals with confessions and their criteria for admissibility. The second chapter deals mainly with judges rules, their relevance in the Zambian jurisdiction, the extent of adherence including factors underlying their non-observance. This chapter further goes to show the role of these rules in obtaining voluntary confessions in Zambia. The third chapter draws focus on a comparative analysis of the application of Judges Rules in England as well as other commonwealth jurisdictions. The purpose for this chapter is to show how efficient Judges Rules are in these jurisdictions and to show certain factors that are non-existent in the Zambia regime.

The fourth chapter marks the climax of the study on the application and relevance of these rules of practice in obtaining free and voluntary confessions from suspects in Zambia. The same chapter shall lay out recommendations and conclusion of the study, thereby bringing the actual significance of the Judges Rules in Zambia.

ABSTRACT

Confessions made by an accused person are admissible in a court of law provided they are made freely and voluntarily. Hence in an effort to obtain free and voluntary confessions from suspects, judges rules are made applicable by a police officer or any other person carrying out the function of an interrogatory nature. It is therefore these rules of practice that aid in the obtaining of voluntary confessions.

The obtaining of free and voluntary confessions from accused persons has always faced challenges in Zambia in the sense that interrogating officers have not adhered to them. This is attributed to lack of knowledge of them by village headmen and such related committees, who in Zambia are given the mandate to interrogate.

In addition non-compliance is also attributable to negligence by police officers, who are actually knowledgeable about these rules of practice.

This concept of Judges Rules is a foreign one and is meant for an organised society where recognition of human rights thrives. It is against this backdrop therefore that the relevance of these rules in Zambia is rendered questionable as the abuse of basic rights is on the rampage.

In addition these rules are merely rules of practice and not rules of law and hence give trial judges the discretion to exclude confessions made as a result of breach of them. It follows that a confession obtained in breach of them will be admissible in as far as it is relevant to the fact in issue.

In the light of the foregoing, it can be seen that the relevance of these rules leaves much to be desired. Hence a critical analysis of the relevance of judges rules in Zambia is imperative.

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The Evidence Act CAP 43 of the laws of Zambia

The English Law Extent of Application Act CAP11 Of the Laws of Zambia

The Prisons and Services Act CAP

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INTRODUCTION

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In addition non-compliance is also attributable to negligence by police officers, who are actually knowledgeable about these rules of practice.

This concept of Judges Rules is a foreign one and is meant for an organized society where recognition of human rights thrives. It is against this backdrop therefore that the relevance of these rules in Zambia is rendered questionable as the abuse of basic rights is on the rampage.

In addition these rules are merely rules of practice and not rules of law and hence give trial judges the discretion to exclude confessions made as a result of breach of them. It follows that a confession obtained in breach of them will be admissible in as far as it is relevant to the fact in issue.

In the light of the foregoing, it can be seen that the relevance of these rules leaves much to be desired. Hence a critical analysis of the relevance of judges rules in Zambia is imperative. This obligatory essay therefore analyses the application of Judges rules as

well as their relevance in a jurisdiction like Zambia where the constitution actually guarantees the protection of human rights and where the police officers use of torture to interrogate suspects has become the rule rather than the exception. This essay will thus dwell on the extent of adherence of these rules in as far as they go to protecting an individual's right against self incrimination.

The main essence of this Directed Research is to analyze the main importance and efficacy of Judges Rules in obtaining free and voluntary confessions from accused persons in Zambia. The study shall also endeavor to show the effectiveness of judges rules in this respect as well as to point out the factors underlying their non compliance.

ORGANIZATION OF CHAPTERS

Chapter One

This research is broken down into four chapters. The first chapter focuses mainly on the background analysis of the statement of problem as well as the significance of the study. This chapter also deals with confessions and their criteria for admissibility.

Chapter Two

The second chapter deals mainly with judges rules, their relevance in the Zambian jurisdiction, the extent of adherence including factors underlying their non-observance. This chapter further goes to show the role of these rules in obtaining voluntary confessions in Zambia.

Chapter Three

The third chapter draws focus on a comparative analysis of the application of Judges Rules in England as well as other commonwealth jurisdictions. The purpose for this chapter is to show how efficient Judges Rules are in these jurisdictions and to show certain factors that are non-existent in the Zambia regime.

Chapter Four

The fourth chapter marks the climax of the study on the application and relevance of these rules of practice in obtaining free and voluntary confessions from suspects in Zambia. The same chapter shall lay out recommendations and conclusion of the study, thereby bringing the actual significance of the Judges Rules in Zambia.

CHAPTER ONE

INTRODUCTION.

1.1 INTRODUCTION AND BACKGROUND INFORMATION

A confession or admission of guilt by an accused person is admissible as evidence in a court of law, providing such confession meets the criteria for admissibility. Therefore, in any proceeding, an admission adverse to the party may be evidence against that party for the purposes of proving any facts stated, and to the extent of such confession, a conviction or judgment may be made, as the case may be.¹

The justification for this rule is that there is clearly a likelihood of truth in a statement adverse to the interests of its maker, which is not the case with statements made in his own favour.²

Closely attached to the issue of confessions is the accuser's right against self-incrimination.³ This entails that in so far as an accused can confess, he cannot be induced to do so as he possess the right not to make statements which may incriminate him.

Clark observes that the history of confessions is full of torture, treachery and lies.⁴ Often accused persons are induced to confess by inflicting pain on them by interrogating officers, or by promising them favours or promises for confessing. This consequently makes confessions unreliable.⁵

However, insistence on confessions arises from a desire to solve a crime and the use of them necessarily implies that other evidence equal to or better is not available and that confessions are reliable.

Since a confession is sufficient to warrant a conviction, it is prudent that such a confession be made freely and voluntarily, that is to say, without being induced by threat of violence or promise of favour. Consequently, in an effort to obtain free and voluntary confessions, Judges Rules are made applicable by police officers or any other professional investigating officer.

Judges Rules are Rules of practice recognized by courts for the conduct of police officers or investigating officers to make a confession admissible. Judges Rules therefore merely aid investigators to obtain voluntary confessions. However, these rules are rules of practice only, and not rules of law. Thus it remains to the discretion of a trial judge to exclude confessions for breach of these codes of conduct.⁶

The obtaining of free and voluntary confessions from accused persons in Zambia has always faced challenges in that Judges Rules have not always been adhered to. This is partly due to lack of knowledge of them on the part of investigating officers such as village headmen as illustrated in the case of The people V Chibozu,⁷ where ignorance of these codes was expressed by a village headman who had on several occasions obtained confessions from his subjects by torture.

The concept of Judges Rules is a foreign one and is meant for an organized society. In Zambia however, where village headmen and committees are recognized as investigative bodies, their applicability leaves much to be desired as their interrogations are characterized by torture and threat to life.

Further more these rules are breached even by knowledgeable police officers simply because of negligence on their part. Hence the accused person is left to the mercy of these officers.

Moreover, they are not rules of law that bind judges, but merely rules of practice, and hence their discretionary nature on the part of judges, whether to accept confessions made in consequence of their breach or not renders their relevance in Zambia questionable.

Therefore this essay proceeds to analyze critically the application of Judges Rules in Zambia, as regards obtaining free and voluntary confessions. Furthermore, the essay shall undertake to investigate the relevance of these rules in as far as obtaining voluntary confessions in Zambia is concerned, as well as to assess the efficacy of these rules vis-à-vis negligent police officers, as well as ignorant village headmen. Moreover the essay shall proceed to examine the trial judge's discretion to exclude a confession for breach of these codes of conduct, and the impact that this has on confessions generally vis a vis the protection of an individuals right against self incrimination.

1.2 CONFESSIONS

1.2.1 WHAT THEY ARE

(a) DEFINITION

Generally, an admission of guilt or of any fact which may tend to prove guilt, and which is made freely and voluntarily by an accused person, if duly made and satisfactorily proved may be sufficient to warrant a conviction. It follows therefore that the court may convict a prisoner based upon his confession, and hence it is prudent that such confession is satisfactorily proved.

At Common Law, a confession was the name given to an adverse admission by the accused, relevant to the issue of guilt in a criminal case.⁸ As aptly defined by Lewis,

“A confession is any statement wholly or partly adverse to the person who made it, made to a person in authority or otherwise, in words or otherwise”⁹

From the foregoing, it is evident that a confession is an admission of guilt or any fact relevant to the issue of guilt upon which a conviction may be made. As vividly enunciated by Lord Justice Ashbury in R v. Thompson,¹⁰

“Where a prisoner pleads guilty and the court accepts the plea, further proof or trial is needless and the court proceeds to judgment on the prisoner’s own confession.”

Thus confessions are admissible in a court of law as part of evidence to aid in the solving of the case. An example of a case where confession of the accused was used to convict him is illustrated in **Chileshe .v. The people**.¹¹ In that case, the appellant was convicted of office breaking, the convicts being supported solely by his own confession, which he had made freely and voluntarily.

As a general rule, a statement or an assertion other than one made by a person while giving oral evidence in the proceeding, other wise known as hearsay, is inadmissible as evidence of the fact asserted.¹² However, confessions are admitted in a court of law as part of evidence as an exception to the hearsay rule.¹³

The use of confessions as part of evidence, as Ndulo aptly notes, necessary implies that other evidence equal to or better than, is not available, and hence confessions are relied upon.¹⁴ The rationale for the reliance upon confessions is summed up thus;

“the justification of this rule is that is clearly a likelihood of with in a statement adverse to the interests of its maker which is not the case with statements made in his favour.”¹⁵

However, as noted above, an accused person has a right against self incriminating statements, to the effect that if he is induced to do so, such confession will not be admitted, as it tends to inevitably lead to unfairness and miscarriage of justice

b) TYPES OF CONFESSIONS

Confessions fall into two classes, that is to say judicial and extra judicial confessions. Firstly, judicial officer such as a court justice, or those confessions made in the course of trial.¹⁶ Judicial confessions may be subdivided into two kinds.

Firstly, they may fall under the category plea of guilt at trial. In this case, the prisoner in open court freely and voluntarily confesses that he is guilty of the offence, which he is charged with in the indictment. This admission may be of guilt as to the facts, subject to the amounts to a plea of guilt in law.¹⁷

It follows from the foregoing that where the prisoner pleads guilty, and the court accepts the plea, further proof is not necessary, and the plea is recorded by the proper officer, and the court proceeds to judgment on the prisoner's own confession.

Secondly, judicial confessions may take the form of confessions made to justices. These tend to prove guilt at the trial made by a prisoner on preliminary inquiry before a court justice in respect of any indictable offence.¹⁸

By contrast, extra judicial confessions as the name implies, are those confessions that are made where the prisoner makes an admission of his guilt, or any fact which may tend to prove guilt, to any person other than a judge or magistrate, seized of the charge against him, or assents to what is said in his presence, relative to a fact within his knowledge.¹⁹ This type of confession is usually practiced by police officers and other interrogative bodies such as security officers, village headmen and committees. Since these institutions have power to interrogate, there is a likelihood that accused persons may be induced to confess, unlike in the former, hence the insistence on the reliance of judges rules to ensure free and voluntary statements.

For the purpose of this essay, emphasis shall be drawn on the latter type of confessions as the study is meant to analyze confessions therein, due to the fact that it is there that confessions are usually induced thereby breaching judges rules.

2.2.2 CRITERIA ADMISSIBILITY

Granted that a confession made by an accused person adverse to himself may warrant a conviction, such confession must first meet certain criteria before it can be admitted in court as part of evidence. Per Charles J **in R.v. Kanyata**,²⁰

"It is established law, in my judgment, that evidence of an incriminating statement made by an accused person is not admissible unless its voluntariness is established to the satisfaction of the trial judge, if necessary after holding a voir dire or trial within a trial."

Therefore, the best criteria for admissibility is not whether the confession appears to be true, but the manner in which it was obtained. Hence the only questions to be considered in deciding whether a confession is or not admissible are;

1. *"Was there any promise of favour, or any menace or undue terror made use of to induce the prisoner to confess?"*
2. *If so, was the prisoner induced by such promise or menace etc, to make the confession sought to be given in evidence"*²¹

If the answer to both of these questions be in the affirmative, the confession will be inadmissible. An illustration of the application of this is seen in the case of **Muwowo .v. The People.**²² In that case, the appellant was convicted of murder the evidence relied on by the prosecution being in confession. In establishing whether the confession was voluntary, it was held that an incriminating statement made by an accused person to a person in authority is not admissible in evidence unless it is proved beyond reasonable doubt to have been made by him voluntarily, that is to say made in exercise of a free

choice to speak or to be silent. Otherwise, induced confessions present to the innocent and the due administration of justice a grave danger.

It follows from the foregoing that, when an incriminating statement by the accused person in authority is tendered in evidence, the prosecution has the burden of proving beyond reasonable doubt that it was not the result of the accuser's mind having been influenced by any prior inducement²³ of the kind mentioned above conversely that burden on the prosecution does not involve negating the making of every form of inducement. That would be an impossible task because as explained by Lawrence J. in **R.v. Thompson**,²⁴ as the burden is to prove or negative, and a negative of wide scope, the burden is initially discharged by adducing evidence sufficient to show that prima facie the statement was made voluntarily.

Furthermore, an induced confession is admissible if the inducement did not relate to the charge. See generally, **R v. Baldry**.²⁵

It is worth noting that in ensuring that statements of admission of guilt are made voluntarily, interrogative bodies such as police officers need to adhere to judges' rules.

2.3 CONCLUSION

We conclude therefore by acknowledging the importance of a free and voluntary confession as such confession may warrant a conviction in the absence of any other evidence. Therefore, it is imperative that interrogating officers adhere to judges rules to ensure that an accused who confesses is not threatened to do so or promised any favour, so that such things may not marry the due administration of justice.

Furthermore, the author has gone to great length to explain to the reader so that he may bear in mind the essence of confessions and their critical nature to convictions in the absence of any other evidence, and also in the analysis of the conduct of interrogating officers in obtaining confessions.

ENDNOTES

- ¹ Halsburys Laws of England 4th ed vol 17 para 62
- ² Ndulo and Hatchard **Evidence in Zambia** p. 273
- ³ Cited in Ndulo and Hatchard **Evidence in Zambia**
- ⁴ Murphy on **Evidence** p.
- ⁵ Ibid
- ⁶ Lewis **Criminal Procedure** p. 155
- ⁷ (1981) ZR 25
- ⁸ Opcit
- ⁹ Opcit
- ¹⁰ (1898) AC 621
- ¹¹ (1972) ZR 132
- ¹² Ibid
- ¹³ Ibid
- ¹⁴ Opcit p. 255
- ¹⁵ Ibid
- ¹⁶ Archbold's **Evidence, Pleading and Criminal Procedure** paragraph 1048
- ¹⁷ Ibid
- ¹⁸ Ibid
- ¹⁹ **Cross on Evidence** p. 275
- ²⁰ (1968) R & N 140
- ²¹ Cited in Archbold's **Evidence Pleading and Criminal Procedure**
- ²² (1965) ZR
- ²³ Cross and Wilkins **Outline of Evidence** p. 140
- ²⁴ Ibid
- ²⁵ R.v Baldly (1893) AC

CHAPTER TWO

2.0 INTRODUCTION

It is the responsibility of everyone to aid in the prevention of crime. The police are however charged by law with the special duty to prevent crime, and where one has been committed to investigate and ensure that persons responsible are brought before the courts.¹ With regard to interrogating a suspect or an accused, reliance on Judges Rules is made in order to ensure that the suspect or accused does not make any statement out of compulsion or coercion. The challenges that are faced with police officers in this area cannot be under estimated. Therefore, this chapter seeks to inquire into the application of Judges Rules in Zambia as well as the extent of adherence by interrogating officers. It also makes an inquiry into the efficacy of these rules in so far as obtaining voluntary confessions is concerned, and the factors underlying their non observance.

2.1 DEFINITION OF JUDGES RULES AND HISTORICAL BACKGROUND

Because of variations in judicial guidance to the police on the proper procedure to adopt in relation to the questioning of suspects, a set of rules was issued in 1912 in England by the Lord Chief Justice, and came to be known as the Judges rules.² They were amended and amplified over the years, and the Royal commission on Criminal procedure in England proposed and enacted more detailed codes of practice which guided police

officers on matters of premises and seizure of property, detention, treatment and questioning of persons.²⁵ In this essay, focus shall be drawn on the questioning of suspects by interrogating officers.

In essence, Judges rules are not rules of law but merely rules of practice that have been adopted by the courts for the guidance of interrogating officers when questioning suspects in order to arrive at freely and voluntarily made statements. Hence they ought to be applied by every person in authority who exercises the functions of an interrogative nature.

As lucidly enunciated by Baron DCJ in **Isaac Lungu and others v The People**³

“ these lay down an elaborate set of cautions to be given by police officers and persons in authority at various stages of interrogation. Their purpose is not so much as to inform the accused of his right to silence as to provide an administrative code, which if followed will result in the defendants statements being admissible against him at trial. ”

As stated in the foregoing, the result of adherence to judges rules is that they render the evidence so obtained admissible in a court of law. Thus what these codes of practice do is to aid the suspect not to say statements that may incriminate him, whether they are true or not. Consequently, it has been said that one’s right to silence is golden, and thus he need not be coerced to speak.⁴

It follows therefore that Judges Rules require the interrogating officer to inform the accused of his right to silence and that anything he says may be used in evidence in the court of law. They also provide that every person at any stage of an investigation should

be able to consult privately with a lawyer even if he is in custody. For details of the provisions of each particular rule, refer to Appendix

Furthermore, not only do they help in the obtaining of freely made confessions but also in the due administration of justice and the promotion of human rights, in that a person is given an option whether to speak or not, thereby exercising his right of silence.

It is important to note that as Judges Rules are not rules of law but merely rules of practice, a confession obtained in contravention to these rules can be admissible in evidence provided that it is voluntary. This means that a trial judge has the discretion of allowing a confession made in consequence of breach of these rules as long as it is not coerced. This is illustrated by the case of **Liswaniso v The people**,⁵ wherein it was stated that

“in practice, the courts are proved reluctant to exclude a confession on account of a technical breach of judges rules in cases where the breach has no effect on the voluntariness of the statement either because the breach was a relatively minor, or the breach was not closely related to the making of the confession.”

Consequently, a trial judge has discretion of excluding a confession made in consequence of breach of these rules. For instance in the case of **The People v Nephath Dimeni**⁶ a confession made in breach of Judges rules was not excluded because the breach had no bearing on the voluntariness of the confession.

On the other hand, breach of these rules which leads to an involuntary statement will be excluded as evidence in the court of law. The rationale behind this proposition is that such involuntary statements tend to be unreliable. Commenting on coerced confessions, Justice Lewanika⁷ had this to say,

“...in so far as a confession obtained under duress is likely to be unreliable, it reasonably follows that society and its courts should not seek to rely on it.”

Therefore it can be said that Judges Rules are expedient in the obtaining of voluntary confessions, although breach of them does not necessarily render them inadmissible. As earlier stated, they are merely rules of practice which promote fairness in the due administration of justice as well as respect for the fundamental human rights of the individual.

These rules are made applicable in Zambia by virtue of their adoption and enactment into the Zambia Police Act. Moreover, the domestication of the Convention on Elimination of Torture and other forms of degrading or Inhuman Treatment or punishment into Zambian Legislation has also enhanced the application and adherence to these codes of practice. For instance, Article 9(3)(a) provides that

“the rules adopted for the interrogation of suspects are the English Judges Rules, which permit police officers or other law enforcement officials to question anyone, whether a suspect or not, from whom useful information can be obtained ...and also requires them to caution a person he reasonably suspects to have committed an offence before putting any questions to him.”

2.2 APPLICATION IN ZAMBIA

2.2.1 RELEVANCE OF JUDGES RULES IN ZAMBIA VIS A VIS OBTAINING VOLUNTARY CONFESSIONS

As already noted, Judges Rules were developed in England and adopted and enacted in the Zambia Police Act, as well as through the convention Against Torture and other Inhuman and Degrading Treatment or Punishment which was entered into force on 6th November, 1998.

The relevance of Judges Rules in obtaining voluntary statements cannot be underestimated. As indicated already, they aid in obtaining free and voluntary statements. It follows therefore that since interrogations are governed by these rules, the possibility of having threats or promises which induce one to confess are highly unlikely.⁸ However, where, confessions are obtained under duress, they become unreliable and hence their exclusion.

As stated above, the adherence to these rules renders evidence so procured admissible in a court of law. However statements made in consequence of breach of these rules may still be admissible as evidence in a court of law, as illustrated above. The Zambian judiciary has considered judges Rules to be merely directory rather than mandatory on law enforcement officers.

However the practice outlined in **Isaac Lungu and others v The People**⁹ is that the courts are very reluctant to entertain any arrest or confessions obtained in breach of Judges Rules. This practice has become well settled and is religiously followed by the Zambian courts today.

Moreover the law as laid down in **Liswaniso v The People** is that evidence obtained illegally or out of coercion, if relevant is admissible as the court is not concerned with how it was obtained, but how it is used by the prosecution. This entails that a judge has no discretion to exclude relevant admissible evidence merely because it was obtained by false or unfair means. This rule no doubt encourages the police to use unfair means to obtain evidence. This rule tends to negate the essence of Judges Rules in the acquisition of free and voluntary statements, and there fore has a bearing on the relevance of these codes of practice.

On the other hand, their relevance in Zambia renders them questionable in that persons in authority who are supposed to administer them such as village headmen have no knowledge of their existence. Hence, where confessions are obtained without even following the rules of practice, and the evidence so obtained is voluntary, their application in such instances becomes irrelevant. Furthermore, where non observance does not lead to serious breach resulting in induced confessions, such breach is not taken into account by the courts. In such situations, judges rules become irrelevant. However, its not in all cases where non observance leads to voluntary confessions. Sometimes the breach is so grave that confessions so made are induced. In such situations application

becomes mandatory so as to guard against such eventualities, and thus the relevance of the application of codes of practice becomes inevitable.

2.2.2 EXTENT OF ADHERENCE TO JUDGES RULES

It is mandatory to apply Judges Rules in order to arrive at voluntary confessions or statements. However, the observance of these rules of practice in Zambia leaves much to be desired. An inquiry into the extent of awareness of the existence of these rules reveals that all police officers in Zambia are required to know them as well as their consequent application. This is attributed to the fact that it is mandatory that they learn about them during their training as police officers.¹⁰ Moreover, an inquiry into the awareness of the rules reveals that all police officers are required, and indeed most of them do have personal copies of print outs of the Judges Rules for easy reference when questioning an accused or a suspect.

However, despite these elaborate conditionalities as regards the knowledge of these codes of practice, their application in practice leaves much to be desired.

In the majority of cases police officers in fact do give the famous warn and caution statement. This can be illustrated by the number of cases that have been disposed off on account of voluntary confessions made out of one's own free will, and as a result of an administration of Judges Rules. For details, refer to appendix 1.

On the other hand, there are other instances where these rules have not been made applicable by police officers. In a lot of cases, there has not been adherence to Judges Rules by police officers. These arise mostly in situations where there has been a violation of one's rights, which brings into play torture by the police.¹¹ Most prisoners are tortured and forced to confess for fear of further torture, that they in fact committed the crime in question. Commenting on torture of suspects by police officers, Afronet had this to say;

*"torture is being used today almost on a routine basis by security officers such as police officers...in order to have accused persons confess to crimes they are charged with."*²⁵

Thus it can be said that the extent to which police officers have adhered to Judges Rules has not been satisfactory in that they have used torture to induce prisoners to confess rather than using these rules and letting them speak when they feel ready to do so.

Furthermore, Article 9(3)(e) of the Committee Against Torture and other Inhuman or Degrading treatment or punishment, stipulates that persons other than police officers, charged with the duty of investigating offences or charging offenders are required to adhere to these codes of practice.

In Zambia, such persons include village headmen as well as village committees which investigate crimes committed within their territory. These people have no knowledge of the need to adhere to judges rules. This can be illustrated by an example of Chief Shakumbila of Lusaka rural who acknowledged that he sometimes deals with criminal

matters arising in his area, and does in fact question suspects, but has no knowledge of the existence of Judges Rules. In spite of all this however, adherence to these rules has to be made in order to ensure free and voluntary confessions. In the case of **Chibozu v The People**,¹² it was stated that a village committee amounted a person in authority as required by the Judges Rules. It was also stated in that case that a village headman or a committee which was vested with investigative powers, and which did not administer the codes of practice and consequently coerced the appellant to confess was expected by law to do so.

This therefore entails that even such committees are required to observe Judges Rules. However, research shows that most criminals in villages are taken to the headmen who are required to solve the disputes, but these headmen have no knowledge of these codes of practice. As a consequence, most of the confessions so made are rendered involuntary. Thus it can be said that as far as adherence to these rules in Zambia is concerned, there has not been a strict observance as far as village headmen and committees are concerned. Conversely, the police has an elaborate mechanism which lays down these rules, but they have been terribly misapplied. As aptly noted by Chanda¹³

“unhappily, the Judges Rules are widely disregarded in Zambia and torture is the rule rather than the exception...”

2.3 FACTORS UNDERLYING THE NON OBSERVANCE OF JUDGES RULES

2.3.1 POLICE OFFICERS

The Zambia police Force is charged with the responsibility of maintaining law and order as well as protection of life and property. The Zambia Police Act provides for the organization, functions and discipline of the force. Section 14(3) of the Act provides that it shall be the duty of every police officer to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and to detect and bring offenders to justice. This entails that the police are especially charged by law to prevent crime, and where it has already been committed, to investigate and consequently bring such defaulters to justice.

As earlier alluded to, when interrogating an accused person or a suspect, reliance on Judges Rules is made in order to ensure that the accused does not make any statement out of compulsion or coercion. However, the challenges and indeed the difficulties that the police may encounter in this cannot be underestimated. There are various factors attributed to the non-observance of these rules of practice.

a) Negligence

Since most if not all police officers are aware of the existence and application of Judges Rules when questioning an accused person or suspect, ideally adherence should not be a problem. However most police officers do not apply them due to negligence on their part. The term negligence, has a lot of meanings ascribed to it. In

this context negligence means failure to exercise care towards others which a reasonable prudent person would not do in the circumstances, or taking action which such a reasonable person would not.¹⁴In other words it means carelessness or lack of exercise of proper care when dealing with suspects.

In essence a police officer is negligent as regards his duty to observe judges rules if he does not take reasonable care or does it deliberately not to apply these rules of practice. In most cases, they just rush into forcing suspects or accused persons into confessing so that they dispose off their cases easily. This is attributable to lack of motivation and dedication by the police force caused by so many factors which center on their poor remunerations.

b) Overcrowding of Prisons

Most prisons in Zambia are overcrowded to unprecedented levels. At Lusaka Central Prison for instance, the situation is so bad that prisoners have to sleep in shifts or spend their nights sitting. Cells usually have to cope with high numbers of prisoners, sometimes to as much as four times the recommended number of occupants. For example as at 10th September 2004, Lusaka Central Police station had over one thousand six hundred inmates. Commenting on the state of prisons in Zambia, it was stated that Zambian prisons provide harsh, cruel and inhospitable environment where the unfittest survive, in conditions where inmates are so overcrowded.¹⁵

In instances such as these, there is an outcry to dispose off cases quickly so as to lessen on the number of inmates. As aptly noted,

“An outcry for the need to have space in these prisons has culminated into the need to have them decongested. Hence police officers are eager to decongest them by any means possible.”¹⁶

As a consequence, the police tend to compel or coerce prisoners to make confessions so that by so doing they will have such cases disposed off , thereby decongesting the prisons.

c) The desire to dispose off a case

What this means is that the police are so eager to solve cases and to bring perpetrators to justice. As pointed out earlier, evidence obtained as a result of an involuntary confession is admissible, provided it is relevant to the facts in issue. Hence the law³ laid down in **Lisawniso’s** case that evidence obtained by coercion if relevant is admissible in a court of law. This rule no doubt tends to encourage the police to use unfair means in order to obtain evidence incriminating an accused.

d) Out datedness of the Judges Rules

The codes of practice that are presently being applied in Zambia are the 1964 Judges Rules, which were adopted from England. These rules are being applied the way they received without any alterations or amendments. By contrast, the English codes of practice have been repealed and updated several times over to the effect that they are now more detailed and abreast with the problems in contemporary England.

On the other hand, the Zambian codes of practice are as old as 1964, entailing that they do not address the current needs of society as it is always in a state of flux. Thus it can be said that judges rules have become ineffective due to the fact that they have become archaic and no longer addresses the contemporary needs of society, hence their ineffectiveness. As a result they ought to have been updated so that they conform to the current problems that society is experiencing.

2.3.2 VILLAGE HEADMEN AND VILLAGE COMMITTEES

As earlier noted village headmen and village committees are ignorant about the existence and relevance of Judges Rules owing to the fact that most of them are illiterate and have never attended formal education. However for those that have, they lack the knowledge of these rules. Most of them have vague ideas about administering the warn and caution statement, but they believe that such things should be reserved for the police.

CONCLUSION

No doubt the police as well as investigating officers are charged with the responsibility of preventing crime, and to investigate where it has been committed. However, the challenges that these people face in this duty are great. Nonetheless it is their duty to ensure that suspects are not compelled to confess, but do it because they want to. Further,

it is still vital for the core values of society, including the rule of law and the proper administration of justice that, even in the face of these sometimes exasperating difficulties, basic rules of fairness and respect for the fundamental human rights of the individuals be observed.

Thus the need to adhere to Judges Rules in this respect is of paramount importance, and has to be applied at all times to enhance basic human rights.

CHAPTER THREE

3.1 INTRODUCTION

It is established law of evidence that when a person is suspected of committing a criminal offence, the police or any other interrogating officer is charged by law with the responsibility of questioning the suspect in order to obtain evidence there from. As earlier articulated in the preceding chapter, a confession obtained from a accused person or a suspect is admissible in court as evidence, providing it was obtained in a manner that is in conformity with the Judges Rules, thereby rendering it free and voluntary.

The application of Judges Rules, which has its origin in the United Kingdom, is today been widespread such that the practice is being followed world over.²⁵

Similarly, in Zambia the rules of practice that have been followed in the questioning of suspects are the Judges Rules of England. However these have not been updated or amended since their adoption. As earlier stated in the preceding chapter, the application of these rules in Zambia leaves much to be desired.

Therefore, this chapter seeks to do a comparative study on the application of judges Rules in England from where they were adopted, South Africa, because it also lays a responsibility on any questioning official or person, including village head men, and finally a comparative study on other commonwealth countries which apply these principles.

3.2 APPLICATION OF JUDGES RULES IN ENGLAND

The historical development of Judges Rules first evolved in England to provide a guideline to be followed by police officers when interrogating suspects or accused persons. This was precipitated by the need to provide a uniform set of rules to govern the conduct of police officers *vis a vis* obtaining evidence from accused persons. If strictly adhered to this would consequently lead to the obtaining of free and voluntary confessions from accused persons or suspects.²

Initially, Judges Rules were not as detailed as they are today, but merely consisted of nine basic rules, which lay a general outline of codes of practice to follow. Generally, they contained basic rules of administering warn and caution statements so as to enable the suspect appreciate the nature and impact of the consequences of his or her statements.

Later as situations became more complicated and as the needs in society became attuned to human rights, there was a need to make Judges Rules more comprehensive and detailed so as to erase any doubts or questions that would arise as a result. As lucidly espoused by Justice Hughes³

“... due to the coming in of new human rights issues, there has been a growing trend to ensure that the basic rights of an individual in relation to him being questioned ought to

be strictly respected... hence the need to lay down clear guidelines for police officers to following interrogating suspects."

Today England has very detailed codes of practice that have been revised from time to time, with the latest edition being that of 1994. For instance, they have step by step guidelines that ought to be followed by an interrogating officer from the time of approaching the suspect to their release or conviction.

It is a notorious fact in England that the police are charged with the responsibility of preventing crime, and discovering the perpetrators of such crime, thus in so doing can question any person in an effort to solving the crime. Consequently the first Judges Rule that has been laid down vis a vis questioning a suspect is that

*"When a police officer is trying to discover whether, or by whom, an offence has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it"*⁴

This guideline confirms an investigator's authority to question anyone that may have information about the offence being investigated. In addition, as soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to the offence, that is to say

the suspect shall be told his right to elect to remain silent or not, and the repercussions of his statements if he chooses to make any.⁵

Inherent in this rule is the importance of observation of basic human rights as well as reducing the likelihood of a suspect being induced to confess, as everything that will be said by them will be out of their own free will.

Furthermore, other detailed rules of procedure on how to handle suspects or accused persons as well as rules on the procedure that police officers are supposed to follow when searching premises, are also extensively enlisted. For instance, the Police and Criminal Evidence Act of England contains detailed provisions on the application of the codes of practice, formerly known as Judges Rules.

Suffice to say some of these provisions though not so detailed are contained in our Zambian codes of Practice, but their implementation leaves much to be desired.

In England however, they have a very efficient implementation mechanism as compared to Zambia. In the first instance, England has only one regime of interrogation officers, that is to say police officers unlike in the Zambian context where apart from having police officers as questioning authorities, we also have people in authority such as village headmen, who are totally ignorant of the existence of these rules.

Moreover, where they have other people other than police officers carrying out interrogatory duties, such persons are not likely to be in breach of these codes of practice in that they are knowledgeable about them as well as their consequent application. As a result, the system in the United Kingdom is more efficient and accurate as compared to the one obtaining in Zambia.

Another aspect that is closely related to the foregoing is the training of police officers. Police officers in England are required to undergo extensive training pertaining to the preservation of human rights with particular emphasis to Judges Rules.⁶ What this implies is that at the time these people graduate from the police academy, they are well vested with knowledge on Judges Rules, as well as their relevance in obtaining free and voluntary confessions. Hence not only do they concentrate on the academic aspect of acquiring knowledge on Judges Rules but are interested in their practice. It follows therefore that there is a strict adherence to these codes of practice.

Moreover the human rights regime in the United Kingdom has been in existence for a long time such that almost all the people in authority are aware of the importance of their respect and observation. This consequently makes it imperative for a comprehensive education of them to police officers during their training as such.⁷ It is against this backdrop therefore that there are not as serious violations of human rights in the United Kingdom as experienced in Zambia today.

Closely related to this aspect is the concept of treating each suspect or accused person with respect. This lessens the number of complaints of police brutality that are brought up. The main reason attributed to this state of affairs is the fact that there is a prevalence of respect for the basic rights of the individual, and so the questioning authorities are afraid to use any form of force or violence when questioning suspects or even the mere threat of violence, for fear of being sued.

Another reason which makes the English Judges Rules tick is the aspect of dealing with each case on merit as opposed to the Zambian situation where prisoners are induced to confess so that prisons become less crowded. Commenting on the comparison between Zambian prisons and those of the west, it was said that

“It is no doubt that one of the aspects attributed to police brutality... and other serious disregard of human rights by police officers is the desire not so much as to make offenders reform, but to have their prisons decongested by having some of their cases disposed off.”⁵

Hence it can be said that the non-congestion of prisons as well as the great respect of basic rights of an individual has precipitated the efficacy of the Judges Rules in England. In addition, the principle of presumption of innocence is adhered to, to a greater extent as compared to the Zambian situation where presumption of guilt is the rule rather than the exception.

Furthermore, the effects of non compliance of rules of practice both in Zambia and England are the same, as above discussed, viz., confessions so obtained will entitle the trial judge to use his discretion of either admitting it as part of evidence or for the reasons advanced in the preceding chapters. However in both systems confessions obtained in the consequence of breach of Judges Rules are admissible provided they are relevant to the facts in issue.⁶

This tends to prejudice the accused person in the sense that he may not always be guilty of the crime so accused, but may merely confess because he has been induced to do so for fear of threat to his life or promise of favour. As aptly enunciated by Professor Daintrey,

“The rule that the trial judge may at any stage, in his discretion exclude a confession if he holds that it would be unfair to the accused, and admit that confession if he thinks that it is relevant to the facts in issue, whether obtained by coercion or not, is flawed.... This rule tends to give powers of abuse to questioning authorities against their suspects, who are powerless... and have no form of protection if the trial judge decides to admit the confession.”⁹

From the foregoing it is evident that the discretion that judges have as regards the inclusion of a confession which is obtained in breach of judges rules tends not to take into consideration the respect and protection of the fundamental rights and freedoms of the individual.

The proposed committee on the Convention Against Torture and other Inhuman and Degrading Treatment,¹⁰ in relation to the aforementioned, stated that allowing an induced confession as part of evidence in a court of law is prejudicial to the accused and disadvantages him in the decision of the case to which he is the accused. Therefore this committee proposed that the above mentioned rule of practice should be struck off so that any confession which is induced by either threat of violence or promise of favour should not be admissible, whether relevant to the facts in issue or not. Hence it is seen that even

in the United Kingdom where they have an advanced and comprehensive application of the codes of practice, their system is not free of flaws as above espoused. However, the degree of non-observance and other related aspects such as police brutality is quite grave in Zambia as compared to the United Kingdom.

In conclusion therefore, it can be said that the application of codes of practice in the United Kingdom is far more comprehensive as compared to the application of Judges Rules in Zambia mainly because of the level of appreciation of human rights as well as the difference in literacy levels in these jurisdictions. Moreover, other differences are attributed to the fact that people in authority in the united kingdom are well vested with knowledge of the codes of practice, including the consequences of their breach as compared to the Zambian scenario where the majority of people in authority such as village headmen and other related persons, are totally ignorant of the Judges Rules and the need to respect the basic fundamental rights of the individual.

3.3 A COMPERATIVE STUDY OF SOUTH AFRICA

As above stipulated the application of Judges Rules or Codes of Practice, as they are referred to from jurisdiction to jurisdiction, is of paramount importance in the due administration of justice. It is for this very reason that the are adhered to in most countries of the world, with variations to a particular country's area of concentration.

Theoretically, the South African justice regime is not so different from that of the United Kingdom, and let alone that of Zambia. What this entails is that what is laid down on paper is almost as comprehensive as that of the United Kingdom.

It follows therefore that police officers in South Africa are responsible for the prevention of crime. Following from this, they are also charged with the responsibility and the right to question any person who is suspected of committing a crime or who has any information pertaining to the crime.

With regards to the questioning of suspects, Judges Rules, or rather Codes of Practice as they are called are made applicable to enable questioning authorities to arrive at free and voluntary confessions. Like the English codes of practice, the South African codes of practice have also evolved through time, from a mere handbook containing the basics on how to handle and question suspects to a detailed administrative code relating to not only the questioning of suspects but also procedure to be followed on how the police ought to conduct themselves.

Therefore unlike the Zambian Judges Rules which have remained unaltered since their adoption in 1964, the South African codes of practice have undergone a lot of changes to become what they are today, that is to say, applicable to contemporary South Africa.

This therefore entails that this country has very detailed and comprehensive codes of practice. For instance, like the English codes of practice the South African codes have step by step administrative procedure on how to handle suspects or accused persons.

Though there are very nice and detailed codes of practice, what obtains in practice are not necessarily what the formulators of these codes ideally had intended when they were making them.¹¹

First and foremost, the appreciation of codes of practice as earlier pointed out thrives in a jurisdiction that has a good human rights system. However, South Africa has for a long time been known for its massive violation of fundamental rights and freedoms of the individual.¹² It is well known for the discrimination of the black majority, who during the apartheid era were hugely discriminated against and thus suffered grave injustice. They were on several occasions detained without reasonable cause and were in most cases induced to confess to crimes they did not commit, for fear that violence or pain would be inflicted on them.¹³

However, since the abolition of apartheid in that country, and the dawning of a solid human rights regime, an adherence to Codes of Practice has been seen. Today more police officers are keen on administering the warn and caution statement rather than being quick to forcing the offender or suspect to confess the case may be.¹⁴

Moreover disregard for these codes of practice was more attributed to the racial discrimination rather than pure negligence on the part of questioning authorities. Thus it can be said that breach of the codes of practice is not so much as a result of the questioning authority being negligent, but because they greatly detested the other race, and hence punished them in every way possible.

Hence as things stand today, though there are a few incidences of police brutality as well as the disregard for the codes of practice, the trend has been that of according respect to an individual's basic human rights. Therefore it can be said that although the application of codes of practice has not advanced to a high level due to the history of apartheid in that nation, recognition of that is slowly gaining ground. As aptly noted by Khudzai,

“The observance of codes of practice is slowly gaining prominence in South Africa today, and the rest of it remains to be seen in future....”¹⁵

For example, the codes have a schedule, which contains the rights of the individual, as well as the redress they may have in case of breach. Furthermore, there has been proliferation human rights awareness campaigns, including the rights accruing to a person if they are being questioned.

Moreover, the South African jurisdiction, like the Zambian one recognises and admits confessions, to the extent of their admissibility, obtained by persons in authority other than police officers. Such persons include village committees as well as village headmen. The challenge faced in Zambia pertaining to village committees and village headmen is also experienced in South Africa, though to a lesser extent. In both jurisdictions, the questioning authorities lack knowledge on the existence of these codes of practice and therefore disregard them to a greater extent.

However, in the South African regime, persons in authority, though they do not administer these codes of practice, do not, to a large extent induce accused persons or suspects to confess.¹⁶

In conclusion, it can be said that, though rich in the provisions of the Codes of Practice, the South African Jurisdiction is only getting into its prime. Thus, though flawed in some areas, it still has a lot of work to do in order to get to the ideal set out in the codes. As articulated

“The administration of criminal justice is perceived to be very weak. Major contributing factors are two- fold. Police investigative, evidence-gathering, and lack of respect for human rights.”¹⁷

3.4 OTHER COMMONWEALTH COUNTRIES

The application of Judges Rules or codes of practice in commonwealth countries was adopted from United Kingdom and made applicable in these common law jurisdictions. A study on the application as well as adherence of these rules shows that those jurisdictions with a comprehensive human rights regime tend to fully appreciate and adhere to them, unlike those countries, where gross violations of human rights is the rule rather than the exception.¹⁸ Thus, those countries in the west usually have a good application of the codes of practice just as those explained in relation to the United Kingdom.

As for most the counties in Africa where there is a recognition of village headmen and chiefs as people in authority, challenges faced are those similar to the ones experienced in Zambia and South Africa. This is attributed to the lack of appreciation of the basic rights of the individual.

3.5 CONCLUSION

The importance of judges Rules or codes of practice cannot be over estimated in the quest to obtaining free and voluntary confessions from accused persons. Their application differs from country to country, the most distinguishing element being that of the extent to which basic fundamental rights and freedoms of an individual are respected.

Another aspect which is indispensable to the proper application of the codes of practice is the their conformity to the current needs of society. It follows that the more the codes of practice are revised, the more effective they become. Thus it is of paramount importance that that they are updated from time to time in order to conform to the changing needs of society.

ENDNOTES

1 Darwood R Detection of Crime in the United Kingdom p.66

² Cromwell, RULE IN ENGLISH LAW P. 423

3 Commission on English Practice and procedure

4 Archibold's Handbook on Criminal Procedure and Pleadings para 1089

5 Ibid.

⁶ Murphy P Training of police officers: A handbook p.17

⁷ Waugh D.S. Criminal Justice p. 487

⁸ www.afronethr.org/news

⁸ www.zamlil.ac.zm

⁹ cited in Chilombo Mwaka Bridget, Obligatory Essay, Police Powers and their Impact on Human Rights p.42

¹⁰ proposed committee on the Convention against Torture and other inhumane and other degrading treatment

¹¹ Republic of South African Codes of Practice

¹² www.humanrightssa.com/hrsa/

¹³ Ibid.

¹⁴ South African Handbook on Codes of Practice: A Commentary p.57

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ <http://www.cwfrh.org>

CHAPTER FOUR

4.1. INTRODUCTION

This chapter marks the climax of the study on the application and relevance of judges rules in Zambia in so far as they go in aiding the obtaining of free and voluntary confessions from suspects or accused persons.

The paper has widely shown the short comings in the application of judges rules by police officers, and this is largely due to their disregard for basic rights of the suspect, and in particular, his right against self incrimination.

Further more, this obligatory essay has shown that not only are judges rules to be adhered to by police officers, other persons in authority ought to apply them in order to ensure that a confession is voluntary, as illustrated by vast case law. Such persons in authority include chiefs and village headmen.

Moreover, the paper reveals the ideal application of judges rules in other jurisdiction such as England, where they were formulated.

Hence it is against this backdrop that the findings of this research are below discussed, as well as recommendations given.

4.2. Findings

Having carried out a substantial research on the application of judges rules in Zambia, the following were the findings;

a) Statistics on cases based on confessions

Statistics on cases coming to the supreme court on appeal from lower courts, according to the development survey Initiative (DSI) report, indicate that those cases that were based on confessions had for their grounds of appeal, coercion or inducement to confess by torture from police officers.

Notably, the supreme court recorded 198 criminal cases between the period of January and November 2003 of which 39 dealt with and / or were decided based on induced confessions.

This goes to show that obtaining confessions from suspects is still an effective way of obtaining evidence. However, it also shows that there are still some police officers who are in the habit of torturing suspects, thereby coercing them to confess. By contrast, statistics on the number of cases on coerced or induced confessions were much higher in the preceding years, where respect and regard for human rights by the police was minimal, and torture was the rule rather than the exception. This is illustrated by a chart from the Director of Public prosecutions (DPP)'s office on cases instigated by him between the period of 1993 and the first quarter of 1998, which indicated in general, an influx of confessions, amounting to 2, 897 cases on confessions obtained from suspects.

Out of these, 2, 177 were found to have been obtained by force thereby making them involuntary, whilst 720 were found to have been duly obtained.

b) Statistics from detainees.

Interviews carried out on some of the detainees at woodlands police station, Chilenje police station and Lusaka central police station as well as statistics obtained from, legal resources foundation indicate that most detainees were arrested without actually administering the famous warn and caution statement which makes the confessions voluntary. Rather most of them stated that they were merely told by the arresting officer to accompany the lather to the police station without explaining to them why they were so required or telling them the crime with which they were charged.

Further, that they were forced to confess to crimes they did or did not commit.

This clearly shows serious disregard of judges' rules which require an arresting officer to furnish the suspect with details of the crimes for which he is charged, as well as to administer the warn and caution statement. This consequently informs the accused or suspect of his right against self-incrimination.

c) *Other Persons in Authority*

The trend as regard interrogating authorities in this category has not changed in any way, as discussed in chapter two. This is largely attributed to lack of knowledge of the judges rules as well as basic rights of the individual incorporated therein. Thus disregard for these codes of practice still persists with this category of persons.

It follows from the foregoing that it is against this background that recommendations to the study are hereby made.

4.3. RECOMMENDATIONS

It must be stated from the outset that the application and consequent adherence to judges rules in the Zambian jurisdiction leaves much to be desired. This is attributed to a number of reasons discussed in chapter two. The obligatory essay therefore recommends the following;

1. AMENDMENT OF JUDGES RULES

The judges rules of practice that are being adhered to today are the 1964 judges rules that were adopted from the United Kingdom. These rules have never undergone any form of alteration since their adoption in 1964. By contrast the codes of practice in the United Kingdom have undergone various changes, which makes them more relevant in that jurisdiction's society.

Since their adoption in 1964, a lot of changes have occurred in the Zambia jurisdiction, as well as world over. Notable among these changes is the establishment of the Human Rights regime, which enhances the guarantee, respect, as well as protection of fundamental rights of the individual. It is upon this basis that many jurisdictions and in particular the United Kingdom had their codes of practice altered in order to be in conformity with the demands of protection of fundamental rights of an individual.

This consequently renders the Zambian Judges rules archaic owing to the fact that they are no longer as responsive to the new demands of human rights as they used to be 40 years ago, when their adherence was in conformity with the needs of society.

Moreover, there are now new problems in their application, which are peculiar to the police service. An example of this is the increased use of torture by the police to obtain confessions.

Therefore, it is recommended that in light of the enhanced recognition and respect of the fundamental rights of a human being, as well as the mushrooming of new situations, that these codes of practice be amended. This will consequently make them more responsive to the changing needs of society, and thus more practical. Thus an amendment of them is imperative because they are outdated and tend not to be in conformity with the dictates of society. These, amendments should be as frequent as possible in order to be more adequately applicable to changing society, as it the case in the untied kingdom.

2) CONFORMITY TO HUMAN RIGHTS

The essence of judges rules is to aid in the obtaining of voluntary confessions from accused persons or suspects. Inherent in this is the right of the individual against making statements that may be incriminating to him. It can therefore be said that the application of judges rules thrives in a regime that recognises as well as respects the basic rights of the individual. This is owed to the fact that without knowledge of the need to respect rights of an individual, the relevance of these codes of practice cannot be realised. Consequently, it is recommended that judges rules incorporate in them a detailed step by step procedure to guide police officers or any other interrogating person when questioning suspects. This entails that the rules have to be detailed on how to deal with a suspect, and step by the guidelines on how to question him have to be laid down so that his rights are protected.. This consequently enhances human rights protection as well as reduces the incidents of torture by the police.

3) GENERAL EDUCATION

It is suggested that the education of Human rights and in particular, a person's right against self incrimination, in the light of judges rules be taken seriously by the state.

Most persons who exercise functions of an interrogatory nature are unaware of the need to administer judges rules when questioning suspects. Most of them are quick to torturing and coercing suspects or accused persons to confess. This thereby makes the

concession so obtained involuntary. Notable in this categorisation of persons are village headmen, chiefs and persons forming village headmen, chiefs and persons forming village committees. These are usually not knowledgeable about Human Rights and the need to apply judges rules to make confessions so obtained voluntary.

It is hence suggested that both the police and general public be informed about individuals right against self-incrimination as well as the need to apply judges rules when questioning suspects. To date the most prominent organizations providing human Rights education are foundation of democratic process, (FODEP) AFRONET, women for Change, SACCORD and many others. However, as a notorious fact, these NGO's concentrate only in the urban areas, and the larger part of the rural area is left ignorant. One approach to provide this education is by what has already been done, by the ministry of Education, vis, revising the secondary school curriculum to include human rights education.

On the need to educate questioning authorities such as chiefs and village Headmen, it is suggested that they be sensitized on the importance and benefits of application of judges rules.

As regards police officers, knowledge of judges rules as well as respect for human rights is imperative, as it is part of their training. However observance of these is what leaves much to be desired. This therefore leads to the next recommendation.

4) STRONG SANCTIONS FOR ERRING POLICE OFFICERS

As discussed earlier, in the preceding chapters, the breach of judges rules leads to the sue of torture to obtain evidence, and this is undesirable for a country that recognises and guarantees human rights. Moreover, where a person has been forced to confess, the trend is usually that they cannot take action against such erring officers due to

- a) *the majority of people are illiterate about their rights.*
- b) *The prohibitive cost of litigation discourage even those that are aware of their rights to sue*
- c) *The general population of Zambia is fearful of police officers, hence they will abide even though they have not done any wrong.*

It is thus not a surprising state of affair that torture by the police has continued due to the fact that most of the offending officers have not been prosecuted or sanctioned. Behind such a state of affairs, it is recommended that other penalties other than court action be implemented for breach of judges rules leading to induced confessions. Hence it is suggested that police internal disciplinary measures be strengthened in order to command compliance from police officers.

5) INDEPENDENT BODY TO MONITOR OBSERVANCE.

It is often argued that when someone's authority is in check, they tend to act in compliance with the extent of such authority. Thus in light of the vast abuse of power by police officers and in particular their non observance of judges rules which lead to coerced or induced confessions, it is suggested that there be an independent body to monitor the adherence to these codes of practice, as well as to act as an effective control to keep their powers in check. This body should also sanction those officers who do not comply.

6) MAKING JUDGES RULES, RULES OF LAW RATHER THAN OF PRACTICE

The importance of judges rules in obtaining confessions cannot be underscored. A confession that is obtained from a suspect can, to the extent of its admissibility renders a conviction. Judges rules are made applicable in order to arrive at voluntary confessions. However these rules are not binding rules of law, but merely rules of practice. Consequently, a trial judge has the discretion to exclude a confession made in breach of these rules, or to admit such confessions in so far as it is relevant to the facts in issue.

It follows from the foregoing that if a conviction is made based on a confession obtained in breach of these rules, it may be unfair to the convict.

This tends to defeat the whole purpose of judges rules. Consequently, it will be prudent to exclude all confessions obtained in breach of judges rules, whether relevant to the facts in issue or not.

Closely connected to the foregoing is the need to give judges rules the force of law so as to command compliance from the police as well as other stake holders. This in turn will be seen as a way of enhancing basic rights of an individual. In other words, the judges rules need not merely be rules of practice but be rules of law, thereby attaching to them the importance they deserve.

4.4. CONCLUSION

At the core of this study has been an examination of the application as well as relevance of judges' rules in obtaining voluntary confessions from accused persons. The approach has been to look at the obtaining situation vis a vis the adherence to these rules of practice, as well as to assess the shortcomings in their observance.

Critical to this has been non-observance by police officers precipitated by torture of suspects, negligence and a general disregard for human rights. Lack of knowledge of these rules of practice as well as an individual right against self incrimination has

characterized the categorization of persons in authority, viz, chiefs, headmen, village committees, thereby rendering the disregarded for these rules of practice .

It is observed that these rule are merely guidelines to be followed when questioning an accused person. The paper endeavored to reconcile this aspect to the need for protecting a suspect against making statements that maybe incriminating to him. Nonetheless, the role of the police officer in maintaining law and order is an important one, but every suspect has the right of presumption of innocence and should thereby not be induced to give it up by making forced statements or confessions.

As a result, in a jurisdiction like Zambia that recognizes and respects human rights, individual worth is priceless. Moreover each person is protected against making statements that may be incriminating to him.

Thus an important inclusion to this study is that the general collapse of respect and recognition of fundamental rights of the individual has had serious repercussions on the application of judges' rules in Zambia. This ahs culminate din grave disregard of the individual right against self-incrimination. As a consequence, more and more prisoners are being coerced to confess for fear of threat to their lives or limbs. In addition, torture by the police has of late been on the increase, thereby making suspects more vulnerable. Thus it follows that there has to be a strict adherence to judges' rules in order to safeguard this right.

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APPENDIX – JUDGES RULES

A police officer is trying to discover whether, or by whom an offence has been committed he is to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. The police officer can do this whether or not the person has been taken into custody provided he has not been charged with the offence or informed that he may be prosecuted for it.

A person on whom there are grounds to suspect of an offence must be cautioned before any questions about it (other than questions if it is his answers to previous questions that provide grounds for suspicion) are put to him for the purpose of obtaining evidence which may be given to a court in a prosecution. The person need not be cautioned if questions are put to him for other purposes, for example, to establish his identity, or the location of any vehicle or the need to search him in the exercise of powers of stop and search.

Whenever a police officer has arrested or detained a person he should promptly inform the person of the reasons for his arrest and detention, and in any case, he must do so no later than 48 hours after such arrest and detention.

Whenever a police officer has arrested or detained a person, he must immediately inform that person that he has the right to speak privately with an instruct a lawyer or, if the person is a minor, to speak with his parents or guardians.

A person must be cautioned upon arrest for an offence unless (a) it is impracticable to do so by reason of his condition or behavior at the time, or (b) he has already been cautioned immediately prior to arrest in accordance with paragraph 1.2 above.

The caution shall be in the following terms: "You do not have to say anything unless you wish to do so, but anything you say may be taken down in writing and given in evidence."

Whenever a police officer has made up his mind to charge a person with a crime, he should first caution that person before asking him any questions or any further questions as the case may be.

4:

When a person is formally charged with an offence, the following caution shall be given to him:

"Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."

Steps should be taken to avoid suggestion or impression that his answers can only be used in evidence against him. This caution should be given to prevent an innocent person from making a statement, which might assist to clear him of the charge.

If a person in custody wishes to volunteer any statement, the usual caution should be administered.

A person in custody making a voluntary statement must not be cross-examined on it, and no question should be asked of him about it except for the purpose of clarifying ambiguity about what he has actually said. For example, if he has mentioned an hour of the day without saying whether it was morning or evening, or has mentioned a day of the week and a day of the month which do not agree, or has not made it clear to what place or what place he intend to refer in some part of his statement, he may be questioned to clear up the ambiguity.

A person in custody should not be questioned without the usual caution stated in Rule 5 above being administered first.

If a person in custody makes a statement before the usual caution is administered, the caution should be administered immediately thereafter before any further statement is taken from that person and the police officer shall certify on the statement the circumstances of its making.

After being cautioned, a person wishes to write down his statement himself, he should always be allowed to do so, in which case he shall be asked to write out and sign before writing what he wants to say, in the following form:

"I make this statement of my own free will, I understand that I need not say anything unless I wish to do so and that what I say may be given in evidence."

A person writing his own statement shall be allowed to do so without any prompting.

When a person has finished the statement, the person making it should be asked to sign it.

If a person says that he would like someone to write his statement for him, a police officer shall write the statement for him, but before starting he must ask the person to sign or make his mark, to the following effect:

"I, ..., wish to make a statement. I want someone to write down what I say. I understand that I need not sign it myself, but I understand that what I say may be given in evidence."

When a police officer writes the statement he must take down the exact words spoken by the person making it and he must not edit or paraphrase it. Any questions that are necessary (for example to make it more intelligible) and the answers given must be recorded contemporaneously on the statement form.

When the writing of a statement by a police officer is finished, the person making the statement shall be asked to read it and to make corrections, alterations or additions he wishes. When he has finished reading he shall be asked to write and sign or make his mark on the following certificate at the end of the statement:

"I have read the above statement, and I have been able to correct, alter or add anything I wish. This statement is true. I have made it of my own free will."

If the person making the statement cannot read, or refuses to read it, or to write the above-mentioned certificate at the end of it or to sign it, the senior police officer present shall read it over to him and ask him whether he would like to correct, alter or add anything and to put his signature or make his mark at the end. The senior police officer shall then certify on the statement itself in the presence of the person what has occurred.

10:

At any time after a person has been charged with or informed that he may be prosecuted for an offence a police officer wishes to bring to the notice of that person any statement made by another person of the content of an interview with another person, he shall hand to that person a true copy of any such statement or refer to his attention the content of the interview record, but shall say or do nothing to invite any reply. If the person charged wishes to make a statement in reply, the usual caution should be administered.

11:

When in making a statement a person uses Creole, he should be encouraged to give it in ordinary English. If he insists on giving it in Creole the police officer recording the statement should check with him the meaning of what he says in ordinary English and record it in ordinary English.

If the person making the statement in Creole does not understand ordinary English the police officer should record as accurately as possible in ordinary English what he understands the person making the statement to be saying, and later should state the circumstances when giving evidence.

12:

When the person making a statement makes it in a language other than English, the practice should be as follows -

Whenever it is practicable the statement should be written in the language spoken by the person making it.

If it is not practicable to write the statement in the language spoken by the person making the statement, it should be written in the English language;

After the completion of the statement it should be read back to the person making it in the language in which it was made; and the person making it should be invited to make any corrections he may wish and to sign it. Corrections should be written at the end of the statement;

If the person who has made the statement refuses to sign it, the senior police officer present should record on the statement itself, and in the presence of the person making it, what happened, and should sign what he

has written.

Rule 13:

Whenever a police officer has arrested or detained a person, that person shall be brought before a court without unnecessary delay, and in any case not later than seventy-two hours after such arrest or detention.

Rule 14:

Persons other than police officers charged with the duty of investigating offences, or charging offenders shall, so far as may be practicable, comply with these Rules.

Rule 15:

Failures to comply substantially with the provisions of these rules may result in a statement made by an accused person or person who subsequently becomes an accused person not being admitted in evidence.