Human Rights Commission

CONSTITUTIONALISM & HUMAN RIGHTS

Perspectives on the Judiciary and the Police in Human Rights Protection, Individuals Rights & Democratic Governance in Zambia

2008
STATE OF HUMAN RIGHTS REPORT IN ZAMBIA.
SIMPLIFIED VERSION
Inside ... Voices on Police Conduct

“Bad people. I was caught urinating in public (in Kabwe), and the police at @@@ station beat me up, the(y) called it toilet training, so that next time I will hold my urine till I get home. I was released the following day after my boss paid my guilty fine of K27, 000.”

- 24 year old male. Occupation: Garden boy.

***

“I personally arrested a thief, but when I took him to the police they told me to bring him back the following day.”

- 40 year old male. Occupation: Shop Manager.
A Human Rights Commission
project funded by

United Nations Development Programme
(UNDP)

State of Human Rights in Zambia 2008
Simplified Version

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Foreword

This Report is a simplified version of the Commission’s 2008 State of Human Rights Report.

About the 2008 State of Human Rights Report


The 2008 State of Human Rights Report provides human rights information premised on perspectives into the Judiciary, the police, individual rights and democratic governance within the framework of Constitutionalism and Human Rights. The Report recognises that constitutionalism enforces the rule of law, and therefore that observance of the rule of law is expected to secure predictability and security in relations between individuals and the State, and hence enhance human rights protection.

The Report shows that the human rights situation in Zambia in 2008 was undesirable. For instance, it is evidenced that the role of the Judiciary and the police within the framework of the rule of law and protection of human rights is severely constrained by inadequacies in institutional and infrastructural support capacities.

Further, individual rights and freedoms are continually violated. This is evidenced in continued subjection of individuals to prolonged inhuman and degrading treatment, arbitrary arrests, unlawful killings, and unlawful detentions.

In addition, individual’s participation and engagement in constitution making through their constituent representation is not very evident. The Report also shows that individuals have inadequate knowledge of their democratic rights within the framework of constitutionalism and human rights.

It is, however, hoped that the findings of this Report inform enhanced State interventions aimed at safeguarding constitutionalism and the rule of law as a means of strengthening human rights protection in Zambia. It is also hoped individuals will use the Report as a framework for influencing the State in making decisions on institutional support to institutions critical to human rights protection.

This version therefore does not change much of the original version but borrows much of the text and content of the 2008 Report so as to ensure it is replicated as close as possible to the original version. It offers extended explanations of the legal terms and human rights concepts and can therefore be used more as an education tool.

Pixie K. Yangailo
Chairperson
Human Rights Commission
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Acknowledgements

This simplified version like the original version of the 2008 State of Human Rights Report would not have been possible but for the contributions of the institutions, in particular the Judiciary and the Police; and, the individuals that lent their voices for making known the human rights violations they have experienced.

The Human Rights Commission, further, acknowledges the financial support of the United Nations Development Programme (UNDP) in the research and development, and publication of this Report.

The Commission also acknowledges the contributions of the reviewers of the original version of the Report Sindiso Kankasa (Governance Secretariat) Bairbre Fee (UNDP), Michael Soko (UNDP), Rumbizai Mutasa (HRC), and Simon Mulumbi (HRC).

Lastly, the Commission thanks its entire staff for the contributions and support during the compilation of this work. The Commission particularly acknowledges the contributions of the staff of the Commission's Research Advocacy and Planning Department – Hope Ndhlovu-Chanda, Sinyama Simui, Chipo Mushota-Nkhata, and Makungwe Abel; the Human Rights Officers – Patrick Mtonga, Mwiba Mwenda, Timothy Banda and Grace Sibanda; the consultant – Malala Mwondela; and, the principal consultant – Mbinji Mufalo.

E Mulembe
Director
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Lusaka

June 2009
### Acronyms

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<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>CID</td>
<td>Criminal Investigations Department</td>
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<tr>
<td>ECZ</td>
<td>Electoral Commission of Zambia</td>
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<tr>
<td>HP</td>
<td>Heritage Party</td>
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<tr>
<td>HRC</td>
<td>Human Rights Commission</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>LRF</td>
<td>Legal Resources Foundation</td>
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<tr>
<td>MMD</td>
<td>Movement for Multiparty Democracy</td>
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<td>NCC</td>
<td>National Constitution Conference</td>
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<tr>
<td>PF</td>
<td>Patriotic Front</td>
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<tr>
<td>SARPCCO</td>
<td>Southern African Regional Police Chiefs Co-operation Organisation</td>
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<tr>
<td>SADC</td>
<td>Southern Africa Development Community</td>
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<tr>
<td>UHDR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UPND</td>
<td>United Party for National Development</td>
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Human Rights are ..... 

“That which a person is entitled to have, to do, or to receive from others, and which is enforceable by law.”

- They are the birthright of all human beings;
- They exist independently of the will of either an individual human being or a group of people;
- They do not have to be given, bought, earned or inherited;
- They belong to each individual simply because they are human;

We are born with our Human Rights.
The Police and Human Rights

Article 104 of the Constitution defines the functions of the Zambian Police Force, which are:

- Co-operate with the Civilian Authority and other security organs established under this Constitution and with the

- Protect life and property;

- Preserve law and order;

- Detect and prevent crime; and,

- Co-operate with the Civilian Authority and other security organs established under this Constitution and with the

Section 30 of the Zambian Police Act defines police misconduct (for an officer below the rank of Assistant Superintendent) as when a police officer:

(a) acts in a disorderly manner or in any manner prejudicial to discipline or likely to bring discredit on the reputation of

(b) uses unlawful or unnecessary violence to any prisoner or other person with whom he/she

unlawfully or unnecessarily arrests, uses any unnecessary violence to any prisoner or other person with whom he/she

(c) behaves in a manner to the prejudice of good order and discipline.

The Force:

State of Human Rights in Zambia 2008 Simplified Version
1.1 Introduction

Reporting on human rights incidences and things that limit human rights enjoyment and protection in a country is important. Human rights monitoring and reporting provides individuals and their government objective information on the country’s performance with respect to observance of human rights, their protection and above all respect for rule of law, and maintenance of the dignity of the individual.

This simplified version of the 2008 State of Human Rights Report provides observations on the human rights situation in Zambia in the year 2008. Human rights are very wide. This report does not report on all of them but has selected to look at rights enjoyed within the topic ‘constitutionalism and human rights’. Thus, the following sections first provide an understanding of human rights, then proceed to attempt to define constitutionalism. The Report also discusses the meeting point of human rights and constitutionalism and how they are related or work together. Lastly, the section outlines how the 2008 Zambia Annual State of Human Rights Report is arranged.

1.2 Understanding Human Rights

Human rights have no agreed definition. The United Nations defines human rights as follows: “Human Rights are universal legal guarantees protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity”.1

The most commonly used definition of human rights are ‘claims which every human being is entitled to have and to enjoy as of right by virtue of one’s humanity, independently of acts of law without distinction on such grounds as race, gender, sex, pregnancy, marital status, colour, age, disability, national origin, religion, conscience, belief, etc.”

Human Rights Defined

Human rights are the rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity.

Human rights are universal – they are the same for everyone, everywhere.

Human rights are inalienable – they can neither be taken away, nor given up.

And human rights are indivisible, interrelated, interconnected & interdependent – there is no hierarchy among rights- no right is superior to the other and no right can be suppressed in order to promote another right.

---

1 Ref: The United Nations System and Human Rights: Guidelines and Information for the Resident Coordinator System” approved on behalf of the Administrative Committee on Coordination (ACC) by the Consultative Committee on Programme and Operational Questions (CCPOQ) at its 16th Session, Geneva, March 2000.
culture, language, birth or social status.
This means that:
✓ Any human being is born with them - they are natural or inborn;
✓ They exist independently of acts of law, the will of either an individual human being or a group of people;
✓ This also means people still have rights even when the laws of their countries do not recognise them, or when they violate them.
✓ They do not have to be given, bought, earned, inherited or forfeited; This also means they cannot be taken away- no one can deprive another person of them for any reason and nobody can renounce these rights by himself;
✓ They belong to each individual simply because they are human;
✓ One cannot enjoy one’s rights without the other e.g. when your right to health or to clean drinking water, to a clean environment or to protection from torture are violated your right to life is also in danger.
✓ No one right is superior to the other; therefore, national & international communities must treat all human rights in a fair and equal manner, on the same footing, and with the same emphasis.
✓ Human rights are the same for all human beings regardless of race, gender, sex, pregnancy, marital status, colour, age, disability, national or social origin, religion, conscience, belief, culture, language, birth or social status.
✓ Human rights are universal because they apply to every human being in the world.

Human rights can also be understood to form part of a social contract between individuals and the State or government - we allow the state or government to rule over us, in exchange for specific promises such as provision of good and just laws, places to resolve disagreements such as courts, clean and safe drinking water, hospitals, schools etc

Human rights are usually divided into two main categories: Civil and Political rights and economic, social and cultural rights.

Civil and political rights include rights like the right to life, to physical integrity, to due process and to vote. Civil and political rights require the government not to do something wrong against its people, for example not to kill you, not to torture you, not to unlawfully detain you, or not to deny you a speedy and fair trial before the courts of law.
Economic, social and cultural rights, on the other hand, include the rights to food, shelter, medical attention and social security. These rights require the government to do something for its people to enjoy them. Human rights are, therefore, entitlements that ensure that individuals or groups of individuals can, by virtue of being human, freely enjoy fundamental freedoms and that they will be treated with dignity and human worthy. Internationally, the Universal Declaration of Human Rights (UDHR) defines civil and political rights, and economic, social and cultural rights that countries should respect and protect.

The UDHR is a declaration that was drawn up for the world nations by the United Nations. It is not a binding document like a law for example, but it sets the minimum standards that all states or governments should observe in the promotion and protection of human rights. States and governments continuously refer to it when discussing human rights. Therefore, it has become a common standard of achievement.

Locally, human rights are upheld by being written down in the laws of a country, and are protected by the rule of law. In the Constitution of the Republic of Zambia, the Bill of Rights under Part III protects civil and political rights, and economic, social and cultural rights are provided under the Directive Principles of State Policy. Directive Principles of State Policy are standards that guide the government on what it should put in place to ensure protection and promotion of economic, social and cultural rights.

1.3 What is Constitutionalism?
To a common person constitutionalism is an unfamiliar and distant concept. Unlike concepts like human rights or democracy, constitutionalism until lately had no clarity of meaning in an individual’s everyday understanding. In seeking to provide an understanding of constitutionalism and placing it within the framework of an individual’s everyday experiences, this State of Human Rights Report adopts Bo Li’s definition of constitutionalism.

That is:

- a system of political arrangement that is founded and governed by a supreme law, that can only be amended by the will of the people or through their constituent representatives, in which the practice of the rule of law, separation of powers, checks and balances and good governance are observed, and the rights and development of the citizens are paramount.

An individual’s everyday understanding of the concept of constitutionalism therefore should recognise that:

(a) He or she lives in a country where the government and the political system are based on and directed by a supreme or most important law, which in Zambia is the Constitution. All other laws and actions by
the government, private entities and individuals must be in line with its provisions. The ones that are not in line with the Constitution are invalid.

(b) He or she understands that his or her system of governance is a democracy and can only be amended by the will of the people or through those who represent them. In Zambia the representatives of the people are members of parliament. The will of the people is exercised at regular intervals through elections.

(c) The government shall provide safeguards for the protection of the practice of the rule of law, separation of powers, checks and balances and good governance.

The rule of law requires respect for all law and that all individuals are held equal before the law.

The rule of law has three elements. These are:

(i). All individuals should be treated equally before the law, meaning no one is above the law;
(ii). No person should be subjected to arbitrary treatment; and,
(iii). All individuals should be subjected to the ordinary courts and laws established under the land.

Separation of powers is a principle that requires that the three organs that make up the government, i.e. the Executive, the Legislature and the Judiciary must all be separate and must each carry out its own separate government functions. For example, the Legislature (parliament) must carry out its work of making laws, the Judiciary (the courts) must carry out its work of deciding cases and the Executive (made up of the President and all the different government ministries and departments) must carry out its work of implementing the laws and policies.

This separation of government functions ensures that no one organ of government is more powerful than the other. Therefore, each organ can check what the other organs are doing and correct them where they do wrong or over step their powers and/or functions. This is what is referred to as checks and balances. This is one of the most fundamental tenets of modern governance, and as such is a key characteristic of any constitution. Of course, the separation of powers does not mean these bodies function alone; rather they work interdependently, but maintain their autonomy. Other tenets include the idea of limited government and the supremacy of law.
(d) His or her individual rights shall be protected. Protection is provided in Zambia by including human rights in the Constitution and by coming up with other laws that provide procedures for government conduct or behaviour. Where these laws are breached, courts must be available to provide a suitable solution or to protect the people.

Constitutionalism provides that in a democracy, a country’s Constitution is the highest and most important law. It defines the political, legal and social governance arrangement. As a result, as indicated above, it is expected that all laws and the behaviour of the government and its departments and agents are based on the rules and values of the constitution.

The Constitution is, therefore, considered to be paramount or fundamental law. Thus, if the constitution making process and the content of a country’s constitution are inadequate, the nature of democracy and rule of law within a country is affected. This will affect individual’s human rights, which can only be realized and protected under a rule of law framework.

In Zambia, the constitutional rules and values called the constitutional principles are stated in the introduction of the Constitution. These are:

(a) Maintenance of sovereignty;
(b) Equity of right to political choice and participation;
(c) Respect for the rights and dignity of the human family;
(d) Rule of Law;
(e) Pursuit of sustainable development;
(f) Upholding the right of every person to enjoy that person’s freedom of conscience or religion; and,
(g) Uphold the values of democracy, transparency, accountability, and good governance.

Therefore, constitutionalism is the idea that a government should be created on the basis of a Constitution and it should be limited in its powers and that its authority depends on its observation of these limitations. In particular, these limitations relate to legislative, executive and judicial powers. A constitution is the legal and moral framework setting out these powers and their limitations. This framework must represent the will of the people, and should, therefore, have been arrived at through consensus.

1.4 Constitutionalism and Human Rights – The Meeting Point!

From the foregoing section, it is clear that constitutionalism implements the rule of law. Constitutionalism provides for defining, in advance, the
powers and limits of government, its responsibilities to its people and how its departments and agents should behave towards the people. This brings about certainty and security and safety in relations between individuals and the government, as certainty entails that the government will and should apply the same laws in the same way - a way that must be known to its entire people before hand, and not in a random or selective way.

For instance, certainty is ensured in Article 18 of the Constitution which provides that every individual suspected of a crime should be charged in a language he or she understands (to help him or her prepare an adequate defence) and brought before a court of law within twenty fours (24) hours or be released on bond. Where it is not practicable to bring him or her before court within the specified time, he or she should be brought before court within reasonable time.

Thus, naturally, constitutionalism is a means by which respect of human rights is not only implemented but also institutionalised. This means, constitutionalism ensures that:
1. A constitution and other laws exist to guide how government is formed and to define it powers, functions and how it should behave;
2. Government institutions are created to carry out the functions of government which include the protection and promotion of the rights of its people.

A country’s constitution is its cornerstone in protecting the rights and liberties of individuals in its populations.

1.5 The 2008 State of Human Rights Report

The point of view of the concept of constitutionalism and human rights that are used in the following chapters in this Report are those that ensure certainty, security and safety in relations between individuals and the State or government as provided below.

(a) Rule of Law in Human Rights Protection

The rule of law, as indicated previously, refers to the supremacy of law, and the equal application of the law to all individuals, including government and state officials. The link between constitutionalism and rule of law is that constitutionalism is the basis on which all institutions should uphold the rule of law in any society. Constitutionalism is also safeguarded by the rule of law.

Most important is that the rule of law requires that a society (including its government and State agents) recognise the supremacy of all law. This provides the framework in which human rights are protected and remedies made available for the redress of violations
of an individual’s human rights.
Effective rule of law in any society is determined by factors that include political, legal and institutional factors. Political factors chiefly constitute the need for the willingness of political leaders and the power for the leaders to create and publicise laws, institutional practices and behaviours that are not contrary to the rule of law principles.

The legal factors necessitate that effective rule of law can only occur in a country if there exist laws that serve the public and defend human rights principles.

In addition, non-observance of laws by institutions and their malfunctioning leads to the collapse of effective rule of law. This limits the enjoyment of human rights by individuals as the institutions responsible for human rights protection become dysfunctional.

Consequently, this Report provides observations on the rule of law in 2008 within two frameworks.

These are:

(i) The role of the Judiciary in human rights protection; and,
(ii) The role of the police in human rights protection.

These are provided in chapters two and three. These chapters provide view points on the roles of the Judiciary and the police in human rights protection, and 2008 observances within the framework of the rule of law.

(b) Individual Rights
Every individual has the fundamental right to life, liberty, expression, association, and other such rights defined in the Bill of Rights. This section provides human rights violations that are, in part, a result of a failure by the government and its departments and agents to follow the provisions of the law and respect for human rights.

Chapter four, therefore, provides the observations on incidences of human rights violations in 2008. It specifically looks at cases of unlawful arrest, unlawful detentions, torture, unlawful killings, condition of detention centres, and freedom of assembly.

(c) Democratic Governance
Constitutionalism also requires that people have the right to
participate in the governance of their country. Meaning, individuals/citizens should be allowed either to vote for the people they want to be in government or should be allowed to stand in an election. It also means that when the government is formulating laws such as the Constitution or laws to protect vulnerable groups such as women, children or disabled persons, the people should be allowed to take part in the law making and to say what the law should be. Also, where a government want to put up a clinic or a school or some other development project, the local people should be consulted as to whether or not this should be done and how. In short, constitutionalism is also about democracy and good governance. Chapter five of this report covers issues on constitution making (the NCC) and the elections held in the year 2008.

Supporting legal and institutional frameworks and social context for human rights protection are provided in each relevant section of the Report. It is, thus, hoped the 2008 State of Human Rights Report provides indicative milestones of future monitoring of constitutionalism and human rights protection in the country.

1.6 Limitations

All incidents of human rights cases mentioned in this Report are based on the Human Rights Commission records, except where other secondary sources are provided. It has always been the wish of the Commission to base its reports on primary sources of information. Unfortunately, most government institutions do not either respond to basic information requests on time, or do not allow basic information to be provided. This is because most government institutions tend to consider basic information generated within their institutions as secret or highly confidential. Bureaucratic hindrances are, thus, commonplace when seeking even the most basic information from a government institution.
CHAPTER TWO
THE JUDICIARY
AND HUMAN RIGHTS PROTECTION

“The rule of law and the proper administration of justice [...] play a central role in the promotion and protection of human rights,... the administration of justice ...and, especially, an independent Judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to democratization processes and sustainable development”. - The UN General Assembly, Resolutions 50/181 of 22.12.1995 and Resolution 48/137 of 20.12.1993 respectively.

2.1 Introduction

The Judiciary consists of courts that administer justice by ensuring that there is fairness in deciding cases. It is one of the three organs (the other two being the Legislature and Executive) that make up a government. The Judiciary hears cases before it and decides in the manner fixed by the law of the country. For rule of law to be upheld and human rights protected, it is important that courts function with due care, by themselves and without bias.

The manner in which the Judiciary is set up and managed in a country is very important in relation to the protection of human rights and freedoms. Courts play an important role in ensuring that victims or those who are likely to be victims of human rights violations obtain effective remedies and protection and that those that violate the human rights of others are punished by law. They also ensure that anyone suspected of committing a criminal offence receives a fair trial as required by law; and that the other two organs of government perform their duties in respect of human rights and the rule of law.

Courts have the work of enforcing, promoting and protecting human rights because they are expected to interpret the law of the country in a fair manner and without taking sides (being impartial) or seen to show favour. Therefore, it is an institution that ensures that individual’s rights are protected and the rule of law upheld.

2.2 The Judiciary in Zambia

The Constitution of Zambia in Part VI creates and provides for the
functioning of the Judiciary. The judicial system in Zambia is based on a system of laws comprising the following: Local statutory law, English law, Common law and Equity, and African customary law.

Under local statutory law, we have the Constitution, which is the most important law in Zambia, and also various Acts of Parliament. African customary law on the other hand reflects the customary practices accepted as law by members of the Zambian society to which they apply.

English statutory law is used by courts in Zambia, but limited in terms of application because it has to be subjected to our own laws and circumstances. This covers all Acts of Parliament that were applied in England before August 17, 1911, as provided in Chapter 11 of the Laws of Zambia. Selected Acts of Parliament which were enacted in Britain after August 17, 1911 apply to Zambia as they are allowed by Chapter 10 of the Laws of Zambia.

Common law means the law that was applicable to the whole of England and remains England’s traditional law that is not written. It equally refers to judge-made law as opposed to statutory law, and the law applicable in the common law courts as opposed to equity.

Equity, on the other hand, is described as the state of being equal or fair; even handed or not biased. Common law and equity, according to the provisions of the High Court Act Chapter 27, are administered side by side in the courts in Zambia.

Statutory law, English law, Common law and equity are administered by the Supreme Court, High Court, and Subordinate Courts (commonly called Magistrate Courts). These have the power to hear both criminal and civil cases. Additionally, they also receive and hear appeals from lower courts. The local courts, on the other hand, mostly hear civil cases and customary law is used to decide cases.

The Supreme Court is located in Lusaka, while the High Court is located in Lusaka, Ndola, Kitwe and Livingstone. Further, the High Court travels round all the provincial headquarters to hear and decide criminal cases in what is referred to as “circuit criminal sessions.” Members of the public, therefore, are free to lodge complaints with the High Court at any of the registries at the High Court buildings. Subordinate Courts are established at all districts in the Country while several local courts are equally established in different districts.

Rule of law principles of certainty, security in relations between individuals and the State, and the protection of individual freedom are defined in the Constitution of Zambia. This is in Part III called the Bill of Rights.
The importance of the courts in the rule of law and in upholding human rights is their role in protecting human rights by way of applying same and accepted procedures established by law itself; and by administering effective remedies. The judicial system embodies the rule of law principal that there shall be respect for law and that all individuals are equal before the law. For individual freedoms to be realised, it is necessary for the courts to be independent, fair, and to function properly.

The following sections provide the findings on the work the Judiciary do in human rights protection, particularly in relation to its independence and administrative functioning.

2.3 Judicial Independence

In a democratic society, the independence of the Judiciary is central to the effective administration of fair and equal justice. Such independence is important if the courts are to act as an effective check on things done not in accordance with the constitution acts of the executive and legislative arms of government. This independence is connected to: - the principle of separation of powers and the principle of the rule of law.

The doctrine of separation of powers require that the three arms of government – legislative, judicial and executive should be clearly separated from each other and that each, while not being isolated, should operate freely from other organs.

As for the rule of law, independence of the Judiciary is an essential element for its support. It is not enough to say that the courts should follow and apply the laws faithfully and equally to all. One must in addition demand that there should be no power to the Executive or other body which would relieve a person from the duties and processes of the law.

Independence is defined as not being subject to the control of any person, or entity. It is a state of being free from unjustified control by others (that is to say, protection or immunity from improper or unlawful influences, direct or indirect). With regards to the Judiciary, it refers to the freedom with which judicial officers carry out their judicial functions.

Independence of the Judiciary is also affected by issues such as appointment of judicial officers, their remuneration, general financing of the Judiciary and a number of other factors. This independence is compromised if judges are appointed, paid, promoted or dismissed by persons or bodies which are controlled directly or indirectly by the Executive, as is the case for the majority of countries in the region. The Zambian Constitution guarantees judicial independence not only in its
proclamation that the Judiciary shall be independent, but also states that it shall be administered in accordance with the provisions of an Act of Parliament. It further states that all members of the judicature shall be subject only to the Constitution and the law.\textsuperscript{4}

For Supreme Court which serves as the final court of appeal, the Chief Justice and the other eight judges are appointed by the President and their security of office is guaranteed as their appointment is ratified by the National Assembly. The Judicial Service Commission created under the Judicature Administration Act has powers to appoint staff of the judicature and are thus responsible for determining the suitability of those appointed to serve in the Judiciary.

Interferences on judicial independence are often witnessed by incidents such as where the government or its agents do not abide by the decision of the court; or where court orders to release those arrested and detained arbitrarily by police and/or other state agents are ignored, and with the individual being detained as soon as they step outside the courts. However, in 2008, no such incidents were recorded.

2.4 Institutional Functioning
Article 18(1) of the Constitution of Zambia, which provides for the protection of the law, requires that any person charged with a criminal offence if the charge is not withdrawn, should be afforded a fair hearing within a reasonable time by an independent and fair (impartial) court established by law. This is also called the right of an accused person to a speedy trial. Institutional functioning relates to the resources that are required to ensure that one enjoys his or her right to a speedy trial. Thus, adequacy of human resources in the Judiciary, pay/salaries, and physical facilities are important to securing protection of the law and thus the right to a speedy trial.

In 2008, observations on judicial institutional functioning reveal that there were things that limited the enjoyment of the right to protection of the law for accused persons. This is evidenced with respect to the few courtrooms to allow speedy disposal of cases; pre-trial detentions; individuals in remand for bailable offences; abuses of court authority; delayed cases and, unfair decisions. These incidences are cited in the following sections, in particular with reference to criminal cases.

2.4.1 Courtrooms and Cases per Court per Day
Observations in 2008 show that individuals' right to a speedy trial, is undermined by the Judiciary in Zambia due to inadequate courtrooms. Cases before the courts are thus always delayed.

\textsuperscript{4} See Article 91(2) and 91 (3)
For instance:

**Chipata Subordinate Court**
This Court has five (5) magistrates, and two (2) courtrooms. That is, there are 2.5 magistrates per court. When the High Court is sitting in Chipata it uses the same courtrooms, hence further reducing the ratio. The number of court cases per magistrate is between seven (7) and twelve (12) per day.

**Kasama Subordinate Court**
This Court has five (5) magistrates, and three (3) courtrooms. When the High Court is sitting, one courtroom is used primarily for the sittings. The magistrates further share the two chambers available at the courts.

The number of court cases per magistrate per day, in Kasama, is four (4). In the period January to November, a total number of five hundred and ninety-nine (599) cases were handled. A hundred and six (106) of them were cases brought forward from the year 2007. Of these, thirty four (34) were committed to the High Court, sixty-seven (67) were discharged and ninety-one (91) cases were awaiting trial. Two hundred and eighty-four (284) were imprisoned. Females constituted four (4) and juveniles' six (6) persons of those imprisoned.

Magistrate case loading in terms of criminal cases in two months, for instance January and February 2008, shows average percentage disposal rates of 28 and 27 percent respectively. That is, percent cases disposed relative to all cases in the month.

When considered as a percentage disposal rate per individual magistrate, this however varies from as low as 15 percent to a moderate 49 percent, in the month of January. In the month of February, this varies from 0 percent to 70 percent.

Some courts are however doing well. An example is **Kitwe Subordinate Court**.

This Court has six (6) magistrates with magistrate-to-court ratio of 1:1, and an average of four (4) court cases per magistrate. The case disposal rate is 60 to 70 percent, with the delays being mostly due to bail jumpers (30 to 40 percent).

Further, disposal rates of criminal cases from selected courts in the
period January to November 2008 vary from 51 to nearly 90 percent. Provided below are summaries of percent disposal rates of criminal cases from six (6) selected districts.

Table 1.0 Percent Cases Disposed Relative to All Cases in the Period Jan - Nov 2008

<table>
<thead>
<tr>
<th>District</th>
<th>Percent Disposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lusaka</td>
<td>51.0</td>
</tr>
<tr>
<td>Kafue</td>
<td>61.4</td>
</tr>
<tr>
<td>Luangwa</td>
<td>89.6</td>
</tr>
<tr>
<td>Siavonga</td>
<td>47.4</td>
</tr>
<tr>
<td>Chisamba</td>
<td>82.7</td>
</tr>
<tr>
<td>Mumbwa</td>
<td>64.9</td>
</tr>
</tbody>
</table>

2.4.2 Pre-trial Detentions

Section 202 of the Criminal Procedure Code of Chapter 88 of the Laws of Zambia provides that a court may, before or during the hearing of any case, postpone the hearing of a case to a certain time and place. This is referred to as an adjournment. An adjournment can be done while either releasing the accused from police custody, or committing him/her to prison or releasing them on bail with or without sureties. Such adjournment has to be done in the presence of the accused or their lawyers. The section further provides that any such adjournment should not exceed thirty clear days or, if the accused is in prison, it should not exceed fifteen clear days from the day of the adjournment.

This provision is, however, sometimes not adhered to, as is evidenced by the observed incidence of prolonged pre-trial detention of Ernest Banda.

Banda, Ernest

Ernest, a suspect accused of robbery, in July 2008 asked the Legal Resources Foundation (LRF) to secure his release from detention. Banda, who has been in detention since 2005, last appeared in court in 2006 and allegedly has been kept in prison without trial because his case record at court cannot be found.

2.4.3 Individuals in Remand for Bailable Offences

Bail is some form of pledge, or money or property deposited to a court in order to persuade it to release an individual remanded (or to be remanded) whilst on trial. This is on the understanding that the individual will return for trial or forfeit the bail, and be guilty of the offence of failure to appear on the expected date. In terms of Zambian law, the court can decide when to grant or deny a bail application.

Section 123(1) of the Criminal Procedure Code Chapter 88 provides
that, other than the offences of murder, treason, misprision of treason, treason-felony, aggravated robbery or any offence that carries a possible or mandatory death penalty, all other offences are bailable. It further states that for the bailable offences, a person arrested or detained or one in custody and who is appearing in a Subordinate Court, High Court or Supreme Court may apply for bail and the police officer or court will make a determination as to whether to grant the bail or not. The bail may be granted upon certain conditions identified as necessary to secure the appearance of the accused at the next court hearing (that is to say, the date of adjournment).

The factors considered when granting or refusing bail are defined in the Criminal Procedure Code and in decided cases⁵, and these include:

(a) nature of the accusation against the accused person applying for bail and the severity of the punishment which may be imposed;
(b) nature of the evidence in support of the charge;
(c) independence of sureties if bail were to be granted;
(d) prejudice to the accused person if he or she is not granted bail; and,
(e) the prejudice to the State if bail is granted.

Further, in securing an individual’s protection of the law, Section 126 of the Criminal Procedure Code provides that bail amounts are such that:

(1) The amount of bail shall, in every case, be fixed with due regard to the circumstances of the case, but shall not be excessive.
(2) The court or police officer admitting a person to bail or releasing him on his own recognizance may, in lieu of a bail bond, accept a deposit of money, or a deposit of property, from any person who would otherwise have had to execute a bail bond under the provisions of section one hundred and twenty-three, and may attach to such deposit such conditions as might have been attached to a bail bond, and on any breach of any such condition such deposit shall be forfeited.
(3) The High Court may, in any case, direct that the bail or deposit required by a subordinate court or by a police officer be reduced, or may vary or add to any conditions imposed under the provisions of section one hundred and twenty-four.

Notwithstanding the foregoing provisions that seek to secure an individual’s protection of the law, in 2008 there were incidences of individuals in

⁵ As exemplified in the case of Oliver John Irwin v The People (1993-4) ZR 54 (HC)
remand for offences for which bail could have duly been granted either because of their socio-economic circumstances or lack of knowledge that they could apply for bail.

For instance, in Ndola Central Remand Prison, there were two hundred and eight-four (284) individuals. Eleven (11) were juveniles. Ninety (90) of the individuals in remand are were facing bailable offences, and most could either not raise sufficient sureties or had no permanent domicile (no fixed abode)\(^6\), or the amount of bail set was excessive.

Of these, there were incidents like:

**Chikaka, Thomas**
Thomas was arrested for theft on October 21, 2008 and first appeared before the Court on October 28, 2008. Thomas was remanded in prison, because he was not able to raise sufficient surety, as his uncle, a night guard, was not granted authority to sign bail for him.

**Musongo, Bright**
Bright, a taxi driver, was arrested for causing death by dangerous driving in December, 2008 and first appeared before the Court the same month. Bright was remanded in prison, because he could not afford the cash bail of Kwacha 2.5 million that he was given.

Further,

**Banda, Julius - Namseche Prison, Chipata**
Julius was arrested in Chipata on September 9, 2008 charged with house breaking and theft, and first appeared before the Court on the 12th of the same month. Julius was remanded in prison, because bail was denied, even though he is HIV positive and had no access to ARVs for two months.

**Mizi, Chalton - Namseche Prison, Chipata**
Chalton was arrested on October 20, 2008 charged with being in possession of a prescribed government trophy. He appeared before the Court on November 15. Chalton was remanded in prison because his application for bail was denied because similar offenders often jumped bail as they have no permanent domicile.

2.4.4 Abuse of Court Authority

The Judicial (Code of Conduct) Act No 13 of 1999 secures an individual’s

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\(^6\) The residence where you have your permanent home or principal establishment and to where, whenever you are absent, you intend to return. In law every person appearing before a Court is assumed to have one and only one domicile at a time.
protection of the law by prescribing behaviours not expected of judicial officers in their pursuit of judicial duties and or outlawing abuse of court authority.

For instance Part III (II (1)) of the Code provides that a judicial officer shall not conduct activities outside the office that:

(a) create conflict of interest with judicial responsibilities;
(b) create doubt on the officer's capacity to act impartially and free of bias as a judicial officer;
(c) bring the integrity, independence and impartiality of the Judicature into question and thus cause embarrassment to the judicature as an institution; and,
(d) interfere with the proper performance of judicial duties.

Contrary, to the foregoing, in 2008, two incidences of abuse of court authority were observed. These are:

**In Samfya**
In October, Judy Kabona (who was pregnant at the time) was picked up from her home almost naked and handcuffed by a Sokontwe Local Court clerk for contempt of Court. Kabona was kept under house arrest for seven days, in the court clerk’s house. [Source: LRF]

**In Kapiri Mposhi**
In April, a Kapiri Mposhi magistrate detained Rachael Bwalya (19) and her nineteen (19) month old baby for alleged contempt of court. The magistrate alleged that the crying of the infant, who lived with Bwalya near the court, disturbed court proceedings. Bwalya was released only after her mother paid a fine of Two hundred and Fifty thousand Kwacha (K250,000.00). Bwalya filed a complaint demanding compensation from the magistrate for unlawful detention.

**2.4.5 Delayed Justice and Miscarriage of Justice**

As noted earlier, Article 18(1) of the Constitution of Zambia states that:

"If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law".
This, therefore, entails that an individual should not be subjected to unnecessary delays in seeking the protection of the law either during trial or appeal hearings. Miscarriage of justice occurs when, in administering the law, there is failure to follow rules and procedures laid down by law.

There were incidences of delayed justice, miscarriage of justice, and delayed appeal hearings in 2008.

The recorded incidences are:

**Ndola Central (Remand) Prison**

**Mkandawire, Samuel**
Samuel was arrested by police in Ndola on February 3, 2008 for defilement. He was convicted by the Ndola Subordinate Court and committed to the Ndola High Court for sentencing. On June 24, 2008, the High Court established that the lower court trial was defective and that there should be a re-trial. Samuel was, at the time of the visit in remand in Ndola Central (Remand) Prison and had not appeared for re-trial since June 24, 2008 when the High Court referred the case back as the Prison Authorities had not received his indictment.

**Kanika, Tresfold**
Tresfold was arrested for rape in Ndola on May 27, 2008. He was convicted by the Ndola Subordinate Court and committed to the Ndola High Court for sentencing. On October 13, 2008, the High Court referred the case back to the lower court for re-trial. Re-trial has since not commenced as Tresfold has not been re-allocated for re-trial. Tresfold is in remand in Ndola Central (Remand) Prison.

**Kabwe Maximum Prison**
There are one hundred and sixty seven (167) male death row inmates in Kabwe Maximum Prison whose appeal cases are still pending before the Courts. The appeals range from those pending for over ten (10) years to a couple of months.

Incidences of appeals of male death row inmates pending for five (5) years and longer are provided in Appendix II.

The appendix shows that slightly over two thirds of the death row inmates have their appeals pending for five (5) years or more. Seven point eight (7.8) percent of the death row inmates have had their appeal cases pending for ten (10) years and
more, and 28.7 percent have been pending for between ten (10) years and five (5) years.

In Senanga - Sishekanu, Sandra
On July 14 2006, Sandra Sishekanu was allegedly raped by a court interpreter at Senanga Subordinate Court offices. Sandra reported the matter to Senanga police, but officers declined to take up the matter. She proceeded to hospital where she was attended to and the doctor’s findings were recorded and later handed over to the police the same day, but nothing was done. Each time she made a follow up on the case, she was slapped with “dreamed up” charges.

Sandra was detained on January 22 to 23, 2007 and on February 6 to 23, in the same year.

In January 2008, she was charged with an offence of using abusive language and convicted for five months which she served until April 17, 2008.

In Kasama - Chilufya, Pamela
Pamela was wrongly convicted and sentenced to two (2) years imprisonment for abortion. Pamela was convicted in November 2006 while she was four (4) months pregnant. Five months into her sentence she gave birth in prison. The records at prison indicate that Pamela was signed in on December 6, 2006. The Officer-in-Charge confirmed that Pamela gave birth while serving her two year sentence at Chinsali Prison.

The Doctor confirmed Pamela was four (4) months pregnant. However, the medical evidence was not given in court by the prosecution despite the Doctor’s expert evidence given to them. The trying Magistrate did not also bother to request for evidence from the Doctor and further accused Pamela of incriminating herself by deciding to remain silent throughout the proceedings.

2.5 Reflecting Back

It has been recognised in this chapter that the importance of the Judiciary in the rule of law and the realisation of human rights is, mainly, its role in protecting human rights by way of due process and effective remedies. However, the incidences in 2008 show that in Zambia, this role is not sufficiently fulfilled as the Judiciary is functioning under very constrained
institutional support.

The lack of adequate courtroom space, for instance, inevitably results in undue delays in the disposal of cases and thus constraining an individual’s fulfilment of the right to a speedy trial.

In retrospect, it can be argued that the insufficient institutional infrastructural support, abuse of court authority, miscarriage of justice and delayed appeal hearings, ultimately show that individual liberties that are supposed to be protected by the Judiciary are instead violated.
CHAPTER THREE
THE POLICE
AND HUMAN RIGHTS PROTECTION

“Even though police officers are not experts in the area of human rights, they are aware of what is right and what is wrong... They know that people’s rights are supposed to be respected and protected... It is sad that human rights are misunderstood by members of the public. They think that they can do whatever they want, hence the need for both the Police and the Human Rights Commission to educate them so that they understand how they should also have regard for other people’s rights.”
- Words from a Division Commanding Officer, Zambia Police Service.

3.1 Introduction

The Police is a very important institution in human rights protection and equally in protecting the Constitution and other laws. It is the work of the police to protect people and property in society. Above all, they have the responsibility of maintaining law and order. However, as shall be seen in this chapter and the following chapter, sometimes the behaviour of the police especially to people who want to be protected by the law is not good.

Observations on the work of the police in human rights protection; the conditions under which they are working, and the feelings people have about police officers in Zambia are provided in this chapter.

3.2 The Zambia Police Service - the Law, Behaviour, and Conditions

3.2.1 The Law

The Constitution, which is the most important law in Zambia, in Article 103 creates a police force termed the Zambia Police Force while Article 104, talks about the functions of the Zambia Police Force which among other things include: protecting life and property; preserving law and order; detecting and preventing crime.

Additionally, an Act of Parliament called the Zambia Police Act clearly

7 The term Zambia Police Force is no longer used, even though that is what is in the Constitution and the Police Act. It is now commonly referred to as the Zambia Police Service. The service falls under the Ministry of Home Affairs and is headed by an Inspector General of Police.
8 Cap 107 of the Laws of Zambia
defines the makeup of the police, administration, powers and the work the Force is meant to do. The Inspector-General is the in-charge of the entire Police Force and controls all police officers in Zambia. He/she provides for police training, clothing, things to use, and shelter so that police officers can work well in protecting people.

3.2.2 Police Conduct

The Constitution and other laws that control the conduct of public officers also apply to police officers. Therefore, they are reasonably expected to give effect to provisions meant to protect, respect and promote human rights (contained in the Bill of Rights). Further, behaviour/conduct, and how the police should related with members of the public is provided in the Zambia Police Act.

A police officer below the rank of Assistant Superintendent commits an offence if he is guilty of bad conduct or behaviour bringing down the name or image of the Force. It is also an offence if he does not follow the law in exercising his powers or authority; makes an necessary arrest without following the law or use unnecessary violence to a prisoner or any other person...

In 1999, some changes were made to the Zambia Police Act in order to improve police conduct towards the public or individuals, as the existing provisions did not clearly provide for complaints to be made against a police officer who misconduct himself. Following the changes made, the Police Public Complaints Authority (PPCA) was created.9

The PPCA is at the moment one of the institutions where complaints against police actions and those, which result in serious injury, or death of a person can be reported.

The PPCA has powers to investigate all complaints reported by a person affected by police action or reported by another person or organisation on behalf of the affected person. However, the complaint can only be made to the Secretary of the Authority, Officer in-charge of a police station/post or the Inspector General of Police if it occurred within two years of making the report.

The Authority sends its findings and recommendations to the Director of Public Prosecutions, Inspector General of Police and the Anti-Corruption Commission. Unfortunately, the recommendations are not always acted upon because the same law give those to whom the recommendations are sent to decide whether or not to take an action against the erring officers.

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9 Under section 57B
In addition, the Force has a police professional standard unit which was established in July 2003. The Unit investigates cases of corruption, arbitrary arrests and detention and other unprofessional behaviour within the police Force. The professional standard unit has power to recommend action against a police officer(s) found guilty of police misconduct.

At the international level, rules of police behaviour are to be found in international agreements. In Southern Africa, police conduct is regulated by the Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO)\textsuperscript{10} Code of Conduct for Police Officials. It has provisions aimed at upholding human rights and the rule of law.

Article 1 of the Code on respect for human rights, for instance states that:

“In the performance of their duties, police officials shall respect and protect human dignity and maintain and uphold the human rights, including property rights, of all persons.”

The Code does not allow torture, cruel, or treatment that lowers the respect and standard of a human being.

The SARPCCO Code of Conduct for Police Officials is attached to this Report in Appendix III.

At the international level, the United Nations Code of Conduct for Law Enforcement Officials adopted by the UN on December 17, 1979, contains articles seeking to guide police conduct towards individuals or the public. For instance Article 5 does not allow torture or anything with the effect of lowering the respect of a human being. It further makes it clear that when it comes to the violation or abuse of these rights no excuse can be given by law enforcement officials.

Observations made on police conduct in 2008 within the Police Public Complaints Authority (PPCA) framework shows that there were sixty four (64) complaints of police misconduct received in the period January to June. These varied from unlawful detention, unprofessional conduct, police brutality, lack of action by police, abuse of authority, to deaths in police custody.

Further, in May police unprofessional conduct was seen when police shot and injured two University of Zambia students in Lusaka. The students

\textsuperscript{10} SARPCCO is an international independent Police organisation covering Southern Africa Development Community (SADC) countries, except Democratic Republic of Congo (DRC)
were protesting against their low government sponsored living allowances. Police used live bullets to disperse the students.

3.2.3 Institutional and Occupational Conditions of the Police in Zambia

(a) General Observations
The police’s respect and compliance to a system of laws, and human rights protection is not only a function effected by the law like the Police Act, but also a function of their institutional and occupational conditions.

To qualify for training as a police officer at the Zambia Police Training College or at the Paramilitary Training Camp, both in Lilayi (Lusaka), and the Zambia Police School of Public Order and Maintenance in Kamfinsa (Kitwe), an individual has to have a Grade 12 full certificate. The training for police officers at these colleges has recently been reviewed to include Human Rights law as a subject. Police training takes six (6) to twelve (12) months, and during this period trainees (recruits as they are commonly referred to) take classes in simple human rights issues. No on-the-job instruction or in-service training in human rights education is provided after a police officer graduates from the college. Inadequate resources have been cited as limiting the intended human rights training once officers get into the field.

Police salaries (wages) are determined at the same time with those of other civil servants. The salaries can be compared to those of teachers in the Ministry of Education. When compared to, for instance, what a family of six people need in a month\(^{11}\) of about Kwacha one million one hundred thousand (ZMK 1, 100,000.00\(^{12}\)) for Lusaka, police salaries are just sufficient for provision of minimal sustainable livelihoods, which is unlikely to result in well motivated public servants.

The total amount, before paying tax and other deductions, of middle to lowest rank in the Police Service, (that is Superintendent, Assistant Superintendent, Chief Inspector, Inspector, Sub-Inspector, Sergeant, to Constable) are from about Kwacha two million three hundred thousand (ZMK 2, 300,000.00) to Kwacha one million one hundred and seventy thousand (ZMK 1, 170,000.00).

The take home salary (after tax and other deductions) in the same rank vary from about Kwacha one million nine hundred (ZMK 1, 900,000.00) to Kwacha one million two hundred (ZMK 1, 200,000.00), with housing allowance\(^{13}\) included in the same amount.

Housing allowances, in this range of officers, ranges from Kwacha three hundred and sixty thousand (ZMK 360,000.00) to Kwacha two hundred thousand
thousand (ZMK 200,000.00). These allowances lead to suffering by police officers in most urban and bigger rural stations as they are below the rental prices for good accommodation. This is worsened by the lack of adequate accommodation within police camps. Appendix IV provides sample salaries for Superintendent, Assistant Superintendent, Chief Inspector, Sub-Inspector, and Constable.

In addition, the police are not enough. There are supposed to be 27,000 police officers in the country but only about half of this number has been employed. Further, most police stations and police posts have no means of transport or adequate fixed line telecommunication facilities. In most Stations fixed line telephone facilities have been disconnected for failure by the Police Force to settle phone bills. While in other cases such telecommunication facilities are entirely not there. Police officers use personal mobile phones for communication purposes during investigations and other duties. Members of the public have to use the toll free 991 to call most police stations as fixed line telephone facilities are non-existent. This results in delayed police response as the toll free is monitored at the district headquarters.

Stationery is rarely provided and when it is provided it is always inadequate. In some cases, members of the public or complainants have to provide stationery. Photocopying facilities are non-existent in most Stations.

The most important thing to know is that, inadequate conditions and limitations in institutional support are mostly caused by inadequate government funding to the Police Force, and failure to give the available limited resources, like motor vehicles, to priority areas.

(b) Specific Observations

“Whenever we received a complaint, we relied on well wishers to provide us with transport. At night, when the reliable well wishers were asleep, we could not do anything even if the matter reported is urgent.” – Words of a Station Officer-in Charge, Zambia Police Service.

Following the general observations provided in the previous sections, specific observations on conditions of the police in Zambia are here provided from selected districts. The districts are Kabwe, Kitwe, Mongu and Ndola.

Kabwe
Chowa Police Station

The Station normally supposed to have (100) officers. The current staffing level is fifty (50) officers.

The station has one motor vehicle and a single fixed line
telephone extension that only has receiving functionality. Stationery and fuel is erratic, with officers always requesting clients/complainants to make copies for themselves as photocopying facilities are non-existent.

**Kabwe Central Police Station**
Kabwe Central Police Station is normally supposed to have (200) officers. The current staffing level is eight-nine (89) officers.

The Station has no motor vehicle, fixed line telephones, and stationery supplies are insufficient.

**Kasanda Police Station**
Kasanda Police Station has forty (40) officers out of an expected establishment staffing level requirement of one hundred and thirty (130).

The station has no transport and fixed line telephone. Water is irregular, and officers often resort to drawing water from a well.

**Kitwe**
**Garnerton Police Station**
The Station and its outlier posts is normally supposed to have one hundred and twenty (120) officers, but is staffed with twenty-two (22) officers. The Station has one (1) office and an enquiries office improvised under a tree. There is no staff accommodation within vicinity of the Station. Accommodation is provided at Mindolo Police Station which is about twelve (12) kilometres away.

The Station does not have vehicles or motorbikes for its operations or for mobility in investigations. Communication facilities are inadequate as there is no fixed line telephone facility.

In addition, the Station seldom has official stationery supplied. Further, the Station has no holding cells for persons being detained awaiting charge or investigations.

**Kitwe Central Police Station**
The Central Police Station has seventy eight (78) officers out of an expected establishment staffing level requirement of one hundred and ten (110). Staff accommodation is inadequate, as most officers share the available houses. Some junior officers live in shelters that were once used for keeping police horses.
The Station has one barely functional vehicle, a disconnected fixed line telephone, and sources its own stationery.

**Mindolo Police Station**
Mindolo Police Station has an establishment staffing level requirement of one hundred and two (102) officers. The current staffing level is sixty-nine (69) officers, with an unknown number of reservists. Staff accommodation is inadequate, as most officers share the available small houses.

The Station has no motor vehicles, and no fixed line telephone facility.

**Wusakili Police Station**
Wusakili Police Station normally is supposed to have one hundred and sixty (160) officers. The current staffing level is seventy-two (72) officers, which includes officers in the seven (7) police posts under its jurisdiction.

The Station has two (2) vehicles. Fuel for the vehicles is always insufficient and non-existent in some periods. The station has one fixed line telephone facility in the officer-in-charge’s office.

**Mongu**
**Namushakende Police Post**
Namushakende Police Post has four (4) police officers, with jurisdiction coverage of about 50 kilometres. The officers work an average of seventeen (17) hours a day.

The police post does not have transport and depends on Mongu Police Station. The officers sometimes have no option but to use their own resources when following up cases. The Post has a fixed line telephone facility.

**Limulunga Police Post**
Limulunga Police Post has an establishment staffing level requirement of up to thirty (30), but has eight officers.

The Post has a vehicle, but fuel supply is not reliable. There is no fixed line telephone facility available at the Post.

**Sefula Police Post**
The Post has five (5) officers covering the whole of Sefula. The officers work an average of eleven (11) hours a day.
Sefula Police Post is an old station in an inhabitable state, with one office being used as "a house" for one of the officers.

The Post does not have motor vehicles to facilitate investigations or responding to crime. Officers walk for up to eight (8) hours when seeking to apprehend suspects. Officers also use transport provided by members of the public.

There is no fixed line telephone facility available at the Post, and stationery is a rarity.

Litulelo Bus Stop Police Station

The Station has nine (9) officers. The average working day is eight (8) hours, but sometimes they work up to 16 hours.

The station does not have transport and officers sometimes use transport provided by complainants.

There is no fixed line telephone facility available at the Post, and stationery is provided by individual officers.

Ndola
Ndola Central Police Station

Ndola Central Police Station is normally supposed to have one hundred and twenty (120) officers. There are fifty two (52) officers, who are subjected to double shifts and long hours of work due to the inadequate staffing level.

The Station has one unreliable vehicle (mostly its being repaired), and when functional, fuel is seldom available. The Station has no functioning fixed line telephone facility as the existing lines have been disconnected for not servicing the bills.

Kansenshi Police Station

This Station has fifty three (53) officers against a required establishment staffing level of eighty (80). Junior officer housing accommodation is shared between families.

The Station has no transport. Its transport needs are on requisition from the Provincial Headquarters. The Station has a fixed line telephone facility with receiving functionality only.

3.3 The Police and the Public – Voices from the Public!

3.3.1 Introduction
This section provides observations on police conduct based on how people look at police officers as reflected in field interviews with members of the public. The interviews were undertaken in Chipata, Kabwe, Kasama, Kitwe, Livingstone, Lusaka, Mongu and Ndola. A total number of 1,364 individuals of different backgrounds were interviewed.

Individuals interviewed show that the way the police appear in the eyes of members of the public is not desirable. This is mostly because of the manner in which the police interact with members of the public. Police conduct in their interaction with the public is mostly in violation of their own rules of behaviour and discipline. We should, however, note that individuals that have the least contact with the police, tend to have slightly comparatively more positive perceptions of police conduct.

The general perception of the police by individuals is that they are corrupt, abusive, brutal, and that rather than protecting rights, police officers violate the rights of individuals. Further, people expressed concern over the complex procedures, at police stations and the likelihood of being arrested instead.

The succeeding section, therefore, provides word for word (verbatim narratives) experiences of police misconduct from some districts in Zambia.

3.3.2 The Voices

The following verbatim narratives of individual’s experiences with police misconduct are produced as they were recorded in the field. Italics are used where corrections are essential and also to provide observations on the incident recorded.

The verbatim narratives are from Chipata, Kabwe, Kasama, Kitwe, Livingstone, Lusaka, Mongu and Ndola.

**Chipata**

“Thieves! They are always arresting us for traffic offences and we pay them not to take (us) to the police to avoid paying more.

I took a complaint to them and they said they had no paper and that Occurrence Book had finished. Every time we meet traffic officers they insult us as transport officers and treat us like we are dogs.”

"My son was locked up without a charge for a night without getting a statement from him on what really happened."

- 60 year old male. Occupation: Accountant.

"In September 2007, arsonists poured paraffin in my lounge. Matter was reported but to date no investigations have been conducted."

- 46 year old male. Occupation: Director.

Kabwe

"When I went to report the breaking of my house by thieves, the officers were unconcerned and even refused to take my complaint down saying they had no paper. It’s because of the police that no justice will always be there. I feel a lot should be fired."

- 32 year old female. Occupation: Assistant Manager.

(Complaint was submitted to a senior officer. Respondent notes that nothing was done, and they forgot about it)

"The traffic officers normally look for faults in our work and even demand that in addition to paying them we drive them around. I was arrested for loitering yet I was coming from funeral with my sisters and I was even slapped and required to pay a guilty fine of K 100, 000"

- 26 year old male. Occupation: bus driver.

"Corrupt people!

My young brother was arrested for buying a stolen phone from the street. He was beaten and detained for 3 days. He was released after three days and CIO apologised for the officers actions."


(Complaint was reported)

"Rude and abusive. I went to file a complaint and they talked to me like I was (a) fool and in the end they said that the O.B. was full."

- 26 year old female. Occupation: Cook.

(Respondent reported incident to Officer in Charge, who promised to act).

Kasama

"The suspects are kept for many days without trial in the police cells. One of the suspects (a close person) got very sick while in the police cells. No proper attention was given."

- 37 year old female. Occupation: Lecturer.

"They are hardworking."
53 year old male. Occupation: Plumber.

“A traditional healer came home and picked up a quarrel with my husband. In a drunken mood, he beat him up and the healer rushed to the police and my husband was in cells for a week, then the police ordered that they agree that the healer be given K 95,000.”


“They (are) corrupt because they solve matters depending on who has money.

My relative was arrested for having not returned a K10,000 debt he owed his friend. When he finally paid the K10,000 while in the cells he was told by (the) police to pay K50,000 before he was to be released.”

- undisclosed age, female. Occupation: Marketeer.

“Police officers from @@@ police post usually come to arrest us and put us in cells whenever they find us drinking beer.”

- 43 year old male. Occupation: Subsistence farmer.

Kitwe

“Traffic police just emerged from nowhere and assumed the roadblock was well mounted so they charged @@@ (my) husband. (On reporting incident) They are one and the same people so it is pointless”


“I was detained at @@@ police for being found late walking home after knocking off from work”

- 30 year old male. Occupation: Miner.

Livingstone

“I just asked one of the officers what my brother had done and he answered me roughly saying I should just get out.”

- 16 year old female. Occupation: Pupil.

“A close relative reported a wife battering case/husband threatening to kill her but was told to go back and come the following day when her life was in danger.”

- 30 year old female. Occupation: Secretary.

“Most are corrupt and abuse the power they have by victimising members of society. A police officer in uniform started calling

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The names of the specific Police Stations/Posts have been withheld to safeguard the safety of the persons submitting.
me a prostitute (and) when I told him to have respect because he didn't know me, he attacked me and arrested me.”

- 23 year old female. Occupation: Student nurse.

“My friend’s car was impounded because he stopped a few metres ahead of the officers who stopped him due to that he couldn’t make brakes there and then. He was charged for failure to obey.”


“When I was involved in an accident, the police refused me to see a doctor but wanted me to wait for them to write a report.”

- 26 year old male. Occupation: undisclosed.

Lusaka

“Bad people. I was caught urinating in public (in Kabwe), and the police at @@@@@ station beat me up, the(y) called it toilet training, so that next time I will hold my urine till I get home. I was released the following day after my boss paid my guilty fine of K27, 000.”

- 24 year old male. Occupation: Garden boy.

“I personally arrested a thief, but when I took him to the police they told me to bring him back the following day.”

- 40 year old male. Occupation: Shop Manager.

“I was threatened by a police officer when I gave evidence of what I saw during an accident.”


“I reported a case in which I lost a car, but they could not write any details because of shortage of stationery so I went to Chelstone to report.”

- 35 year old female. Occupation: Company Secretary.

“I took a complaint and the officers did not seem interested, and used bad language towards me.”


“It was during or towards Christmas time, when I knock(ed) off from work around 22:30hrs. I showed them my I.D., but they insisted and locked me in cells. They got all the money, used all my talk time in my phone amounting to K85, 000.”

- 32 year old male. Occupation: Field monitor.

“We were tear-gassed in a police cell.”

- 38 year old male. Occupation: Lecturer.
Mongu
"I had been locked in cells when a thief was beaten by a mob and he had broken into my house... Due to the bad conditions in cells and the remand cells I contracted TB"
- 41 year old male. Occupation: Stores Assistant.

"I was alleged of marriage interference and the police tortured me in order to get information leaving me with a fractured limb"
- 20 year old female. Occupation: Student.

"I was caught idling last year and they wanted to have sex with me"
- 34 year old female. Occupation: Bar Maid.

"I was arrested on a mere allegation which was a bailable offence but the police kept blocking my bond until I paid them"

Ndola
"My brother had made an offence and they came into my house without permission and identity."

"I was picked and locked up with insufficient evidence only to find out the offender was my neighbour."
- 43 year old male. Occupation: Marketing Manager.

The above voices show that the work of the police in rule of law and human rights protection is likely to be affected by their conduct towards members of the public and individuals, and the indeed the way people look at them. It is, however, important to note that most police stations and division commands visited within 2008 indicate that they receive minimal to no complaints on experienced police misconduct. The police further note that the complaints sometimes do not merit investigations as they tend not to portray the actual situation.

3.4 Reflecting Back
In this chapter it is recognised that the Zambia Police is a critical institution in constitutionalism, rule of law, and human rights protection. The police contribute to the protection of all human rights by maintaining social order so that individuals can enjoy their rights and freedoms.

However, the reality is different because undesirable conduct prevents the fulfilment of individual freedoms and observance of rule of law. First,
institutional support frailties observed in the year 2008 have a limiting influence on how effectively and efficiently the police do their work. Inadequate training regimes, lack of adequate communication facilities (vehicles and telephones), inadequate and poor accommodation, and salaries sufficient only for minimal life support undermine police performance in human rights protection and rule of law.

Further, the allocation of resources between central administrative offices and operational offices is not well done. Police administration command centres (and individuals thereof) tend to have more vehicles than the police stations around the country.

In addition, this chapter shows that most police stations have few police officers and, therefore, force officers to work longer hours resulting in their inability to efficiently and effectively carry out their duties of law enforcement and human rights protection.

Even though the police have institutional weaknesses, the conduct of the police themselves is seriously wanting. Police officers have something very important to do in human rights protection as they are constantly in contact with individuals from all social classes. It is, therefore, important that they exhibit professionalism as required by the law under which they function, and indeed the Constitution.

Lastly, stories gathered from filed interviews in the country have shown that police conduct is bad and likely resulting in the loss of confidence in the police by members of public. It is, therefore, necessary for the police to always act within the provisions of the law.
CHAPTER FOUR
INDIVIDUAL RIGHTS

4.1 Introduction
This chapter must be read in consideration of the problems stated in chapter three.
The aim of this chapter is to show how in 2008 the police acted in relation to the following human rights and liberties:

(a) Right to life
(b) Right to personal liberty
(c) Protection from inhuman treatment
(d) Freedom of assembly.

4.2 The Right to life

One of the duties of a police officer is to protect a person's life.

Article 12 of the Constitution of Zambia provides for protection of right to life. The said article reads as follows:

"No person shall be deprived of his (her) life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted"\(^\text{16}\).

From the above just mentioned Article it is clear that no person shall kill another human being unless the same is done in accordance to a Court order.

However, in 2008 there were cases where people were killed by the police in total violation of the above stated law. Below are some examples where police officers broke the said law.

January, 29.
Mulala, Munalula – Lusaka
Munalula was killed when a police officer opened fire on a charcoal truck he was in, after it immediately left a charcoal levy point. A police officer, Anderson Yabe, was arrested and charged with manslaughter. In April, the officer was sentenced to seven years imprisonment after finding him guilty of shooting Munalula to death and for seriously wounding another person. (LRF)

April.
Nyanga, Alfred – Mumbwa
Alfred was allegedly handcuffed and beaten to death by police officers while in custody in Mumbwa. Two police officers were arrested over the incident and investigations instituted.

\(^{16}\) Constitution of Zambia, Article 12 (1)
May 29.

**Chimwang’a, Robert - Mwinilunga**

Robert was on May 29, allegedly beaten to death by police officers while in police custody. Investigations were instituted.

4.3 Right to personal liberty.

The law provides under Article 13 of the Constitution that;

“No person shall be deprived of his personal liberty except as may be authorised by law…”\(^{17}\)

This simply means that no one including the police may deprive a person of this right except where the law clearly states so. This law further states that;

“Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person”\(^{18}\).

However, in 2008, unlawful arrests and detention remained problems, as evidenced below.

February 29.

**Ndonji, Joseph – Lusaka**

Joseph was arrested at his house around 0500hrs on February 29 and asked by police officers to lead them to his brother’s house. He was detained in police cells together with his brother and released after three (3) days without explanation or being charged.

Joseph was beaten by a police officer using a gun butt whilst in police custody.

There is no law that provides that a person be arrested for the crimes of another. It is hence clear that the arrest of Joseph by the police was unlawful.

July.

**Nailuli, Monde-Mongu.**

Monde was detained together with her children by the police at Mongu Central Police Station. She had gone to the Station to report her two missing children. The children had already been picked by a taxi driver and taken to the police station. Nailuli was released after three (3) days, and had her hair shaved off. She was asked to pay a fine of kwacha twenty thousand (K20, 000). (LRF).

17 Constitution of Zambia, Article 13 (1)
18 Constitution of Zambia, Article 13 (4)
4.4 Protection from cruel and inhuman treatment

The law provides through Article 15 of the Constitution that; “No person shall be subjected to torture or to inhuman or degrading punishment or other like treatment”,

The above just mentioned law must be read together with Article 14(1) which prohibits slavery. This law has no exceptions.

Below are cases where the police acted in total disregard of the above stated law

**On July 19.**

Edward Chanda was picked by police officers while at the Provincial Agricultural Show in Kasama and taken to the Police Station where he was badly beaten on arrival by a police officer. The police officer allegedly used a plank that had a nail in it and inflicted serious injuries on Edward’s left palm.

Edward had, in the previous month, been unlawfully detained at Kasama Central Police Station cells for thirty (30) days without being taken to court for trial and was released without charge.

This is a clear violation of the law. Action has since been taken against the officers involved.

**and in September.**

Charles Landilani Phiri was tortured and detained in police cells in Nakonde for reversing his light truck into a car that had parked behind his vehicle without his knowledge. One of the occupants of the car was a police officer. The police officer came out of the car and started beating him up for hitting into the vehicle. The police officer then took Charles to Nakonde Police Station and detained him in the cells.

Charles reported that while in the cells, the same police officer ordered the inmates to beat him up.

Charles was later charged with careless driving and failing to obey lawful instructions. He paid admission of guilt and was released from custody.

Weeks later, Charles went to the Police Station to report the loss of a battery from his truck. He found the same police officer man, and the officer instructed that Charles be detained. He remained in custody for one night and was released the following day after he was told to pay an admission of guilt for the offence of using insulting language and disobeying orders of the police officer.
The law allows the police to investigate but NOT to beat people.

4.5 Condition of Detention Centres (holding cells and Prisons)

This section provides an overview of the conditions that individuals in police custody and or in remand, for in particular bailable offences, are subjected to. It must be noted that when a person is arrested or detained, the only right they are deprived of is their right to liberty; they must enjoy all other rights and the state under whose custody they are held is obligated to ensure enjoyment of these other rights.

Article 15 of the Constitution, which protects individuals from inhuman treatment, also applies to conditions of detention centres.

This section provides observation on conditions of detention centres in selected locations in the country. The detention centres covered in this report are those used to hold individuals awaiting charge or trial. These are police cells and remand prisons.

Below are conditions of some of the detention centres visited.

**Kitwe**

**Garnerton Police Station**

Garnerton Police Station has no holding cells for suspects. Suspects are held within the single office making up the Station. Violent and dangerous suspects are cuffed around a pole outside to prevent them from escaping.

This is totally inhuman.

**Kitwe Central Police Station**

The Central Police Station has two (2) cells dedicated to male suspects. There are no female or juvenile cells. Both cells are inhabitable. Lighting is poor in one, and there is no lighting in the other. One of the cells has no toilet, and suspects are only allowed to go to the toilet once a day.

**Mindolo Police Station**

The Station has cells for male and female suspects, but only one toilet facility for both sexes. The toilet has no running water, and it is always unhygienic. Juveniles are not held separately.

**Mongu**

**Mongu Central Police Station**

The cells at Mongu Central Police Station are small and often overcrowded. The toilet is situated right in the middle of the
cell with no walls around it for privacy, and it has no flush unit. In addition, the cell has no running water.

Further, the Station does not have separate juvenile and female cells. Juveniles and females are detained at the enquiries office.

**Limulunga Police Station**

The cell at this Station has no toilet facility and running water. A hole has been made in the corner of the cell wall leading to a pit dug outside. This serves as the toilet. At this Station, juveniles and females are detained at the enquiries office as there are no cells for them.

**Namushakende Police Post**

The cell at this Police Post is very dirty, and human excreta is visible in the hole meant to be the toilet. There is no tap or well in the vicinity. The Post has no separate facilities for juveniles and females.

**Sefula Police Post**

Sefula Police Post is an old derelict building with broken window panes. The cell is unhygienic. It has no toilet facility and running water. Suspects use a grass thatched pit latrine that is about 30 metres away from the cell. There is no provision for juveniles and females.

**Ndola**

**Ndola Central Police Station**

Ndola Central Police Station holding cells have recently been refurbished by the local community. There are separate cells for females, males and juveniles. The only problem faced is an erratic water supply.

4.5.2 Remand Prison

In a criminal matter, a magistrate/judge can remand into custody a person accused of a crime if, after a preliminary hearing, the magistrate/judge finds that there is reason to put the accused on trial. Juveniles are, however, supposed to be held separately from adults.

Therefore, remand prison is a custodial place for individuals awaiting trial and/or on trial.
Observations are provided from two towns. These are Chipata and Ndola. The observations show that the prisons in these towns are congested.

Ndola Central Remand Prison
Ndola Central Remand Prison has a holding capacity of one hundred and fifty-eight (158), but is holding 284 individuals. This is nearly twice its capacity. The factors attributed to the congestion are chiefly high frequency of court adjournments, inadequate court rooms, disappearances of case records and lack of transport to allow for consistent appearance of individuals before the courts.

Chipata
In Chipata, individuals on remand are held together with convicted prisoners in Chipata Central Prison, as there is no separate remand prison or a separate section for remandees within the prison. The prison has a design holding capacity of three hundred (300), but is presently holding six hundred and twelve (612) individuals. That is, those serving custodial sentences (prisoners) and individuals on remand.

4.6 Reflecting Back

This chapter has shown that police conduct towards individuals and/or members of the public is characterised by continued negation of individual rights and freedoms. In 2008, the police subjected individuals to unlawful arrests and detentions, torture, and unlawful killings. Cases of unlawful killing and detention by the Police were very common. This is true about cases of inhuman and degrading treatment by the police.

Further, observations on conditions of police cells from selected police stations show that despite the provisions of the law, most police custodial places subject individuals to inhuman and degrading conditions. The absence of toilets and running water presents a serious health risk. Further, persons on remand are not supposed to be mixed with convicted persons.

In summary, the chapter shows that although the role of the police in human rights protection is undoubted, their undermining the rule of law is evident in their behaviour towards the rights and freedoms of an individual.


CHAPTER FIVE

DEMO CRATIC GOVERNANCE

5.1 Introduction

Constitutionalism implies that a political governance system should uphold the following two principles. Firstly, that the people are supreme to government. This provides for the understanding that a constitution represents the will of the people. Secondly, that, the people shall have controlling influence on the decisions and affairs of government. This principle entails that the people ought to be a part of Government decisions. In short, constitutionalism demands democratic governance.

The principles of democracy are three fold and are interlinked. These are the application of principles of equity in choice, participation and representativeness. That is, people can freely choose, participate and be represented in their form of governance, without any interference from other individuals or the State. Participation is not merely in form of being chosen to represent or choosing a representative, but also participating in formulating the rules of how one is to be governed. That is, participating, among other things, in constitution making.

Therefore, government should institute responsive mechanisms that ensure that individuals are treated with equal respect and as of equal worth in the exercise of their controlling influence. Exercise of controlling influence is manifest in processes such as constitution making and elections.

This chapter provides observations on constitution making, in particular the National Constitution Conference process, and the electoral processes in Zambia in the year 2008.

5.2 Constitution Making

5.2.1 Introduction

A Constitution, is a fundamental or supreme law, establishing the structure of the state, fundamental rights and freedoms, limitations on the scope of government powers and authority, and amendment procedures. In most countries a constitution is the supreme law of the country and no other dispositions or norms can take away the privileges, liberties and rights it guarantees individuals.

Therefore, the constitution is fundamental in protecting the rights and freedoms of individuals, as well as prescribing a framework for political, economic and social governance. Without an adequate framework, society cannot be effectively governed by the rule of law. This framework of governance must represent the will of the people. The rules and regulations spelt out must be those consented to by citizens. Without citizenry participation and consent, a constitution cannot be said to be democratic or legitimate.
The process of constitution making is, thus, as important as the substantive content of the constitution itself. This is because the framework of a country’s governance and structure cannot be defined without intellectual and societal agreements on political, legal and moral issues. The competing demands and conflicting interests have to be reconciled. This makes drafting a constitution fundamental to democracy and the rule of law.

In 2008, Zambia continued with its constitutional review process initiated in April, 2003, by Statutory Instrument No. 40 of 2003. The Mung’omba Constitutional Review Commission was established as a consequence. In 2007, the National Constitution Conference Act was enacted as a result of the recommendations of the Mung’omba Constitutional Review Commission.

The National Constitution Conference Act provided for the establishment of a National Constitution Conference (NCC) at which constituent representatives can engage in debates and discussions of the Mung’omba Constitutional Review Commission draft constitution prior to the adoption of a new constitution. The underlying assumption of the NCC is that it will result in a constitution based on broad-based participation and national consensus.

The NCC continued to meet in 2008 to consider the draft constitution proposed by the 2005 Mung’omba Constitutional Review Commission. The boycott of the NCC by some civil society groups, including large umbrella organizations representing women’s groups and church groups, continued in 2008. These organisations had reservations on the representativeness of the NCC. They argued that there was inadequate consultation on the legislative processes leading to the enactment of the NCC Act and that the NCC representation was biased towards government and ruling political party representation.

5.2.2 Observations
As noted in section 3.3 of chapter three, a total of one thousand three hundred and sixty four (1,364) individuals with varying demographic attributes were surveyed in Chipata, Kabwe, Kasama, Kitwe, Livingstone, Lusaka, Mongu and Ndola.

The survey interviews on constitution making in Zambia inquired into individual’s knowledge of what a constitution is; the NCC processes; their constituent representative; participation and empowerment to make effective contributions through their representatives; and, receptiveness and openness to the diverse views existing in the country.

The survey undertaken by the Human Rights Commission showed that whilst individual’s knowledge of what a constitution is, is desirable, their knowledge of the ongoing constitution making process was very poor. Whereas there is moderate knowledge of what a constitution is and that there is a National Constitution Conference (NCC) sitting in Lusaka, the
majority of individuals manifest ignorance as to who their constituent representative is.
In addition, major church organisations, some civil society organisations (in particular major NGOs representing women) and political parties like Patriotic Front (PF) have constrained citizenry engagement through constituent representatives in constitution making (through the NCC) as they have boycotted the process. These organisations cite inadequate consultation and representation as their major areas of concern.

Most knowledge of the NCC is from the print and electronic media. There is no substantive evidence in individual’s knowledge that their constituent representatives are consultative, and hence allowing individuals to indirectly participate in the process. Lack of knowledge of constituent representatives also manifests in individuals’ inability to contribute to the debates as they can only do so through their constituent representatives. This further manifests individuals’ feelings that the NCC process is not receptive to wider debate and contributions.

5.3 Elections

"[T]he will of the people shall be the basis of the authority of a government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." (Article 21 of the Universal Declaration of Human Rights)

"Every citizen of Zambia who has attained the age of eighteen years shall, unless he is disqualified by Parliament from registration as a voter for the purposes of elections to the National Assembly, be entitled to be registered as such a voter under a law in that behalf, and no other person may be so registered." Article 75. (1) of the Constitution of the Republic of Zambia

5.3.1 Introduction

The manner in which elections in Zambia are carried out is guided by the following:

(a) The Republican Constitution of Zambia
(b) The Electoral Act(1991)
(c) The Electoral Commission Act(No.24 of 1996)
(d) Local Government Elections Act, Chapter 282 of the Laws of Zambia.
Various regulations promulgated by the Electoral Commission of Zambia.

The law under Article 76 (1) of the Constitution of Zambia establishes the Electoral Commission of Zambia.

5.3.2 Presidential and Parliamentary Elections held in 2008

**Presidential Elections**

Presidential elections were held on October 30, after the death of the incumbent President Levy Mwanawasa on August 19. Dr Mwanawasa, the incumbent Republican President and president of the Movement for Multiparty Democracy (MMD) died after complications from a stroke he suffered in June, whilst in Egypt.

The contesting presidential candidates were:

(a) Banda Rupiah B., of the Movement for Multiparty Democracy (MMD);
(b) Hichilema Hakainde of the United Party for National Development (UPND);
(c) Miyanda Godfrey, of the Heritage Party (HP); and,
(d) Sata Michael C, of the Patriotic Front (PF).

Banda Rupiah B, the former Vice President under Mwanawasa won the elections by 40.09 percent margin, over Sata Michael C with 38.13 percent of the votes. The presidential elections had a low voter turnout of about 45.43 percent.

**Parliamentary By-Elections**

**February 21.**

Patriotic Front (PF) candidate Chanda Gerry was elected Kanyama constituency member of parliament, after the seat fell vacant following the death of the incumbent Henry Mtonga.

**June 26.**

Movement for Multiparty Democracy (MMD) candidate, Chisanga Banda Reuben, was elected as Milanzi constituency member of parliament, after the seat fell vacant following the death of the incumbent Chosani Njovu.

**October 30.**

Patriotic Front (PF) candidate, Mwango Davies, was elected Kanchibiya constituency member of parliament, after the seat fell vacant following the death of the incumbent Albert Kanyanyamina.
Patriotic Front (PF) candidate, Mushili Mark, was elected Ndola central member of parliamentary after the seat fell vacant following the nullification of the earlier elections.

Patriotic Front (PF), Samuel Chitonge, was re-elected as Mwansabombwe member of parliamentary. He retained the constituency’s parliamentary seat after his election in 2006 was nullified by the Supreme Court in August due to undue influence by the chief.

**Concerns raised in regards to the above mentioned elections**

The following are some of the concerns that were raised by the people in relation to the Presidential and Parliamentary elections held in 2008:

(a) Lack of continuous voter registration.
(b) Allegations of electoral corruption and misapplication of government resources.
(c) Lack of trust by some opposition parties in the manner in which, the Electoral Commission of Zambia conducted, the Presidential elections. These opposition parties contended that the Presidential elections were not held in a transparent and fair manner. In certain instances some opposition political parties alleged that there was printing of excess ballot papers and that there were foreign trucks carrying excess ballot papers. The latter resulted in members of opposition political parties impounding some foreign trucks in Livingstone for allegedly carrying ballot papers. These incidences constrained the integrity of the elections.

As a result of the above mentioned concerns, Patriotic Front (PF) losing candidate in the presidential by-elections, Sata Michael, filed a petition with the Supreme Court to request a recount of the votes, and also alleged electoral malpractices.

### 5.4 Reflecting Back

This chapter shows that individuals controlling influence on the decisions and affairs of government, as provided in constitution making and electoral processes are moderate. In 2008, there is evidence that individual’s knowledge of the ongoing constitution making process and engagement is undesirable. This is likely to undermine democratic governance, and constrain the rule of law.

Further, the electoral processes in Zambia are still beset with administrative problems, and opposition party confidence in the processes is still not sufficiently evident.
CHAPTER SIX.
CONCLUSIONS
AND
RECOMMENDATIONS

6.1 Conclusions

Constitutionalism enforces the rule of law, and thereby providing for certainty, security and safety in relations between individuals and the State. It is a means by which human rights are not only upheld, but also made part of the everyday operations and functions of a society’s institutions.

This 2008 State of Human Rights Report in Zambia set itself the task of human rights monitoring and reporting within the subject of constitutionalism and human rights. Within this subject, the Report provided observations on the rule of law in human rights protection with respect to the roles of the Judiciary and the police in human rights protection, individual rights and freedoms, and democratic governance.

The summary findings in 2008 are that, while the importance of the role of Judiciary in the rule of law and the realisation of human rights is its role in protecting human rights by way of settling disputes and providing helpful and valuable solutions, the occurrence of violations within the Judiciary reported in this report show that this role is not satisfactorily put into practice. This is mostly because the Judiciary in Zambia lacks adequate institutional and infrastructural capacity i.e. adequate qualified personnel and court buildings around the country.

Further, on the due affirmation that the police are a critical institution in constitutionalism, rule of law, and human rights protection, occurrences of human rights violations by police officers in 2008 shows a seriously unwelcome situation. The police have very poor institutional and infrastructural capacity, which constrain police performance. In addition, places of custody (police cells) are in a bad state and continually subject individuals to inhuman and degrading treatment.

However, despite this, the police in Zambia time and again work against individual’s rights and freedoms through their improper conduct and behaviours. Random arrests, unlawful detentions and torture by the police are still common. Evidence of professionalism in the police as prescribed by law is seldom observed.

Lastly, 2008 shows that individual’s participation in decisions and affairs of government, as provided in constitution making and electoral processes are lacking. Individual’s knowledge of their democratic rights, within
the frameworks of constitutionalism and human rights is scarce. Hence, their participation and engagement in constitution making through their constituent representation is not very evident.

6.2 Recommendations

The observations in this 2008 State of Human Rights Report in Zambia requires that, for individuals to fully enjoy their rights and freedoms and for there to be significant human rights protection and rule of law, the Republic of Zambia should endeavour to in:

(a) the **Judiciary and human rights protection frameworks**

   strengthen the institutional and infrastructural constraints faced by the Judiciary by providing adequate financial and material support. This includes but is not limited to the need to do the following:

   (i). increasing the number of courts to ensure speedy trials;

   (ii). increasing the magistrate staffing levels;

   (iii). revising the law and subsequent practice to improve protection of human rights with respect to bail, sureties and appeal processes so as to be more mindful of the obtaining socio-economic circumstances of most of the population; and,

   (iv). reducing instances of abuse of court authority.

(b) the **police and human rights protection frameworks**:

   (i). redress the institutional and infrastructural constraints faced by the police by providing adequate financial and material support that should prioritise increased well trained police staffing levels, increased budgetary allocation to ensure adequate logistical support and improved working conditions;

   (ii). ensure that police officers treat all individuals in accordance with the provisions of the law, and individuals also carry out their duties and responsibilities according to the law;

   (iii). institute punitive and preventive measures for police misconduct and police behaviours that violate individual rights and freedoms;

   (iv). strengthen institutions responsible for professional standards within the Police Force; and,

   (v). institute programmes for sensitising police officers on their duties and responsibilities in relation to human rights protection and the state of detention centres.
(c) the **individual human rights protection frameworks:**
   (i). criminalise (punish by law) conduct that violates individual rights and freedoms like inhumane and degrading treatment;
   (ii). rehabilitate detention centres to meet acceptable humane and sanitary standards; and,
   (iii). always ensure that there are separate custodial holding places (cells) for juveniles and women from adults and males respectively;

(d) the **democratic governance and human rights protection frameworks:**
   (i). review electoral laws and processes to instil confidence;
   (ii). undertake continuous voter registration exercises; and,
   (iii). undertake social mobilisation interventions to bridge the gaps of knowledge and understanding between the citizenry and the State in the practice of the rule of law, constitutionalism and democratic governance.

(e) **overall human rights protection, monitoring and reporting frameworks:**
   (i). Pass a freedom of information law to secure freedom of information. Freedom of information is critical to human rights reporting and monitoring, and ultimately to enhancing human rights protection; and,
   (ii). introduce a human rights based approach to budgeting, and development planning.
Appendix I

(a) EXCERPT FROM THE CONSTITUTION OF ZAMBIA ON PART III PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOM OF THE INDIVIDUAL

11. Fundamental rights and freedoms
It is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following, namely:

(a) life, liberty, security of the person and the protection of the law;
(b) freedom of conscience, expression, assembly, movement and association;
(c) protection of young persons from exploitation;
(d) protection for the privacy of his home and other property and from deprivation of property without compensation;

and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

12. Protection of right to life
(1) No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.
(2) No person shall deprive an unborn child of life by termination of pregnancy except in accordance with the conditions laid down by an Act of Parliament for that purpose.
(3) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases; as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this Article if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case --

(a) for the defence of any person from violence or for the defence of property;
(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
(c) for the purpose of suppressing a riot, insurrection, mutiny or if he dies as a result of a lawful act of war;
(d) in order to prevent the commission by that person of a criminal offence.

13. Protection of right to personal liberty
(1) No person shall be deprived of his personal liberty except as may be authorised
by law in any of the following cases:

(a) in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence or which he has been convicted;
(b) in execution of an order of a court of record punishing him for contempt of that court or of a court inferior to it;
(c) in execution of an order of a court made to secure the fulfilment of any obligation imposed on him by law;
(d) for the purpose of bringing him before a court in execution of an order of a court;
(e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;
(f) under an order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
(g) for the purpose of preventing the spread of an infectious or contagious disease;
(h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of this care or treatment or the protection of the community;
(i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Zambia or for the purpose of restricting that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted prisoner from one country to another;

or
(j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained -

(a) for the purpose of bringing him before a court in execution of an order of a court; or
(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia; and who is not released, shall be brought without undue delay before a court; and if
any person arrested or detained under paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that the appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person.

14. Protection from slavery and forced labour
(1) No person shall be held in slavery or servitude.
(2) No person shall be required to perform forced labour.
(3) For the purpose of this Article, the expression “force labour” does not include-

(a) any labour required in consequence of a sentence or order of a court;
(b) labour required of any person while he is lawfully detained that, though not required in consequence of a sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
(c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
(d) any labour required during any period when the Republic is at war or a declaration under Article 30 or 31 is in force or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period, or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or
(e) any labour reasonably required as part of reasonable and normal communal or other civic obligation.

15. Protection from inhuman treatment
No person shall be subjected to torture or to inhuman or degrading punishment or other like treatment.

16. Protection from deprivation of property
(1) Except as provided in this Article, no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired.
(2) Nothing contained in or done under the authority of any law shall be held to be
inconsistent with or in contravention of clause (1) to the extent that it is shown that such law provides for the taking possession or acquisition of any property or interest therein or right thereover-

(a) in satisfaction of any tax, rate or due;
(b) by way of penalty for breach of any law, whether under civil process or after conviction of an offence;
(c) in execution of judgements or orders of courts;
(d) upon the attempted removal of the property in question out of or into Zambia in contravention of any law;
(e) as an incident of a contract including a lease, tenancy, mortgage, charge, pledge or bill of sale or of a title deed to land;
(f) for the purpose of its administration, care or custody on behalf of and for the benefit of the person entitled to the beneficial interest therein;
(g) by way of the vesting of enemy property or for the purpose of the administration of such property;
(h) for the purpose of-
   (i) the administration of the property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the benefit of the persons entitled to the beneficial interest therein;
   (ii) the administration of the property of a person adjudged bankrupt or a body corporate in liquidation, for the benefit of the creditors of such bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;
   (iii) the administration of the property of a person who has entered into a deed of arrangement for the benefit of his creditors; or
   (iv) vesting any property subject to a trust in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust;

(i) in consequence of any law relating to the limitation of actions;
(j) in terms of any law relating to abandoned, unoccupied, unutilised or undeveloped land, as defined in such law;
(k) in terms of any law relating to absent or non-resident owners, as defined in such law, of any property;
(l) in terms of any law relating to trusts or settlements;
(m) by reason of the property in question being in a dangerous state or prejudicial to the health or safety of human beings, animals or plants;
(n) as a condition in connection with the granting of permission for the utilisation of that or other property in any particular manner;
(o) for the purpose of or in connection with the prospecting for, or exploitation of, minerals belonging to the Republic on terms which provide for the respective interests of the persons affected;
(p) in pursuance of a provision of the marketing of property of that description in the common interests of the various persons otherwise entitled to dispose
of that property;
(q) by way of the taking of a sample for the purposes of any law;
(r) by way of acquisition of the shares, or a class of shares, in a body corporate on terms agreed to by the holders of not less than nine-tenths in value of those shares or that class of shares;
(s) where the property consists of an animal, upon its being found trespassing or straying;
(t) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry or, in the case of the land, the carrying out thereon -
   (i) of work for the purpose of the conservation of natural resources or any description; or
   (ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed, to carry out;
(u) where the property consists of any licence or permit;
(v) where the property consists of wild animals existing in their natural habitat or the carcasses of wild animals;
(w) where the property is held by a body corporate established by law for public purposes and in which no moneys have been invested other than moneys provided by Parliament;
(x) where the property is any mineral, mineral oil or natural gases or any rights accruing by virtue of any title or licence for the purpose of searching for or mining any mineral, mineral oil or natural gases -
   (i) upon failure to comply with any provision of such law relating to the title or licence or to the exercise of the rights accruing or to the development or exploitation of any mineral, mineral oil or natural gases; or
   (ii) in terms of any law vesting any such property or rights in the President;
(y) for the purpose of the administration or disposition of such property or interest or right by the President in implementation of a comprehensive land policy or of a policy designed to ensure that the statute law, the Common Law and the doctrines of equity relating to or affecting the interest in or rights over land, or any other interests or right enjoyed by Chiefs and persons claiming through and under them, shall apply with substantial uniformity throughout Zambia;
(z) in terms of any law providing for the conversion of titles to land from freehold to leasehold and the imposition of any restriction on subdivision, assignment or sub-letting;
   (a) in terms of any law relating to -
      (i) the forfeiture or confiscation of the property of a person who has left Zambia for the purpose or apparent purpose, of defeating the ends of justice;
      (ii) the imposition of a fine on, and the forfeiture or confiscation of the property of, a person who admits a contravention of any law relating to
the imposition or collection of any duty or tax or to the prohibition or control of dealing or transactions in gold, currencies, or securities.

(3) An Act of Parliament such as is referred to in clause (1) shall provide that in default of agreement, the amount of compensation shall be determined by a court of competent jurisdiction.

17. Protection for Privacy of Home and Other Property

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

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

(a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or in order to secure the development or utilisation of any property for a purpose beneficial to the community;
(b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
(c) that authorises an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority, or body corporate, as the case may be; or
(d) that authorises, for the purpose of enforcing the judgement or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order;

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justified in a democratic society.

18. Provisions to Secure Protection of Law

(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence -

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;
(b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
(c) shall be given adequate time and facilities for the preparation of his defence;
(d) shall unless legal aid is granted him in accordance with the law enacted by Parliament for such purpose be permitted to defend himself before the court.
in person, or at his own expense, by a legal representative of his own choice;
(e) shall be afforded facilities to examine in person or by his legal
representative the witnesses called by the prosecution before the court,
and to obtain the attendance and carry out the examination of witnesses
to testify on his behalf before the court on the same conditions as those
applying to witnesses called by the prosecution; and
(f) shall be permitted to have without payment the assistance of an interpreter
if he cannot understand the language used at the trial of the charge;
and except with his own consent the trial shall not take place in his absence unless
he so conducts himself as to render the continuance of the proceedings in his
presence impracticable and the court has ordered him to be removed and the trial
to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any
person authorized by him in that behalf shall, if he so requires and subject to
payment of such reasonable fee as may be prescribed by law, be given within a
reasonable time after judgment a copy for the use of the accused person of any
record of the proceedings made by or on behalf of the court.
(4) No person shall be held to be guilty of a criminal offence on account of any
act or omission that did not, at the time it took place, constitute such an offence,
and no penalty shall be imposed for any criminal offence that is severer in degree
or description that the maximum penalty that might have been imposed for that
offence at the time it was committed.
(5) No person who shows that he has been tried by a competent court for a
criminal offence and either convicted or acquitted shall again be tried for that
offence or for any other criminal offence of which he could have been convicted
at the trial for that offence, except upon the order of a superior court in the
course of appeal or review proceedings relating to the conviction or acquittal.
(6) No person shall be tried for a criminal offence if he shows that he has been
pardoned for that offence.
(7) No person who is tried for a criminal offence shall be compelled to give
evidence at the trial.
(8) No person shall be convicted of a criminal offence unless that offence is
defined and the penalty is prescribed in a written law:
Provided that nothing in this clause shall prevent a court of record from punishing
any person for contempt of itself notwithstanding that the act or omission
constituting the contempt is not defined in written law and the penalty therefore
is not so prescribed.
(9) Any court or other adjudicating authority prescribed by law for the
determination of the existence or extent of any civil right or obligation shall be
established by law and shall be independent and impartial; and where proceedings
for such a determination are instituted by any person before such a court or other
adjudicating authority, the case shall be given a fair hearing within a reasonable
time.
(10) Except with the agreement of all the parties thereto, all proceedings of
every court and proceedings for the determination of the existence or extent
of any civil right or obligation before any other adjudicating authority, including
the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in clause (10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority -

(a) may consider necessary or expedient in circumstances where publicity would prejudice the interest of justice or in interlocutory proceedings; or
(b) may be empowered by law to do in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of -

(a) paragraph (a) of clause (2) to the extent that it is shown that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
(b) paragraph (d) of clause (2) to the extent that it is shown that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under Zambian customary law, being proceedings against any person who, under that law, is subject to that law;
(c) paragraph (e) of clause (2) to the extent that it is shown that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;
(d) clause (2) to the extent that it is shown that the law provides that -

(i) where the trial of any person for any offence prescribed by or under the law has been adjourned and the accused, having pleaded to the charge, fails to appear at the time fixed by the court for the resumption of his trial after the adjournment, the proceedings may continue notwithstanding the absence of the accused if the court, being satisfied that, having regard to all the circumstances of the case, it is just and reasonable so to do, so orders; and
(ii) the court shall set aside any conviction or sentence pronounced in the absence of the accused in respect of that offence if the accused satisfies the court without undue delay that the cause of his absence was reasonable and that he had a valid defence to the charge;

(e) clause (2) to the extent that it is shown that the law provides that a trial of a body corporate may take place in the absence of any representative of the body corporate upon a charge in respect of which a plea of not guilty has been entered by the court;
(f) clause (5) to the extent that it is shown that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under
the disciplinary law of that force, so, however, that any court so trying such a
member and convicting him shall in sentencing him to any punishment take into
account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, clause (1), paragraphs
(d) and (e) of clause (2) and clause (3) shall not apply in relation to his trial for
a criminal offence under the law regulating the discipline of persons held in
detention.

(14) In its application to a body corporate clause (2) shall have effect as if the
words "in person or" were omitted from paragraph (d) and (e).

(15) In this Article “criminal offence” means a criminal offence under the law in
force in Zambia.

19. PROTECTION OF FREEDOM OF CONSCIENCE

(1) Except with his own consent, no person shall be hindered in the enjoyment of
his freedom of conscience, and for the purposes of this Article the said freedom
includes freedom of thought and religion, freedom to change his religion or belief,
and freedom, either alone or in community with others, and both in public and
in private, to manifest and propagate his religion or belief in worship, teaching,
practice and observance.

(2) Except with his own consent, or, if he is a minor, the consent of his guardian,
no person attending any place of education shall be required to receive religious
instruction or to take part in or attend any religious ceremony or observance
if that instruction, ceremony or observance relates to a religion other than his
own.

(3) No religious community or denomination shall be prevented from providing
religious instruction for persons of that community or denomination in the course
of any education provided by the community or denomination or from establishing
and maintaining institutions to provide social services for such persons.

(4) No person shall be compelled to take any oath which is contrary to his religion
or belief or to take any oath in a manner which is contrary to his religion or
belief.

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

(a) in the interests of defence, public safety, public order, public morality or
public health; or

(b) for the purpose of protecting the rights and freedoms of other persons,
including the right to observe and practice any religion without the unsolicited
intervention of members of any other religion:

and except so far as that provision or, the thing done under the authority thereof
as the case may be, is shown not to be reasonably justified in a democratic
society.

20. PROTECTION OF FREEDOM OF EXPRESSION
(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.
(2) Subject to the provisions of this Constitution no law shall make any provision that derogates from freedom of the press.
(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision -

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or
(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or the registration of, or regulating the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television; or
(c) that imposes restrictions on public officers; and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.

21. PROTECTION OF FREEDOM OF ASSEMBLY AND ASSOCIATION
(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.
(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision -

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
(b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
(c) that imposes restrictions upon public officers; or
(d) for the registration of political parties or trade unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such register including conditions as to the
minimum number of persons necessary to constitute a trade union qualified for registration;

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.

22. PROTECTION OF FREEDOM OF MOVEMENT
(1) Subject to the other provision of this Article and except in accordance with any other written law, no citizen shall be deprived of his freedom of movement, and for the purposes of this Article freedom of movement means -

(a) the right to move freely throughout Zambia;
(b) the right to reside in any part of Zambia; and
(c) the right to leave Zambia and to return to Zambia.

(2) Any restrictions on a person’s freedom of movement that relates to his lawful detention shall not be held to be inconsistent with or in contravention of this Article.
(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision -

(a) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or public health or the imposition or restrictions on the acquisition or use by any person of land or other property in Zambia, and except so far as that provision or, the thing done under the authority thereof, as the case may be, is shown not to be reasonably justifiable in a democratic society;
(b) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Zambia;
(c) for the imposition of restrictions upon the movement or residence within Zambia of public officers; or
(d) for the removal of a person from Zambia to be tried outside Zambia for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

23. PROTECTION FROM DISCRIMINATION ON THE GROUND OF RACE, ETC.
(1) Subject to clauses (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.
(2) Subject to clauses (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.
(3) In this Article the expression “discriminatory” mean, affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions
colour or creed whereby persons of one such description are subjected to
disabilities or restrictions to which persons of another such description are not
made subject or are accorded privileges or advantages which are not accorded to
persons of another such description.

(4) Clause (1) shall not apply to any law so far as that law makes provision -

(a) for the appropriation of the general revenues of the Republic;
(b) with respect to persons who are not citizens of Zambia;
(c) with respect to adoption, marriage, divorce, burial, devolution of property
on death or other matters of personal law;
(d) for the application in the case of members of a particular race or tribe,
of customary law with respect to any matter to the exclusion of any law with
respect to that matter which is applicable in the case of other persons; or
(e) whereby persons of any such description as is mentioned in clause (3) may
be subjected to any disability or restriction or may be accorded any privilege
or advantage which, having regard to its nature and to special circumstances
pertaining to those persons or to persons of any other such description, is
reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in
contravention of clause (1) to the extent that it is shown that it makes reasonable
provision with respect to qualifications for service as a public officer or as a
member of a disciplined force or for the service of a local government authority
or a body corporate established directly by any law.

(6) Clause (2) shall not apply to anything which is expressly or by necessary
implication authorized to be done by any such provision or law as is referred to in
clause (4) or (5).

(7) No thing contained in or done under the authority of any law shall be held
to be inconsistent with or in contravention of this Article to the extent that it
is shown that the law in question makes provision whereby persons of any such
description as is mentioned in clause (3) may be subjected to any restriction on
the rights and freedoms guaranteed by Articles 17, 19, 20, 21 and 22, being such
a restriction as is authorised by clause (2) of Article 17, clause (5) of Article 19,
clause (2) of Article 20, clause (2) of Article 21 or clause (3) of Article 22, as the
case may be.

(8) Nothing in clause (2) shall affect any discretion relating to the institution,
conduct or discontinuance of civil or criminal proceedings in any court that is
vested in any person by or under this Constitution or any other law.

24. PROTECTION OF YOUNG PERSONS FROM EXPLOITATION

(1) No young person shall be employed and shall and shall in no case be caused or
permitted to engage in any occupation or employment which would prejudice his
health or education or interfere with his physical, mental or moral development:

Provided that an Act of Parliament may provide for the employment of a young
person for a wage under certain conditions.
(2) All young persons shall be protected against physical or mental ill-treatment, all forms of neglect, cruelty or exploitation.
(3) No young person shall be the subject of traffic in any form.
(4) In this Article “young person” means any person under the age of fifteen years.

25. DEROGATION FROM FUNDAMENTAL RIGHTS AND DETENTION
Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Articles 13, 16, 17, 19, 20, 21, 22, 23, or 24 to the extent that it is shown that the law in question authorises the taking, during any period when the Republic is at war or when a declaration under Article 30 is in force, or measures for the purpose of dealing with any situation existing or arising during that period; and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions if it is shown that the measures taken were, having due regard to the circumstances prevailing at the time, reasonably required for the purpose of dealing with the situation in question.

(b) DIRECTIVE PRINCIPLES OF STATE POLICY

PART IX
DIRECTIVE PRINCIPLES OF STATE POLICY AND THE DUTIES OF A CITIZEN
(As amended by Act No. 18 of 1996)
110. (1) The Directive Principles of State Policy set out in this Part shall guide the Executive, the Legislature and the Judiciary, as the case may be, in the-
   Application of Directive Principles of State Policy
   (a) development of national policies;
   (b) implementation of national policies;
   (c) making and enactment of laws; and
   (d) application of the Constitution and any other law.
(2) The application of the Directive Principles of State Policy may be observed only in so far as State resources are able to sustain their application, or if the general welfare of the public so unavoidably demands, as may be determined by Cabinet.

111. DIRECTIVES NOT TO BE JUSTICIABLE
The Directive Principles of State Policy set out in this Part shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.

112. DIRECTIVE PRINCIPLES OF STATE POLICY
The following Directives shall be the Principles of State Policy for the purposes of this Part:
(a) the State shall be based on democratic principles;
(b) the State shall endeavour to create an economic environment which shall encourage individual initiative and self reliance among the people and promote private investment;
(c) the State shall endeavour to create conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment;
(d) the State shall endeavour to provide clean and safe water, adequate medical and health facilities and decent shelter for all persons, and take measures to constantly improve such facilities and amenities;
(e) the State shall endeavour to provide equal and adequate educational opportunities in all fields and at all levels for all;
(f) the State shall endeavour to provide to persons with disabilities, the aged and other disadvantaged persons such social benefits and amenities as are suitable to their needs and are just and equitable;
(g) the State shall take measures to promote the practice, enjoyment and development by any person of that person's culture, tradition, custom or language insofar as these are not inconsistent with this Constitution;
(h) the State shall strive to provide a clean and healthy environment for all;
(i) the State shall promote sustenance, development and public awareness of the need to manage the land, air and water resources in a balanced and sustainable manner for the present and future generation; and
(j) the State shall recognise the right of every person to fair labour practices and safe and healthy working conditions.

113. Duties of Citizen

It shall be the duty of every citizen to-

(a) be patriotic and loyal to Zambia and to promote its well-being;
(b) contribute to the well-being of the community where that citizen lives, including the observance of health controls;
(c) foster national unity and live in harmony with others;
(d) promote democracy and the rule of law;
(e) vote in national and local government elections;
(f) provide defence and military service when called upon;
(g) carry out with discipline and honesty legal public functions;
(h) pay all taxes and duties legally due and owing to the State; and
(i) assist in the enforcement of the law at all times.
Appendix II
Male Deathrow Inmates in Kabwe Maximum Prison Whose Appeal Cases are Pending for Longer Periods

(A) Appeal cases pending for ten (10) years and more:

1) Ntambo. L. Vensa was convicted in Solwezi for murder on November 14, 1994;
2) Zulu Patrick. Convicted in Lusaka for murder on September 13, 1995;
3) Mushoke Stephen. Convicted in Mongu for murder on August 24, 1995;
5) Sakala Jabes. Convicted in Livingstone for murder on May 7, 1996;
6) Zimba Thomas. Convicted in Livingstone for murder on May 7, 1996;
7) Sialubaba Patson. Convicted in Livingstone for murder on June 17, 1996;
9) Kaunda B. Mike. Convicted in Kabwe for aggravated robbery and murder on May 5, 1999; and,
10) Ndhlovu Joseph. Convicted in Chipata for murder on June 18, 1999;
11) Kandenene Pumulo. Convicted in Mongu for robbery and murder on August 15, 1999;
12) Kanyanga C. Shaft. Convicted in Mongu for robbery and murder on August 13, 1999;

(B) Appeal cases pending for less than ten (10) years but more than five (5) years:

1) Katontoka M. Bright. Convicted in Kitwe for murder on December 4, 2003;
2) Chisunka Lucky. Convicted in Kitwe for robbery on December 4, 2003;
3) Mumba Innocent. Convicted for in Kitwe aggravated robbery on December 20, 2002;
4) Zimba Kaunda. Convicted in Lusaka for aggravated robbery on April 13, 2001;
5) Mulingalinga Levy. Convicted in Lusaka for aggravated robbery on April 13, 2001;
6) Kamuhuza Kenneth. Convicted in Kitwe for aggravated robbery on May 13, 2002;
7) Zama M. Moses. Convicted in Kitwe for aggravated robbery on May 13, 2002;
8) Bwalya Sheban. Convicted in Livingstone for aggravated robbery on September 1, 2003;
9) Nyemboka Charles. Convicted in Mongu for murder on June 13, 2003;
10) Tembo Jairos. Convicted in Lusaka for aggravated robbery on February 12, 2003;
11) Tembo Benjamin. Convicted in Lusaka for aggravated robbery on February 12, 2003;
12) Mupinga Godfrey. Convicted in Lusaka for aggravated robbery on February 12, 2003;
13) Mukela Mwiba. Convicted in Mongu for murder on October 17, 2003;
14) Njekwa Sikanda. Convicted in Mongu for murder on August 15, 2003;
15) Njekwa Nanjeka. Convicted in Mongu for murder on November 27, 2001;
16) Muziba Muyunda. Convicted in Mongu for aggravated robbery on February 15, 2001;
17) Sitali Ilutumbi. Convicted in Mongu for aggravated robbery on February 15, 2001;
18) Tembo Adam. Convicted in Kitwe for aggravated robbery on September 28, 2001;
19) Musonda Joseph. Convicted in Kitwe for aggravated robbery on September 28, 2001;
20) Cholowwa Mathews. Convicted in Kitwe for murder on November 11, 2003;
21) Chindela Friday. Convicted in Kitwe for murder on October 16, 2000;
22) Kabanshi C. Joe. Convicted in Lusaka for murder on August 14, 2002;
23) Hajaya R. Convicted in Livingstone for aggravated robbery on October 30, 2001;
24) Kabengele John. Convicted in Kitwe for murder on October 11, 2002;
26) Mwamba Nelson. Convicted in Kitwe for murder on October 11, 2002;
29) Mulenga Moses. Convicted in Lusaka for aggravated
robbery on July 25, 2003;
31) Mabuluku James. Convicted in Ndola for aggravated robbery on May 24, 2001;
32) Somili Lufinda. Convicted in Ndola for aggravated robbery on May 24, 2001;
33) Nyamba Alfred. Convicted in Kitwe for murder on November 13, 2003;
34) Chola Isaac. Convicted in Kitwe for aggravated robbery on March 16, 2002;
35) Kalenga Bodwin. Convicted in Kitwe for aggravated robbery on March 16, 2002;
36) Fundfunda M. Stephen. Convicted in Lusaka for aggravated robbery on November 2, 2001;
37) Silumande Justine. Convicted in Lusaka for aggravated robbery on November 2, 2001;
38) Mwaipopo John. Convicted in Lusaka for aggravated robbery and murder on November 2, 2001;
40) Shabalila Kingsley. Convicted in Livingstone for robbery on March 15, 2002;
41) Chikwikiwililu Victor. Convicted in Mongu for murder on June 13, 2003;
42) Ndala K. Robby. Convicted in Mongu for murder on August 14, 2002;
43) Kasanga Ndala. Convicted in Mongu for murder on December 11, 2002;
44) Muyabi C. Davies. Convicted in Kasama for murder on August 15, 2003;
45) Mumba Pearson. Convicted in Kitwe for aggravated robbery on December 27, 2002;
46) Yakobo Y. Elias. Convicted in Kitwe for aggravated robbery on December 27, 2002;
47) Mwansa Simon. Convicted in Lusaka for aggravated robbery on September 6, 2002; and,
Appendix III

Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO)

Code of Conduct for Police Officials

PREAMBLE

We, the Chiefs of Police of the:

Republic of Angola; Republic of Botswana; Kingdom of Lesotho; Republic of Malawi; Republic of Mauritius; Republic of Mozambique; Republic of Namibia; Republic of South Africa; Kingdom of Swaziland; United Republic of Tanzania; Republic of Zambia; and the Republic of Zimbabwe,

As members of the Southern African Regional Police Chiefs Co-operation Organization [SARPCCO].

GUIDED by the following principles: respect for all human life; reverence for the law; integrity; service excellence and respect for property rights;
RECOGNIZING that ethical standards, in particular human rights norms are an important tool in the professionalization of police forces/services everywhere and in SARPCCO member countries;
DESIROUS of integrating human rights in SARPCCO police training and practices, in line with the values and ideals of SARPCCO;
CONSIDERING that it is desirable that police officers have the active moral and physical support of the public they are serving;
AWARE of the need to disseminate best practices and strengthen respect for human rights in SARPCCO member countries;
REAFFIRMING the commitment to a high degree of professionalism in serving the public,

HEREBY AGREE AS FOLLOWS:

Respect for all human rights
ARTICLE 1
RESPECT FOR HUMAN RIGHTS
In the performance of their duties, police officials shall respect and protect human dignity and maintain and uphold the human rights, including property rights, of all persons.

ARTICLE 2
NON-DISCRIMINATION
Police officials shall treat all persons fairly and equally and avoid any form of
discrimination.

ARTICLE 3
USE OF FORCE
Police officials may use force only when strictly necessary and to the extent required for the performance their adhering to national legislation and practices.

ARTICLE 4
TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT
No police official under any circumstances, shall inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment to any person.

ARTICLE 5
PROTECTION OF PERSONS IN CUSTODY
Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

ARTICLE 6
VICTIMS OF CRIME
All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided where necessary.

Reverence for the law

ARTICLE 7
RESPECT FOR THE RULE OF LAW AND CODE OF CONDUCT
Police officials shall respect and uphold the rule of law and the present Code of Conduct. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Integrity

ARTICLE 8
TRUSTWORTHINESS
The public demands that the integrity of police officials be above reproach. Police officials shall, therefore behave in a trustworthy manner and avoid any conduct
that might compromise integrity and thus undercut the public confidence in a police force / service.

**ARTICLE 9**
**CORRUPTION AND ABUSE OF POWER**
Police officials shall not commit or attempt to commit any act of corruption or abuse power. They shall rigorously oppose and combat all such acts. Police officials shall not accept any gifts, presents, subscriptions, favours, gratuities or promises that could be interpreted as seeking to cause the Police official to refrain from performing official responsibilities honestly and within the law.

**Service excellence**

**ARTICLE 10**
**PERFORMANCE OF DUTIES**
Police officials shall at all times fulfil the duties imposed upon them by law, in a manner consistent with the high degree of responsibility and integrity required by their profession.

**ARTICLE 11**
**PROFESSIONAL CONDUCT**
Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the community they serve.

**ARTICLE 12**
**CONFIDENTIALITY**
Matters of a confidential nature in the possession of Police officials shall be kept confidential, unless the performance of duty and need of justice strictly require otherwise.

**Respect for Property Rights**

**ARTICLE 13**
**PROPERTY RIGHTS**
In the performance of their duties Police officials shall respect and protect all property rights. This includes the economical use of public resources.
Human Rights Are *Inherent*

- They are the birthright of all human beings;
- They exist independently of acts of law, the will of either an individual human being or a group of people;
- They do not have to be given, bought, earned, inherited or forfeited;
- They belong to each individual simply because they are human;
- Human rights are inherent because we are born with them.
Appendix IV
Sample Emoluments for Superintendent, Assistant Superintendent, Chief Inspector, Sub-Inspector, and Constable.

(a) Sample Emoluments for Superintendent

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Welcome to our new Payroll Management & Establishment Control System. Overpayments and non-recovery of loans and advances should be reported. Leave accrued and pension life to date will be introduced soon.
(b) Sample Emoluments for Assistant Superintendent

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**WELCOME TO OUR NEW PAYROLL MANAGEMENT & ESTABLISHMENT CONTROL SYSTEM**

Overpayments and non-recovery of loans and advances should be reported.

Leaves accrued and pension life to date will be introduced soon.
(c) Sample Emoluments for Chief Inspector

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End of Statement

Totals: 2,624,599.00  1,301,971.43

Net Pay: 722,627.58

Welcome to our new Payroll Management & Establishment Control System.

Overpayments and non-recovery of loans and advances should be reported.

Accrued and pension life to date will be introduced soon.
(d) Sample Emoluments for Sub-Inspector
(e) Sample Emoluments for Constable

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**Government of the Republic of Zambia**

**Payslip No:** 002  
**Pay Month:** March 2009  
**Printed:** 0000.00  
**Next Appraisal:** 0000.00  
**Present Appoint:** 0000.00

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**Totals:** 1,634,334.00  
**Net Pay:** 1,020,357.84

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**Welcome to our New Payroll Management & Establishment Control System**

Overpayments and non-recovery of loans and advances should be reported. Leave accrued and pension life to date will be introduced soon.
(e) Sample Emoluments for Constable

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**NET PAY:**

| PAY | 1,138,539.48 |

*LIFE T/C = Life to Date

Overpayments and non-recovery of loans and advances should be reported. Leave accrued and pension life to date will be introduced soon.*