

LEGAL OPINION

AFRICAN HUMAN RIGHTS AND ACCESS TO JUSTICE (AHRAJ) PROGRAMME

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APPLICATION NO. 231

Case Name: The People vs. John Chishimba 2TO/09/95
Country: Zambia
Theme: Fair trial
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Factual Description

The victim was arrested on an alleged charge of murder in 1994. In 1998 he was examined by a specialist psychiatrist and neurologist to determine whether he was fit to stand trial, it was concluded that he was and a report was sent to the Court in May 2004. Despite the report being received the victim has not yet stood trial. The applicant applied for constitutional bail in June 2006 and it was granted. During the bail hearing it emerged that the Prosecution had misplaced the victim's file hence the delay in trial.

The applicant seeks the following remedies:

1. A declaration that the accused's continued detention is an infringement of his right to protection of the law as enshrined by the Zambian Constitution.
2. The case be dismissed for want of prosecution and that the client be released forthwith.

Stage of Application

1st instance before national court at advanced hearing stages.

Case Assessment

Prolonged detention before trial is emerging as a major problem facing the Zambian Legal system.

PART 1

1.1 Review of the Applicable International Human Rights Treaties and Conventions

1.1.1 The primary issue of the case is to determine whether:

- (i) the long period of detention and the related circumstances amount to a violation of the rights of the victim/applicant by the State, and;
- (ii) if the answer is in the affirmative, to determine whether the appropriate remedies under both municipal and international law will be available to the victim/applicant. These remedies will include:
 - reparation/compensation under international law:

- permanent stay of prosecution;
- release: and,
- compensation for violation of his Constitutional right under the municipal laws of Zambia.

The resolution of these issues will therefore necessitate a review and application of the relevant principles of law both at the domestic and international levels.

1.1.2 The demands of sovereignty place on States and Governments *inter alia* the responsibility to protect and defend the integrity of the State, and maintain peace and security. Among the institutions and mechanisms employed by States is the criminal justice system that provides for the legal framework of the powers exercised by law enforcement agents and judicial officers. Penal laws and their enforcement, in particular, impinge on the rights of the individual especially with regard to the rights of personal liberty, freedom of movement and privacy etc. The concern about the potential abuse of the rights of the individual in the process of the enforcement of the penal laws by the state security apparatus and law enforcement agents has resulted in legislative intervention at both international (in the form of international covenants) and national levels aimed at protecting the rights of the individual. International Bills of Rights have impacted on municipal jurisdiction to the extent that most contemporary jurisdictions have incorporated the International Bill of Rights¹ and treaty norms in their constitutions and domestic legal systems. For example, with regard to the right to fair trial, both the African Charter on Human and Peoples' Rights and the International Covenant of Civil and Political Rights (hereinafter referred to as ICCPR), have provisions protecting the rights of the individual to fair trial and these provisions have been internalised in the municipal laws of most countries. The provisions are as follows:

Article 7(d) of the African Charter on Human and People's Rights states that every individual has the right to be tried within a reasonable time by an impartial court or tribunal.

The ICCPR states in Article 9(3) that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

1.1.3 As a general application of the basic principles of the law of treaties, in international law the parties to these international treaties are States and the UN and therefore such international standards and norms become binding on State parties either through the constitutional technique of legislative incorporation or automatic incorporation². These constitutions guarantee the civil and political rights of every citizen as well as the democratic values of human dignity, equality and freedom and in the Bill of Rights provisions such rights as the right to fair hearing, including the right to be heard, to appeal, to be presumed innocent, to be defended by counsel of one's choice and to have a trial within a reasonable time by an impartial court or tribunal are both entrenched and justiciable.

These international Covenants such as the International Covenant of Civil and Political Rights (the ICCPR) and the Protocols do not only provide for these rights but also the mechanisms for redress and appropriate remedies that are available to a victim of human rights violation. State parties to such covenants are bound to these international instruments and therefore any alleged violations of individual rights are governed by the provisions of not only the municipal laws of a particular jurisdiction but also international law. The Human Rights Committee established under the ICCPR for example, is mandated to monitor and supervise the implementation of the rights set out in the Covenant (ICCPR). At the continental level such treaty bodies as the African Court on People's

¹ The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.

² V. Leary, *International Labour Conventions and National Law* (1982)

Human and Peoples' Rights, and the African Commission on Human and Peoples' Rights³ are mandated to protect and defend the rights of the individual against violations by state agencies.

However, it must be added that under international law, as a general rule, there is no formal obligation on States to ratify a particular international covenant or a protocol and therefore, for example, the invocation of the jurisdiction of the Human Rights Committee, mentioned above, will require prior ratification of the Protocol establishing the Committee. The limitations of the binding effect of international conventions and the lack of enforcement mechanism by which to hold signatories accountable are recognised in the jurisprudence of international law. Furthermore, under international law, individuals seeking the jurisdiction of international tribunals have the *locus standi* only where the State has acceded to the jurisdiction of the particular international organisation and the individual has exhausted all available domestic remedies to enforce compliance.

This seemingly inefficacy of the enforcement mechanisms under international law does not mean, however, that states can indulge in violations of rights with impunity. There exist in modern international relations and especially in Human Rights jurisprudence, such mechanisms and instruments of compliance, such as sanctions and isolation of the recalcitrant and delinquent state, exerted by the international community, and international human rights watchdogs, such as the Amnesty International to enforce compliance. H Steiner and P Alston⁴ describe the concept as follows:

Human rights violations occur within a state, rather than on the high seas or in outer space outside the jurisdiction of any one state. Ultimately, effective protection must come from within the state. The international human rights system does not typically place delinquent states in political bankruptcy and through some form of receivership take over the administration of a country in order to assure the enjoyment of human rights – although the measures implemented by the international community in Bosnia-Herzegovina after the 1995 Dayton Peace Agreement and especially in Kosovo represent steps in that direction. Rather the international system seeks to persuade or pressure states to fulfil their obligations through one or another method – either observing national law(constitutional or statutory) that is consistent with the international norms, or making the international norms themselves part of the national legal and political order.

1.1.5 Under international law, the international standards and norms contained in international treaties and conventions become binding on States upon accession of the said instruments and acceptance of the jurisdiction of the particular international organisation. However if the provisions of a treaty or an international instrument are considered to be self-executing and an individual has the standing to do so, the individual may invoke the provisions of a treaty before national courts in automatic incorporation in the absence of implementing legislation. Individuals have *locus standi* before the institutions if all available domestic remedies have been exhausted. This international rule of exhaustion of local remedies before taking to international remedies is one of the basic rules in international law. The object of the rule is to enable the respondent State the first opportunity to correct the harm and to make redress. Hence, a person whose rights have been violated should first make use of domestic remedies to right a wrong rather than first address the issue to an international committee, court or other tribunal. However, if no domestic remedies are available or there is unreasonable delay on the part of the national courts in granting remedy, then a person is justified in having recourse to international remedies. The rule of local remedies should not constitute an unjust impediment to access to international remedies.

1.6 The International Covenant of Civil and Political Rights(ICCPR)

³ The Protocol establishing the African Court on Human and Peoples' Rights entered into force 25 January 2004.

⁴ HJ Steiner and P Alston, *International Human Rights in Context* 987 (2000)

1.6.1 As stated under paras.1.1.2;113 and 1.1.4 above, two of the international human rights treaties or conventions and treaty bodies that *inter alia* protect and enforce the right of the individual to a trial within a reasonable time are the International Covenant of Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights, the Human Rights Committee, the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights.

The ICCPR states in Article 9(3) that:

anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

This provision must not to be seen as standing on its own. The efficacy and application of this provision will be fully appreciated if it is discussed in a holistic context and in conjunction with the complementary provisions under Articles 1 and 2 of the Optional Protocol. Articles 1 and 2 of the Optional Protocol read as follows:

Article 1

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

1.6.2 Comments on Article 1

1.6.2.1 Reference is made to the Human Rights Committee that is established under article 28 of the ICCPR. The jurisdiction of the Committee is stated under Article 40 of the Covenant and it requires state parties to submit reports on measures taken to give effect to the undertakings of the Covenant and on the progress made in the enjoyment of rights declared by the Covenant. The reports are transmitted to the Committee for consideration. The Committee is to study them. The same article instructs the Committee to transmit such general comments as it may consider appropriate to these state parties. The other aspect of the jurisdiction of the jurisdiction of the Committee, which is particularly relevant to this case is the jurisdiction provided for by Article 2 of the Optional Protocol.

1.6.2.2 The Human Rights Committee is a treaty body whose jurisdiction may be described as quasi-judicial. With respect to individual communications it has the jurisdiction to receive communications from individuals who claim to be victims of a violation by a state party to the Protocol of any of the rights set forth in the Covenant. After being notified of the communication, the state party shall submit to the Committee explanations or statements clarifying the matter. The Committee then examines the communications and thereafter forwards its views to the individual and the state concerned. The views of the Committee may include payment of compensation or release of a prisoner. But it must be noted that there is no provision setting forth the precise legal effect of the views of the Committee or what follow-up should take place if the Committee's views are ignored.

1.6.3 Comments on Article 2

1.6.3.1 Article 2 requires that in addition to effective protection of Covenant rights, States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. State parties are also enjoined to establish appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law. The enjoyment of the rights recognized under the Covenant can be effectively assured by the judiciary in many different ways, including direct applicability of the Covenant, application of comparable constitutional or other provisions of law, or the interpretive effect of the Covenant in the application of national law. Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy.

1.6.3.2 Article 2 also requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of Article 2, is not discharged. In addition to the explicit reparation in specific instances of violations, the Covenant generally entails appropriate compensation. Reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations. Victims of violations of rights suffering from long periods of detention, such as the case of the accused, are entitled such reparation.

1.6.3.3 International human rights jurisprudence indicates that in general, the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant. Accordingly, it has been a frequent practice of the Human Rights Committee in cases under the Optional Protocol to include in its Views the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question. Such measures may require changes in the State Party's laws or practices⁵. In view of the notoriety of cases of prolonged detention before trial in Zambia, such measures are encouraged.

1.7 African Charter on Human and Peoples' Rights and the Protocol

1.7.1 The continental human rights regime under whose jurisdiction this case may be redressed is the African Charter on Human and Peoples' Rights and the Protocol. The African Charter on Human and Peoples' Rights under Article 7 (d) states that every individual has the right to be tried within a reasonable time by an impartial court or tribunal. However, this provision does not operate in a vacuum: its application and enforceability are to be found in the jurisdiction of the African Commission on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

1.7.2 Article 30 of the Charter establishes the African Commission on Human and Peoples' Rights, the primary function of which is the promotion and protection of human and peoples' in Africa. The *modus operandi* employed by the Commission includes submission of communications by both State Parties and individuals or, what is also referred to as non-state communications.

With regard to this case, the most appropriate procedure will be the individual communications procedure. This procedure, however, has certain limitations, which may impact on the satisfactory redress of this matter and which must be therefore be highlighted. As stated by Steiner and Alston, ⁶the African Charter does not expressly define an objective for the individual complaints procedure. In the Free Legal Assistance Group Case [a 1996 decision involving Zaire], the Commission

⁵ See The Human Rights Committee, **General Comment No. 31 (80)** The Nature of the General Legal Obligation Imposed on States Parties to the Covenant Adopted on 29 March 2004 (2187th meeting).

⁶ H Steiner and P Alston, *International Human Rights in Context*, (2000)pp 925-6

established that the objective of the communications procedure is 'to initiate a positive dialogue, resulting in an amicable resolution between the complainant and the state concerned, which remedies the prejudice complained of'. The attainment of this objective, the Commission continued, was dependent on 'the good faith of the parties concerned, including willingness to participate in a dialogue'. The Commission thus recognizes that the bottom line of the communications procedure is the redress of violations complained of. To enable it to reach this objective, it is prepared to seek an amicable settlement between the parties, which must fulfil a two-pronged, subjective and objective criteria. Subjectively, the parties must be satisfied with the result, a difficult standard to meet given that the interests and aims of the victims and perpetrators of violations are often at odds. Objectively, both parties are called upon to act in good faith so as to bring about a resolution which 'remedies the prejudice complained of'.

Another limitation of the objectives established by the Commission for the communications procedure is that it is dependent on the volition and good faith of the state party, respondent in this case, and thus may not be entirely consistent with the obligation of the states parties under Article 1 of the African Charter to recognize the rights, duties, and freedoms enshrined in it and to 'undertake to adopt legislative and other measures to give effect to them'. Where efforts to reach an amicable resolution fail, the Commission is then forced to reach a decision on the merits⁷. Article 56 (5) also subjects the invocation of this procedure subject to the general international law principle of exhaustion of domestic remedies. But as pointed out by Steiner and Alston⁸ (i)n practice, the Commission has been willing to allow wide margins of exception to this requirement, especially in situations in which massive violations of human rights are alleged.

Pityana⁹ also points out that the Commission's decisions lack enforceability as they are not judicial decisions. Also, too many of the Commission's decisions are ignored routinely by states. The commission lacks not only the authority to enforce its own decisions, it also does not have the resources to undertake follow-up activities and monitor compliance with its decisions. The matter could be placed before the Assembly, but the Assembly itself has not so far had any legislative framework by which it can demand compliance from member states.

1.7.3 The African Court on Human and Peoples' Rights was established in 1998 by a Protocol which entered into force on January 1, 2004 upon its ratification by fifteen member states. The Protocol under Article 2 asserts that the Court shall complement the protective mandate of the African Commission on Human and Peoples' Rights. Given the limitations of the Commission stated under para.1.7.7 above, this must be understood to mean that it will reinforce and make more complete the objectives of the Charter. Under Article 3, the Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and other relevant Human Rights instrument ratified by the States concerned. In terms of *locus standi*, the Court may entitle relevant Non-Governmental Organisations (NGOs) with observer status before the Commission and individuals to institute cases directly before it in accordance with article 34 (6) of the Protocol, which demands that the state parties must have made a declaration at the time of the ratification of the Protocol or any time thereafter accepting the competence of the Court to receive cases under Article 5(3) of the Protocol. Hence in the absence of any such declaration, individuals have to submit their complaints first to the African Commission. The Protocol is silent on the question of the exhaustion of local remedies but it may be presumed that the general principles of international law will apply to subject individuals that seek the jurisdiction of the Court to the satisfaction of the exhaustion of local remedies principle.

The judgment of the Court is binding on State parties to the Protocol.¹⁰ The State parties to the Protocol undertake, in terms of Article 30, to comply with the judgment in any case where they are parties within the time stipulated by the Court and to guarantee its execution. In other words, the

⁷ See the 1994 Decision in the Mekongo Communication Against Cameroon

⁸ Supra p927

⁹ N.B. Pityana, *Reflections on the African Court on Human and Peoples'Rights*.

¹⁰ Article 30 of the Protocol

states take primary responsibility for the execution of the judgments of the Court. Should the affected parties fail to do so, other persuasive and coercive means are available to the AU. The Court submits its reports to the regular session of the Assembly,¹¹ and the provision goes on to state that the report must in particular specify the cases in which a state has not complied with the Court's judgment¹². This provision, in effect, transfers the secondary responsibility for ensuring compliance with the rulings of the Court to the collective of the Heads of State and Government. This could serve as a kind of peer review mechanism¹³. As a monitoring mechanism, the judgments of the Courts are notified not only to the parties in dispute but also to the Council of Ministers who shall monitor its execution on behalf of the Assembly¹⁴

1.8 APPLICATION OF INTERNATIONAL HUMAN RIGHTS CONVENTIONS AND STANDARDS

1.8.1 As stated in para. 1.1 above both the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights have provisions protecting the right of the individual to trial within a reasonable time and under these treaties there are treaty bodies that have been established and empowered with the jurisdiction to enforce compliance of the obligations of the treaties. In Zambia, international instruments are not self-executing and require legislative implementation to be effective. Zambia has ratified the ICCPR¹⁵ and is also a party to the First Optional to the International Covenant on Civil and Political Rights providing for individual complaint procedures. First and foremost, therefore, it must be emphasised that Zambia is bound by the treaty obligations under article 2 to make available to the victim the remedies stated under paras. 1.6.3.1 and 1.6.3.2 above, if violation of the victim's right is successfully established. Secondly, in the event of the victim's dissatisfaction with the local legal system for reasons stated under para 1.1.5 above, the victim/applicant can avail himself of the individual communications procedure under the jurisdiction of the Human Rights Committee. As stated earlier, the Committee has the jurisdiction to examine communications from individuals who claim to be victims of a violation of any of the rights proclaimed in the Covenant, including the right to trial within a reasonable period.

At the regional level, Zambia is also a party to the African Charter on Human Peoples' Rights¹⁶. The Zambia Constitution has incorporated international human rights standards, and these include the right to fair trial, which is justiciable. Zambia is therefore bound by the treaty obligations under the Charter just as much as she is bound by the treaty obligations of the ICCPR. The victim/applicant is entitled to invoke the jurisdiction of the African Commission on Human and Peoples' Rights and avail himself of the individual communications procedure.

These international instruments that provide for these rights, however, do not define what constitutes 'within a reasonable time', or 'a speedy trial' and therefore reference will have to be made to other sources for the determination of what constitutes 'a speedy trial'. These sources will include relevant legislation and case law, but it must be explained that in this Opinion there is more reliance on case law than legislative sources, simply for lack of access to these latter sources, if they are available.

1.8.2_ Establishment of Violation of Rights under International Conventions and Treaty Bodies.

To establish a successful case of infringement and violation of rights will necessitate the adducing of sufficient evidence to satisfy the requirements of both substantive and procedural law in order to establish that the delay complained of exceeds what is reasonable. Furthermore, evidence will have to

¹¹ Article 31 of the Protocol

¹² Article 31

¹³ NB Pityana (ibid)

¹⁴ Article 29.2 of the Protocol

¹⁵ Zambia acceded to the International Covenant on the Civil and Political Rights on April 10, 1984

¹⁶ Zambia signed the African Charter on Human and Peoples' Rights on January 17, 1983 and ratified it on January 10, 1984

be adduced to quantify the damage/loss occasioned as a result of the violations with regard to the claim for compensation.

1.8.2.1 Substantive Considerations

The determination of what constitutes ‘reasonable time’ has been discussed in judicial decisions of certain jurisdictions, most notable of which is perhaps the case of *R v Askov*,¹⁷ where the issue involved alleged violations of the Constitutional rights . This case reviews relevant authorities, especially cases of the Supreme Court of the US and Canada and lays down standards for the establishment of speedy trial or trial within a reasonable time. These standards have been followed by Superior and Constitutional Courts in a number of jurisdictions, including Zimbabwe¹⁸ and Namibia¹⁹ . These standards are extensively discussed in the cases mentioned in para.2.1-2.2.5.1 hereunder but a summary of the factors will be mentioned here in order to put them in context. *R v Askov* lays down four factors to determine ‘reasonable time’, namely, (i) the **length of the delay**,(ii) **the explanation for the delay**, (this includes evidence relating to the conduct of the Crown or the State, systemic or institutional delays and the conduct of the accused), (iii) **the waiver** and(iv) **prejudice to the accused**. The court held that the first factor is the triggering mechanism or threshold determination of the excessiveness of the delay and that if that delay appears *prima facie* excessive, the Court must then consider the three remaining factors to determine whether the accused has been deprived of the Sixth Amendment. In the Zimbabwean case of *In Re Mlambo*²⁰ in the determination of violation the rights of the accused to trial within a reasonable time Gubbay CJ followed the factors laid down in the *Askov* case and stated that additional evidence will have to be established to determine violation of human rights. He stated:

I have no hesitation in holding that the time frame is designed to relate far more to the period prior to the commencement of the hearing or trial that to whatever period may elapse after the accused has tendered a plea. This meaning is wholly consonant with the rationale of s18(2)- that the charge from which the reasonable time enquiry begins, must correspond with the start of the impairment of the individual’s interest in the liberty and security of his person. The concept of ‘security’ is not restricted to physical integrity, but includes stigmatisation, loss of privacy, anxiety, disruption of family, social life and work.(my emphasis_).

I may say that this view accords with the interpretation given to the materially similar wording of Article 6 para 1 of the European Convention by the European Courts if Human Rights

In the case of *R v Askov*²¹ Lamer J., as he then was, also expressed similar views and referred to these vexations, as described supra by Gubbay CJ as ‘all strictly individual rights’. In the case under consideration, the Presiding Judge ruled that there had been inordinate delay as the accused had been in detention for more than twelve years. Therefore there is incontrovertible evidence to satisfy the triggering mechanism that the delay was *prima facie* unreasonable, or in the words of Powell J in *Barker v Wingo*²² ‘presumptively prejudicial. However, in order to come to the conclusion that the effect of the lengthy delay is such as to deny the applicant the right to a fair hearing in this case there is the need to balance the other factors.

Further evidence will also have to be adduced to prove that the inordinate delay led to the impairment of the accused’s interests in the liberty and security of his person and therefore constituted a violation of his rights. In the light of the above, therefore proof of violation will

¹⁷ (1990) 2 S.C.R. 1199; (1991) 49 CRR 1 (Supreme Court of Canada)

¹⁸ *In re Mlambo* (1992) 4 SA 144; (1992) 2 SACR 245

¹⁹ *S v Heidenrich*, (NmHC), (1996) 2 BCLR 197; (1998) nr 229

²⁰ 1999 (4) SA 144

²¹ (1990) 2 S.C.R. 1199

²² (1972) 407 US 514 at 530

include evidence to establish for example stigmatisation, loss of privacy, anxiety, disruption of family life, social life and work occasioned as a result of the inordinate delay and long period of detention.

1.8.8.2 Procedural Considerations

The burden of proof required will be the standard required in civil proceedings, which is on the balance of probabilities and with regard to the question of *locus standi* there must be evidence of the exhaustion of local remedies, which will include both judicial and extra judicial remedies, like in the case of Zambia, placing the case before the Zambian Human Rights Commission or unless it can be established that the prevailing conditions are such that it can be legitimately claimed that the victim will not receive justice under the local legal system, including reasons stated in para. 1.1.5 These procedural considerations will apply to applications to both the Human Rights Committee and the African Commission

With respect to petitions before the African Court authorizing it is imperative that the petition be directed against a State Party which has made a declaration under article 43.6 of the Protocol authorizing direct access for individuals and NGOs with Observer Status before the African Commission. To be admissible under article 56.2 of the Charter the petition must invoke provisions of the African Charter allegedly violated, in this case article 7 (d) of the Charter. But it is essential to establish the current status of Zambia before the Court.

Remedies

The provisions of the ICCP dealing specifically with remedies are under Article 2 the relevant provisions of which read as follows :

Article 2

3. Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

The specific remedies are therefore initially to be sought from the remedies provided under the municipal laws of a particular jurisdiction . But as indicated in para. 1.6.3.2 above the remedies include compensation and reparation. These may be ordered by the Committee and the State concerned is obliged to comply with the order.

PART II

2. The Jurisprudence of the Right to Fair Trial under Municipal Law

2.1 The right to a hearing within a reasonable time

Article 18(1) of the Zambian Constitution that deals with protection of law provides as follows:

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.

The term “reasonable time” has not been defined in the Zambian Constitution but has been considered in a number of cases from various jurisdictions.

In the English case of *Hickey v. Raymond and Reid*, at pages 32 and 33 Lord Watson observed that:

The condition of reasonable time has been frequently interpreted and has been invariably been held to mean that a party upon whom it is incumbent duly fulfils his obligation not withstanding protracted delay, so long as such delay is attributable to cause beyond his control, and he has neither acted negligently nor unreasonably.

2.2 Perhaps the most comprehensive consideration of what amounts to a ‘speedy trial’ a fair hearing within a ‘reasonable time’ is to be found in the judgment of Cory JJ of the Supreme Court of Canada in the case of *R. v. Askov*²³. The case involved the interpretation of what constitutes unreasonable delay in the context of Section 11(b) of the *Canadian Charter of Rights and Freedoms* which provides that ‘any person charged with an offence has the right to be tried within a reasonable time’. (The facts are stated below)²⁴. The provisions of Section 11(b) of the *Canadian Charter of Rights and Freedoms* are couched in the same terms as the provisions of Article 18(1) of the Zambian Constitution.

In laying down the factors to be considered in determining ‘reasonable time’ the court reviewed the position of the law in both the US and Canada and discussed in detail the *raison d’être* of the right to fair trial within a reasonable time. He explained the position of the law as follows:

2.2.1 Judicial Consideration of the Principle of Providing a Trial Within a Reasonable Time

The United States

In the United States the Sixth Amendment ensures that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial”. The United States Supreme Court considered the issue in *Barker v. Wingo*, 407 U.S. 514 (1972). In that case Barker, who was charged with murder, was brought to trial five years after the murder was committed. The delay was caused by the necessity of trying an accomplice beforehand. This prerequisite trial was extremely complicated; the accomplice was tried no less than six times. During this ongoing process, Barker initially had agreed to continuances or adjournments. He only began to assert his right to a speedy trial three and one-half years after the charges were laid.

²³ *R v. Askov*, (1990) 2 S.C.R. 1199

²⁴ In that case, the appellants were charged with conspiracy to commit extortion in November 1983. A, H and M were also charged with several related offences and detained in custody for almost six months before being released on recognizances. G was released on a recognizance shortly after his arrest. All counsel agreed on a date early in July 1984 for the preliminary hearing, but it could not be completed until September. A trial was then set for the first available date, in October 1985. The case could not be heard during that session, and was put over for trial to September 1986, almost two years after the preliminary hearing. When the trial finally began, appellants moved to stay the proceedings on the ground that the trial had been unreasonably delayed. The trial judge found that the major part of the delay following appellants’ committal stemmed from institutional problems and granted the stay. The Court of Appeal found: (1) no misconduct on the part of the Crown; (2) no indication of any objection by the appellants to any of the adjournments; and (3) no evidence of any actual prejudice to the appellants. It accordingly set aside the stay and directed that the trial proceed. But the Supreme Court found that the delay was *prima facie* excessive; indeed it was grossly excessive. The Court further found that the defence never caused the delay nor agreed to it. The delay was caused by the prosecution. Taking all those factors into consideration, the Court concluded that the delay could not be justified and therefore was unreasonable.

The court held that a flexible approach should be taken to cases involving delay and that the multiple purposes or aims of the Sixth Amendment must be appreciated. Powell J., giving the reasons for the court, recognized the general concern that all persons accused with crimes should be treated according to fair and decent procedures. He particularly noted that there were three individual interests which the right was designed to protect. They were:

- (i) to prevent oppressive pre-trial incarceration;
- (ii) to minimize the anxiety and concern of the accused; and
- (iii) to limit the possibility that the defence will be impaired or prejudiced.

However, Powell J. went on to observe that unlike other constitutional rights which only have an individual interest, the right to a speedy trial involved the added dimension of a societal interest. He found that a delay could result in increased financial cost to society and as well, could have a negative effect upon the credibility of the justice system. Further, it was noted that a delay could work to the advantage of the accused. For example, the fostering of a delay could become a defence tactic designed to take advantage of failing memories or missing witnesses or could permit the accused to manipulate the system in order to bargain for a lesser sentence. Specifically, he stated at p. 521 that the right to a speedy trial was:

. . . a more vague concept than other procedural rights. It is, for example, impossible to determine with precision when the right has been denied. We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate. As a consequence, there is no fixed point in the criminal process when the State can put the defendant to the choice of either exercising or waiving the right to a speedy trial.

In order to balance the individual right and the communal aspect of the Sixth Amendment, the U.S. Supreme Court adopted an approach of *ad hoc* balancing "in which the conduct of both the prosecution and the defendant are weighed" (p. 530). The balancing is undertaken by reference to four factors identified by Powell J. as the test for infringement of the right to a "speedy trial". They are as follows:

- (i) the length of the delay;
- (ii) the reason for the delay;
- (iii) the accused's assertion of the right; and
- (iv) prejudice to the accused.

The first factor is the triggering mechanism or threshold determination of the excessiveness of the delay. If that delay appears *prima facie* excessive, the Court must then consider the three remaining factors to determine whether the accused has been deprived of the Sixth Amendment right.

The foregoing review may assist in defining the factors which should be taken into consideration on an application for a stay of proceedings. However, before that step is undertaken, it is necessary to determine what may be distilled from the cases as to the purpose or aim of s. 11(b).

2.2.2 Purpose of s. 11(b)

I agree with the position taken by Lamer J. that s. 11(b) explicitly focuses upon the individual interest of liberty and security of the person. Like other specific guarantees provided by s. 11, this paragraph is primarily concerned with an aspect of fundamental justice guaranteed by s. 7 of the *Charter*. There could be no greater frustration imaginable for innocent persons charged with an offence than to be denied the opportunity of demonstrating their innocence for an unconscionable time as a result of unreasonable delays in their trial. The time awaiting trial must be exquisite agony for accused persons and their immediate family. It is a fundamental precept of our criminal law that every individual is presumed to be innocent until proven guilty. It follows that on the same fundamental level of importance, all accused persons, each one of whom is presumed to be innocent, should be given the opportunity to defend themselves against the charges they face and to have their name cleared and reputation re-established at the earliest possible time.

Although the primary aim of s. 11(b) is the protection of the individual's rights and the provision of fundamental justice for the accused, nonetheless there is, in my view, at least by inference, a community or societal interest implicit in s. 11(b). That community interest has a dual dimension. First, there is a collective interest in ensuring that those who transgress the law are brought to trial and dealt with according to the law. Second, those individuals on trial must be treated fairly and justly. Speedy trials strengthen both those aspects of the community interest. A trial held within a reasonable time must benefit the individual accused as the prejudice which results from criminal proceedings is bound to be minimized. If the accused is in custody, the custodial time awaiting trial will be kept to a minimum. If the accused is at liberty on bail and subject to conditions, then the curtailments on the liberty of the accused will be kept to a minimum. From the point of view of the community interest, in those cases where the accused is detained in custody awaiting trial, society will benefit by the quick resolution of the case either by reintegrating into society the accused found to be innocent or if found guilty by dealing with the accused according to the law. If the accused is released on bail and subsequently found guilty, the frustration felt by the community on seeing an unpunished wrongdoer in their midst for an extended period of time will be relieved.

There are as well important practical benefits which flow from a quick resolution of the charges. There can be no doubt that memories fade with time. Witnesses are likely to be more reliable testifying to events in the immediate past as opposed to events that transpired many months or even years before the trial. Not only is there an erosion of the witnesses' memory with the passage of time, but there is bound to be an erosion of the witnesses themselves. Witnesses are people; they are moved out of the country by their employer; or for reasons related to family or work they move from the east coast to the west coast; they become sick and unable to testify in court; they are involved in debilitating accidents; they die and their testimony is forever lost. Witnesses too are concerned that their evidence be taken as quickly as possible. Testifying is often thought to be an ordeal. It is something that weighs on the minds of witnesses and is a source of worry and frustration for them until they have given their testimony.

It can never be forgotten that the victims may be devastated by criminal acts. They have a special interest and good reason to expect that criminal trials take place within a reasonable time. From a wider point of view, it is fair to say that all crime disturbs the community and that serious crime alarms the community. All members of the community are thus entitled to see that the justice system works fairly, efficiently and with reasonable dispatch. The very reasonable concern and alarm of the community which naturally arises from acts of crime cannot be assuaged until the trial has taken place. The trial not only resolves the guilt or innocence of the individual, but acts as a reassurance to the community that serious crimes are investigated and that those implicated are brought to trial and dealt with according to the law.

The failure of the justice system to deal fairly, quickly and efficiently with criminal trials inevitably leads to the community's frustration with the judicial system and eventually to a feeling of contempt for court procedures. When a trial takes place without unreasonable delay, with all witnesses available and memories fresh, it is far more certain that the guilty parties who committed the crimes will be convicted and punished and those that did not, will be acquitted and vindicated. It is no exaggeration to say that a fair and balanced criminal justice system simply cannot exist without the support of the community.

Continued community support for our system will not endure in the face of lengthy and unreasonable delays.

Further, implicit support for the concept that there is a societal aspect to s. 11(b) can be derived from the observation that the last thing that some wish for is a speedy trial. There is no doubt that many accused earnestly hope that the memory of a witness will fail and that other witnesses will become unavailable. This factor was noted by the Honourable T. G. Zuber in his *Report of the Ontario Courts Inquiry* (1987), at p. 73:

It is, however, the observation of this Inquiry that those accused of crime and their counsel are often disinterested in trial within a reasonable time. Delay is perceived not as a factor which will impair the ability of the accused to present a defence but rather a factor which will erode the case for the prosecution.

Doherty J. wrote to the same effect in a paper delivered to the National Criminal Law Program in July 1989. He wrote:

Many accused do not want to be tried at all, and many embrace any opportunity to delay judgment day. This reluctance to go to trial is no doubt a very human reaction to judgment days of any sort; as well as a reflection of the fact that in many cases delay inures to the benefit of the accused. An accused is often not interested in exercising the right bestowed on him by s. 11(b). His interest lies in having the right infringed by the prosecution so that he can escape a trial on the merits. This view may seem harsh but experience supports its validity.

This unique attitude on the part of accused toward this right often puts a court in a position where it perceives itself as being asked to dismiss a charge, not because the accused was denied something which he wanted, and which could have assisted him, but rather, because he got exactly what he wanted, or at least was happy to have -- delay. A dismissal of the charge, the only remedy available when s. 11(b) is found to have been violated, sticks in the judicial craw when everyone in the courtroom knows that the last thing the accused wanted was a speedy trial. It hardly enhances the reputation of the administration of justice when an accused escapes a trial on the merits, not because he was wronged in any real sense, but rather because he successfully played the waiting game.

As these comments from distinguished jurists indicate, the s. 11(b) right is one which can often be transformed from a protective shield to an offensive weapon in the hands of the accused.

I believe the inferred societal interest should be considered in conjunction with the main and primary concept of the protection of the individual's right to fundamental justice. This is closer to the views expressed by Wilson J. in *Mills, supra*. At some level, the conduct of and prejudice to the accused must be examined. Although it must be recognized that the primary goal of s. 11(b) is the protection of the individual's interest in fundamental justice, nevertheless that same section contains a secondary and inferred societal interest that should not be ignored. If the recognition of both the primary individual interest and the inferred society interest is accepted as the true aim of s. 11(b), then I think the various factors which should be taken into consideration in determining whether there has been an unreasonable delay can be clarified and set forth in a consistent test.

2.2.3 Factors to be Taken Into Account in Determining Whether or not There has Been an Infringement of s. 11(b)

(i) *The Length of the Delay*

It is clear that the longer the delay, the more difficult it should be for a court to excuse it. This is not a threshold requirement as in the United States, but rather is a factor to be balanced along with the others. However, very lengthy delays may be such that they cannot be justified for any reason.

(ii) *Explanation for the Delay*

This category referred to by Sopinka J. in *Smith, supra*, may be usefully subdivided with the aspects of systemic delay and conduct of the accused amplified.

(a) The Conduct of the Crown (or Delay Attributable to the Crown)

Generally speaking, this category will comprise all of the potential factors causing delay which flow from the nature of the case, the conduct of the Crown, including officers of the state, and the inherent time requirements of the case. Delays attributable to the actions of the Crown or its officers will weigh in favour of the accused. For example, the nineteen adjournments initiated by the trial judge in *Rabey* or the unavailability of judges because of holidays in *Smith* are examples where the actions or the lack of actions of Crown officers weighed against the state in the assessment of the reasonableness of the delay.

It is under this heading that the complexity of the case should be taken into account. Complex cases which require longer time for preparation, a greater expenditure of resources by Crown officers and the longer use of institutional facilities will justify delays longer than those that would be acceptable in simple cases.

(b) Systemic or Institutional Delays

On a more specific level, the question of delays caused by systemic or institutional limitations should also be discussed under the heading of delays attributable to the Crown. This factor will often be the most difficult to assess. A careful and sensitive balancing will be required in order to properly assess the significance of this aspect of delay. First, let us consider the problem from the point of view of society. Section 11(b) applies to all Canadians in every part of our land. In a country as vast and diverse as ours, the institutional problems are bound to differ greatly from province to province and from district to district within each province. Differences of climate, terrain, population and financial resources will require different solutions for the problem of providing adequate facilities and personnel. Lack of financial resources may require imaginative answers to difficult problems, including the provision of temporary facilities. The problems presented and the solutions required will vary between heavily populated centres such as Toronto and Montréal and the sparsely populated districts bordering on Hudson Bay.

Wise political decisions will be required with regard to the allocation of scarce funds. Due deference will have to be given to those political decisions as the provisions of courtroom facilities and Crown Attorneys must, for example, be balanced against the provision of health care and highways. Yet solutions must be found as indeed they have been in many jurisdictions outside Ontario. Similarly situated communities can provide a rough comparison and some guidance as to what time period constitutes an unreasonable delay of the trial of an accused person. That comparison should always be made with the more efficient of the comparable jurisdictions.

The right guaranteed by s. 11(b) is of such fundamental importance to the individual and of such significance to the community as a whole that the lack of institutional resources cannot be employed to justify a continuing unreasonable postponement of trials. In *Mills, supra*, Lamer J. noted at p. 935:

In an ideal world there would be no delays in bringing an accused to trial and there would be no difficulties in securing fully adequate funding, personnel and facilities for the administration of criminal justice. As we do not live in such a world, some allowance must be made for limited institutional resources.

However, the lack of institutional facilities can never be used as a basis for rendering the s.11(b) guarantee meaningless. In the same case, Lamer J. gave clear warning of the dangers that would ensue from permitting the lack of institutional resources to constitute an acceptable excuse for unreasonable delays. At page 935 he stated:

It is imperative, however, that in recognizing the need for such a criterion we do not simply legitimate current and future delays resulting from inadequate institutional resources. For the criterion of institutional resources, more than any other, threatens to become a source of justification for prolonged and unacceptable delay. There must, therefore, be some limit to which inadequate resources can be used to excuse delay and impair the interests of the individual. [Emphasis added.]

It must be remembered that it is the duty of the Crown to bring the accused to trial. It is the Crown which is responsible for the provision of facilities and staff to see that accused persons are tried in a reasonable time.

This same view was expressed by Martin J.A. in *Beason, supra*. In that case the Ontario Court of Appeal considered a delay of forty months, nine months of which was occasioned by a shortage of courtrooms in Toronto. Martin J.A. stated at p. 42:

An accused has no duty to bring himself to trial. The Crown has that duty. I am further of the view that the unavailability of court-room facilities or personnel cannot justify a delay of this *inordinate* length in a simple case such as this.

Where inordinate delays do occur, it is those who are responsible for the lack of facilities who should bear the public criticism that is bound to arise as a result of the staying of proceedings which must be the inevitable consequence of unreasonable delays. Members of the community will not and should not condone or accept a situation where those alleged to have committed serious crimes are never brought to trial solely as a result of unduly long delays. It is a serious consequence with potentially dangerous overtones for the community. It is right and proper that there be criticism of the situation when it occurs.

The response to the question of "how long is too long" as it applies to institutional delay will always be difficult to fashion in our country. The question must be answered in light of the particular facts of each case. There can be no certain standard of a fixed time which will be applicable in every region of the country. Nonetheless, an inquiry into what is reasonable in any region should not be taken in isolation and must, of necessity, involve a comparison with other jurisdictions. Consideration must be given to the geography, the population and the material resources of the province and district. The comparison of similar and thus comparable districts must always be made with the better districts and not with the worst. In *Mills, supra*, Lamer J. expressed his views on this issue in the following words at pp. 935-36:

. . . the courts must refrain from simply drawing an average between the worst and the best in the country, that is, between those areas where delays are longest and those which offer the best examples of promptness. The appropriate models are those jurisdictions which have the greater degrees of promptness, or the lesser amounts of systemic delay. They are examples of the appropriate accommodation between demands on the system and allocation of available resources.

It is no answer to say that demands on the system may be less in some areas than in, to give an example, a congested urban centre. The point is that there has been in such jurisdictions an allocation of *sufficient* resources to meet the demands and administer the criminal justice system with minimal delay. Greater delays in other areas may simply mean that sufficient resources have not been allocated to deal adequately with current demands. The measure of what is possible in adjusting resources to demands comes from those jurisdictions which have the lesser amounts of systemic delay. That is the measure which must serve for all jurisdictions.

Such a criterion has the obvious advantage of being anchored in reality. It does not seek to impose an arbitrary standard, such as a fixed ceiling, e.g. four months or five months, on excusable delay but looks to what has in fact been accomplished in various jurisdictions. It is those very jurisdictions which have been most successful in minimizing systemic delay which thus set the measure of what is possible, rather than the courts *in abstracto*. Additionally, this approach is more flexible than would be fixed ceilings, all the while establishing an objective, national standard. It would reduce discrepancies between different parts of the country and ensure that "unreasonable delay in run-of-the-mill criminal cases cannot be justified by simply asserting that the public resources provided by the State's criminal-justice system are limited and that each case must await its turn" (*Barker v. Wingo, supra, per White J., Brennan J. concurring, at p. 538*).

To summarize, when considering delays occasioned by inadequate institutional resources, the question of how long a delay is too long may be resolved by comparing the questioned jurisdiction to the standard maintained by the best comparable jurisdiction in the country. The comparison need not be too precise or exact. Rather, it should look to the appropriate ranges of delay to determine what is a reasonable limit. In all cases it will be incumbent upon the Crown to show that the institutional delay in question is justifiable.

(c) The Conduct of the Accused (or Delay Attributable to the Accused)

As Lamer J. so cogently observed in *Mills*, it is a fundamental precept of our criminal justice system that it is the responsibility of the Crown to bring the accused to trial. Further, the right to be tried within a reasonable time is an aspect of fundamental justice protected by s. 7 of the *Charter*. It follows that any inquiry into the conduct of the accused should in no way absolve the Crown from its responsibility to bring the accused to trial. Nonetheless, there is a societal interest in preventing an accused from using the guarantee as a means of escaping trial. It should be emphasized that an inquiry into the actions of the accused should be restricted to discovering those situations where the accused's acts either directly caused the delay (as in *Conway*), or the acts of the accused are shown to be a deliberate and calculated tactic employed to delay the trial. These direct acts on the part of the accused, such as seeking an adjournment to retain new counsel, must of course be distinguished from those situations where the delay was caused by factors beyond the control of the accused, or a situation where the accused did nothing to prevent a delay caused by the Crown.

In addition, since the protection of the right of the individual is the primary aim of s. 11(b), the burden of proving that the direct acts of the accused caused the delay must fall upon the Crown. This would be true except in those cases where the effects of the accused's action are so clear and readily apparent that the intent of the accused to cause a delay is the inference that must be drawn from the record of his or her actions.

(iii) *Waiver*

While the question of waiver could be discussed under factor (ii)(c) above (Delay Attributable to the Accused), for reasons of clarity, I prefer to examine the issue separately.

The accused should not be required to assert the explicitly protected individual right to trial within a reasonable time. It is now well established that any waiver of a *Charter* right must be "clear and unequivocal . . . with full knowledge of the rights the procedure was enacted to protect and of the effect the waiver will have on those rights in the process". See *Korponay v. Attorney General of Canada*, [1982] 1 S.C.R. 41, at p. 49. The failure of an accused to assert the right does not give the Crown licence to proceed with an unfair trial. Failure to assert the right would be insufficient in itself to impugn the motives of the accused as might be the case with regard to other s. 11 rights. Rather there must be something in the conduct of the accused that is sufficient to give rise to an inference that the accused has understood that he or she had a s. 11(b) guarantee, understood its nature and has waived the right provided by that guarantee. Although no particular magical incantation of words is required to waive a right, nevertheless the waiver must be expressed in some manner. Silence or lack of objection cannot constitute a lawful waiver. The matter was put in these words by Dickson J., as he then was, in *Park v. The Queen*, [1981] 2 S.C.R. 64, at pp. 73-74:

No particular words or formula need be uttered by defence counsel to express the waiver and admission. All that is necessary is that the trial judge be satisfied that counsel understands the matter and has made an informed decision to waive . . . Although no particular form of words is necessary the waiver must be express. Silence or mere lack of objection does not constitute a lawful waiver.

If the Crown is relying upon actions of the accused to demonstrate waiver, then the onus will lie upon the Crown to prove that a specific waiver can be inferred. It may well be that the setting of trial dates and the agreement to those dates by counsel for the accused may be sufficient to constitute waiver. This possibility was noted by Sopinka J. as stated in *Smith*, *supra*, at p. 1136:

Agreement by an accused to a future date will in most circumstances give rise to an inference that the accused waives his right to subsequently allege that an unreasonable delay has occurred. While silence cannot constitute waiver, agreeing to a future date for a trial or a preliminary inquiry would generally be characterized as more than silence. Therefore, absent other factors, waiver of the appellant's s. 11(b) rights might be inferred based on the foregoing circumstances.

In sum, the burden always rests with the Crown to bring the case to trial. Further, the mere silence of the accused is not sufficient to indicate a waiver of a *Charter* right; rather, the accused must undertake some direct action from which a consent to delay can be properly inferred. The onus rests upon the Crown to establish on a balance of probabilities that the actions of the accused constitute a waiver of his or her rights.

(iv) *Prejudice to the Accused*

The different positions taken by Members of the Court with regard to the prejudice suffered by an accused as a result of a delayed trial are set forth in *Mills* and *Rabey*. Perhaps the differences can be resolved in this manner. It should be inferred that a very long and unreasonable delay has prejudiced the accused. As Sopinka J. put it in *Smith*, *supra*, at p. 1138:

Having found that the delay is substantially longer than can be justified on any acceptable basis, it would be difficult indeed to conclude that the appellant's s. 11(b) rights have not been violated because the appellant has suffered no prejudice. In this particular context, the inference of prejudice is so strong that it would be difficult to disagree with the view of Lamer J. in *Mills* and *Rabey* that it is virtually irrebuttable.

Nevertheless, it will be open to the Crown to attempt to demonstrate that the accused has not been prejudiced. This would preserve the societal interest by providing that a trial would proceed in those cases where despite a long delay no resulting damage had been suffered by the accused. Yet, the existence of the inference of prejudice drawn from a very long delay will safely preserve the pre-eminent right of the individual. Obviously, the difficulty of overcoming the inference will of necessity become more difficult with the passage of time and at some point will become irrebuttable. Nonetheless, the factual situation presented in *Conway* serves as an example of an extremely lengthy delay which did not prejudice the accused. However, in most situations, as Sopinka J. pointed out in *Smith*, the presumption will be "virtually irrebuttable".

Furthermore, the option left open by Sopinka J. in the *Smith* case whereby accused persons who have suffered some additional form of prejudice are permitted to adduce evidence of prejudice on their own initiative in order to strengthen their position in seeking a remedy under s. 24(1) of the *Charter* is consistent with the primary concern of protecting the individual's right under s. 11(b).

2.2.4 From the foregoing review it is possible I think to give a brief summary of all the factors which should be taken into account in considering whether the length of the delay of a trial has been unreasonable.

(i) The Length of the Delay.

The longer the delay, the more difficult it should be for a court to excuse it. Very lengthy delays may be such that they cannot be justified for any reason.

(ii) Explanation for the Delay.

(a) Delays Attributable to the Crown.

Delays attributable to the action of the Crown or officers of the Crown will weigh in favour of the accused. The cases of *Rabey* and *Smith* provide examples of such delays.

Complex cases which require longer time for preparation, a greater expenditure of resources by Crown officers, and the longer use of institutional facilities will justify delays longer than those acceptable in simple cases.

(b) Systemic or Institutional Delays.

Delays occasioned by inadequate resources must weigh against the Crown. Institutional delays should be considered in light of the comparative test referred to earlier. The burden of justifying inadequate resources resulting in systemic delays will always fall upon the Crown. There may be a transitional period to allow for a temporary period of lenient treatment of systemic delay.

(c) Delays Attributable to the Accused.

Certain actions of the accused will justify delays. For example, a request for adjournment or delays to retain different counsel.

There may as well be instances where it can be demonstrated by the Crown that the actions of the accused were undertaken for the purposes of delaying the trial.

(iii) Waiver.

If the accused waives his rights by consenting to or concurring in a delay, this must be taken into account. However, for a waiver to be valid it must be informed, unequivocal and freely given. The burden of showing that a waiver should be inferred falls upon the Crown. An example of a waiver or concurrence that could be inferred is the consent by counsel for the accused to a fixed date for trial.

(iv) Prejudice to the Accused.

There is a general, and in the case of very long delays an often virtually irrebuttable presumption of prejudice to the accused resulting from the passage of time. Where the Crown can demonstrate that there was no prejudice to the accused flowing from a delay, then such proof may serve to excuse the delay. It is also open to the accused to call evidence to demonstrate actual prejudice to strengthen his position that he has been prejudiced as a result of the delay.

2.2.5 The issue of what constitutes a fair hearing within a reasonable time was also considered in the Zimbabwean case of *In Re Mlambo*²⁵.

The applicant was arrested in 1986 and charged with theft. He appeared in court and was released on bail after two weeks in custody. He subsequently appeared in court on 12 occasions until August 1987 when his legal representative complained about the lengthy delay in bringing the matter to trial and made strong representations that a date for trial be set. Thereupon the prosecutor promptly withdrew the charges and the applicant was advised that he could be charged at a later stage. In August 1990 the applicant was summonsed to appear in court on substantially the same charges.

His legal representative wrote on several occasions to the clerk of the court requesting copies of various documents which the State intended to produce at the trial. When the date of trial arrived and the copies of documents had not been furnished the applicant's legal representative sought a postponement of the trial, which was granted. At the resumed hearing applicant's counsel asked the court to stay the proceedings on the grounds that the applicant's rights under s 18(2) in the Declaration of Rights in the Constitution of Zimbabwe had been infringed by the delay in bringing the matter to trial. The prosecution made no attempt to explain the delay and the magistrate dismissed the application. On the following day the matter resumed before another magistrate, who agreed to refer the matter to the Supreme Court in terms of s 24(2) of the Constitution.

The Court held, that a reasonable time was necessary for the State to be ready for a trial, which period varied from case to case and the distinction between what was a reasonable period and what was not a reasonable period could not be drawn too sharply.

Gubbay CJ delivering the judgment of the full Bench of the Supreme Court endorsed the approach of the European Court of Human Rights in *Eckle v Germany (Federal Republic)*²⁶ and *Foti v Italy*²⁷. He re-stated the factors as follows:

2.2.5.1 The factors to be considered in a determination of whether an accused person has been afforded a fair hearing within a reasonable time

In *Fikilini v Attorney-General* 1990 (1) ZLR 105 (SC) at 112G this Court approved of the factors identified by Justice Powell in his landmark judgment in *Barker v Wingo* (supra) as amongst those to be taken into account in assessing whether an accused has been deprived of his constitutional right to a speedy trial. He stated them at 530-2, as follows:

²⁵ *In Re Mlambo* 1992 (4) SA 144; 1992 (2) SACR 245 (ZS)

²⁶ (1985) 5 EHRR 1

²⁷ (1983) 5 EHRR 313

"The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. Nevertheless, because of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case. To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge.

Closely related to length of delay is the reason the government assigns to justify the delay. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defence should be weighed heavily against the Government. A more neutral reason such as negligence or overcrowded courts should be weighed less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the Government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

We have already discussed the third factor, the defendant's responsibility to assert his right. Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasise that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.

A fourth factor is prejudice to the defendant. Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pre-trial incarceration; (ii) to minimise anxiety and concern of the accused, and (iii) to limit the possibility that the defence will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defence witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.²⁸

2.3 The onus

As stated earlier it is for the applicant to persuade the court that the delay complained of exceeds what is reasonable. See *Fikilini v Auorney-General*(*supra* at 117D-E). The degree of persuasion required of him is to show that the delay is *prima facie* unreasonable, or, in the words of Powell J in *Barker v Wingo* (*supra* at 530), 'presumptively prejudicial'. It is that which triggers the enquiry into the other factors that go into the balance. It is the threshold at which the court may look to the State for an explanation. It is, of course, neither possible nor desirable to identify precisely the length of delay which will trigger the enquiry. Each case is to be viewed in the light of its own particular circumstances in order to determine whether the delay is *prima facie* unreasonable.

²⁸ See also *United States v Van Neumann* 474 US 242 (1986) at 247.

These factors received the *imprimatur* of the Privy Counsel in *Bell v Director of Public Prosecutions of Jamaica and Another* [1985] 2 All ER 585

2.4 Assessment of reasonableness

In this case the overall length of the delay is twelve years which is more than adequate to trigger an enquiry. It is 'presumptively prejudicial'. The disposition of this case will therefore ultimately turn on the proof of the other factors like (i) explanation for the delay, particularly systemic or institutional delay and delays attributable to the accused; (ii) waiver and (iii) prejudice to the accused. Considering the length of the delay and the explanation thereof one is obliged to come to the conclusion that the State's conduct is indicative of a sustained unconcern to proceed as quickly as possible against the applicant. The explanation for the delay is that the Prosecution had misplaced the victim's file, this is as totally unacceptable as it is reprehensible. That the entire delay was attributable to the actions of the State weighs heavily in favour of the applicant. Unless, therefore, there is some strong basis to counter this factor, which becomes clear from an examination of other factors, it will not prove possible to tolerate it.

Next to be set in the scale is the frequency and force of the objection to the delay. Here evidence must be deduced to establish that there was nothing in the conduct of the victim or his defence counsel that can be viewed as a waiver of the applicant's constitutional guarantee. It must be proved that concerted efforts were made by the victim or his counsel to object to the delay. With regard to the fourth factor, evidence must be elicited from the applicant to the effect that the delay had caused him actual prejudice. This may relate to unavailability of witnesses and other evidence that collectively impair the ability to present an adequate defence, to establish the trial prejudice. It must also be borne in mind that a very long delay such as this, inherently gives rise to a strong presumption of prejudice to an accused. As stated by Hannah J:²⁹

The right, therefore, recognises that, with the passage of time, subjection to a criminal charge gives rise to restrictions on liberty, inconveniences, social stigma and pressures detrimental to the mental and physical health of the individual. It is a truism that the time awaiting trial must be agonising for accused persons and their immediate family. I believe that there can be no greater frustration for an innocent charged with an offence than to be denied the opportunity of demonstrating his lack of guilt for an unconscionable time as a result of delay in bringing him to trial.

The right recognises, also, that an unreasonable delay may well impair the ability of the individual to present a full and fair defence to the charge.

Where the State can demonstrate that there was no prejudice flowing from the delay, then such proof may serve to excuse it.

Balancing all the factors leads one irresistibly to submit that the effect of this extraordinarily lengthy delay is such as to deny the applicant/victim the right to a fair hearing of his case. Justice so delayed is an affront to the individual, to the community and to the very administration of justice. The charge against the victim/accused is murder and therefore, far from trivial and there can be no doubt that it would be in the best interests of society to proceed with the trial of those who are charged with the commission of serious crimes. Yet, that trial can only be undertaken if the guarantee under s 18(1) of the Zambian Constitution has not been infringed. In this case it has been grievously infringed. In the premise it is unconceivable how a hearing can be allowed to take place. Any conclusion to the contrary would render meaningless a right enshrined in the Constitution as the Supreme law of the land.

2.5 The appropriate remedy

This case involves alleged violation of the right of the accused to a fair trial within a reasonable time as provided for by 18(1) of the Constitution of Zambia and therefore the application for a

²⁹ *S v Heidenrich*, (NmHC), 1996 (2) BCLR 197 (NmH): 1998 NR 229 at page 235 A-C

declaration of the violations and the order for the remedies will have to be made to the courts of Zambia that have jurisdiction over constitutional matters, and these will be the High Court and the Supreme Court.

In criminal law jurisprudence there are two schools of thought on the appropriate remedy to be ordered in cases of violation of the right to fair trial; whether an order for a stay of prosecution (an order to abort the trial) or an order for a speedy trial. In the *R v Askov* case the Court granted a stay of proceedings. In the *Mlambo* case the Court granted a permanent stay of proceedings but added that an order that the charge be dismissed would be tantamount to a pronouncement of innocence. In the Namibian case of *S v Heidenrich*³⁰ Hannah J stated that:

once the main of the sub-article 12(1)(b) of the Constitution of Namibia, which provides that the accused shall be released in the event of the violation of right, has been identified as being not only to minimise the possibility of lengthy pre-trial incarceration and to curtail restrictions placed on an accused who is on bail but also to reduce the inconvenience, social stigma and other pressures which he is likely to suffer and to advance the prospect of fair hearing, then it seems to me that ‘release’ must mean release from further prosecution for the offence with he is charged. It is only by giving the term this wider meaning that the full purpose of the sub-article is met. Release from custody or from onerous conditions of bail meets part of purpose of the sub-article.

In the South African case of *McCarthy v Additional Magistrate, Johannesburg*³¹ the Court decided that a party asserting an unreasonable delay in prosecution was required to show more than average systemic delay and that an indefinite stay of prosecution would seldom be granted in the absence of extraordinary circumstances.

PART 111

Zambia is a sovereign state with a supreme court as the final court of appeal and therefore foreign authorities are not binding but only persuasive. But the authorities referred to above are not from the Courts of only one jurisdiction. These authorities all confirm that stay of proceedings is an appropriate remedy to be ordered in a case of violation of the right to fair trial. Considering the length of the delay in this case couples with the non availability of the case records, it is inconceivable that State would wish to continue with the proceedings. Constitutional bail has already been granted by the trial Court and therefore further detention of the victim will amount to the Court disobeying its own orders and an affront to the criminal justice system of Zambia. It might be advisable to investigate the remedies provided by the Criminal Procedure Code of Zambia³² because the municipal laws of certain jurisdictions such as South Africa and Namibia have specific legislative provisions relating to remedies to be granted in cases of violation of the right to fair trial.

The victim is also entitled to invoke the civil jurisdiction of the Superior Courts of Zambia to apply for a declaration of the violation of his rights and compensation. But in practice, to succeed in the claim for compensation, sufficient evidence must be adduced to establish quantifiable loss. Evidence such as job loss, loss of conjugal and matrimonial rights, deprivation of family life etc will be relevant and necessary.

Zambia is a signatory to both the International Covenant of Civil and Political Rights and the African Charter on Human and Peoples’ Rights. Furthermore, Zambia has internalized the norms and standards of the International Bills of Rights in her domestic laws, more particularly, the Constitution of Zambia, Article 18(1) of which protects the right to fair trial within a reasonable time. The Zambian law enforcement agents are therefore not only bound by the treaty obligations of the

³⁰ supra

³¹ 2000 (2) SACR 542 (SCA)

³² I was not able to gain access to any of the relevant legislation of ZAMBIA and therefore I am not in the position to speak with authority on any legislative provisions of Zambia

above mentioned international instruments but also the provisions of their own constitution, the supreme law of the land, to give effect to these standards and norms.

Application of the principles of law dealing with the right to fair trial within a reasonable time to the case at bar will lead to the conclusion that there was obviously an unreasonable delay by the State, and hence the triggering threshold requirement is satisfied. If enough evidence is adduced to establish trial prejudice, then there exists a clear case of the infringement of the rights of the victim. In the premise, therefore, the victim is entitled to approach the Constitutional Court of Zambia for redress. The remedies of stay of proceedings and release should be available to the victim.

In terms of applications to the treaty bodies whose protocols Zambia has ratified, the victim *prima facie* has jurisdiction before these treaty bodies but with the proviso that the exhaustion of domestic remedies requirement must be complied with except where, of course, no domestic remedies are available or there is unreasonable delay on the part of the Zambia courts in granting remedy. It needs however to be established whether Zambia has ratified the Protocol to the African Courts on Human and Peoples' Rights.

A) National Legislation

Extracts from the Constitution of Zambia

B) International Instruments Referred to:

- 1) The International Covenant of Civil and Political Rights and the Optional Protocol
- 2) The International Bill of Human Rights
- 3) The African Charter on Human Peoples' Rights
- 4) The African Commission on Human and Peoples' Rights
- 5) The African Court on Human and Peoples' Rights

Further Sources for Reference

- 1) The Supreme Court of Zambia Act
- 2) The High Court of Zambia Act
- 3) The Human Rights Commission of Zambia Act
- 4) The Criminal Procedure Code

ANNEXURE 1

Optional Protocol to the International Covenant on Civil and Political Rights
Adopted and opened for signature, ratification and accession by
General Assembly resolution 2200A (XXI) of 16 December 1966
entry into force 23 March 1976, in accordance with Article 9

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Have agreed as follows:

Article 1

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514(XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether

they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph I, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

ANNEXURE 11

International Covenant on Civil and Political Rights
Adopted and opened for signature, ratification and accession by
General Assembly resolution 2200A (XXI) of 16 December 1966
entry into force 23 March 1976, in accordance with Article 49

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions,

regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3.
 - (a) No one shall be required to perform forced or compulsory labour;
 - (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
 - (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 22

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-

General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1.

(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information. 7. When the Commission has fully considered the matter, but in any event not

later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

ANNEXURE 111

African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986: [excerpts] . . .

Preamble

The African States members of the Organization of African Unity, parties to the present convention entitled "African Charter on Human and Peoples' Rights",

Recalling Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of a "preliminary draft on an African Charter on Human and Peoples' Rights providing inter alia for the establishment of bodies to promote and protect human and peoples' rights";

Considering the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples";

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights;

Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings which justifies their national and international protection and on the other hand that the reality and respect of peoples rights should necessarily guarantee human rights;

Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;

Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, Zionism and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, color, sex, language, religion or political opinions;

Reaffirming their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instrument adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations;

Firmly convinced of their duty to promote and protect human and people' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa;

Have agreed as follows:

Part I: Rights and Duties

Chapter I -- Human and Peoples' Rights

Article 1

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3

1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law.

Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 7

1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal. 2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

Article 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

Article 9

1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 10

1. Every individual shall have the right to free association provided that he abides by the law. 2. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.

Article 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

Article 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. 2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.

3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions. 4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law. 5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. 2. Every citizen shall have the right of equal access to the public service of his country. 3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

Article 14

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

Article 15

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

Article 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 17

1. Every individual shall have the right to education. 2. Every individual may freely, take part in the cultural life of his community. 3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

Article 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

Article 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

Article 20

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

Article 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law. 4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity. 5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

Article 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. 2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

Article 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States. 2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that: (a) any individual enjoying the right of asylum under 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter; (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

Article 24

All peoples shall have the right to a general satisfactory environment favorable to their development.

Article 25

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

Article 26

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

Chapter II - Duties

Article 27

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community. 2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

Article 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

Article 29

The individual shall also have the duty: 1. to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need; 2. To serve his national community by placing his physical and intellectual abilities at its service; 3. Not to compromise the security of the State whose national or resident he is; 4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened; 5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law; 6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society; 7. to preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society; 8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

Part II: Measures of Safeguard

Chapter I -- Establishment and Organization of the African Commission on Human and Peoples' Rights

Article 30

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

Article 31

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience.
2. The members of the Commission shall serve in their personal capacity. . . .

Article 41

The Secretary-General of the Organization of African Unity shall appoint the Secretary of the Commission. He shall also provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear the costs of the staff and services. . . .

Chapter II -- Mandate of the Commission

Article 45

The functions of the Commission shall be:

1. To promote Human and Peoples' Rights and in particular:
 - (a) to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.
 - (b) to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.
 - (c) co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
3. Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU.
4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

Chapter III -- Procedure of the Commission

Article 46

The Commission may resort to any appropriate method of investigation; it may hear from the Secretary General of the Organization of African Unity or any other person capable of enlightening it.

Communication From States

Article 47

If a State party to the present Charter has good reasons to believe that another State party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the

attention of that State to the matter. This communication shall also be addressed to the Secretary General of the OAU and to the Chairman of the Commission. Within three months of the receipt of the communication, the State to which the communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. This should include as much as possible relevant information relating to the laws and rules of procedure applied and applicable, and the redress already given or course of action available.

Article 48

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

Article 49

Notwithstanding the provisions of 47, if a State party to the present Charter considers that another State party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organization of African Unity and the State concerned.

Article 50

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

Article 51

1. The Commission may ask the States concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

Article 52

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of Human and Peoples' Rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in 48, a report stating the facts and its findings. This report shall be sent to the States concerned and communicated to the Assembly of Heads of State and Government.

Article 53

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

Article 54

The Commission shall submit to each ordinary Session of the Assembly of Heads of State and Government a report on its activities.

Other Communications

Article 55

1. Before each Session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the Commission.
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

Article 56

Communications relating to human and peoples' rights referred to in 55 received by the Commission, shall be considered if they:

1. Indicate their authors even if the latter request anonymity,
2. Are compatible with the Charter of the Organization of African Unity or with the present Charter,
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
4. Are not based exclusively on news discriminated through the mass media,
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and
7. Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

Article 57

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

Article 58

1. When it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.
2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations.
3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

Article 59

1. All measures taken within the provisions of the present Chapter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide. . . .
2. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

Chapter IV -- Applicable Principles

Article 60

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.

Article 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on human and people's rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.

Article 62

Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter. . . .

ANNEXURE IV

EXTRACTS FORM THE CONSTITUTION OF ZAMBIA

Article

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 he 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 therefor 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;

(aa) 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 than 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 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.

26. [Provisions relating to restriction and detention]

(1) where a person's freedom of movement is restricted, or he is detained, under the authority of any such law as is referred to in Article 22 or 25, as the case may be, the following provisions shall apply -

(a) he shall, as soon as reasonably practicable and in any case not more than fourteen days after the commencement of his detention or restriction, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is restricted or detained;

(b) not more than fourteen days after the commencement of his restriction or detention a notification shall be published in the Gazette stating that he has been restricted or detained and giving particulars of the place of detention and the provision of law under which his restriction or detention is authorised;

(c) if he so requests at any time during the period of such restriction or detention not earlier than three months after the commencement thereof or after he last made such a request during that period, as the case may be, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, appointed by the Chief Justice, who is or is qualified to be a judge of the High Court;

(d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the authority by which the restriction or detention was ordered or to any tribunal established for the review of his case; and

(e) at the hearing of his case by such tribunal he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any review by a tribunal under this Article, the tribunal shall advise the authority by which it was ordered on the necessity or expediency of continuing his restriction or detention and that authority shall be obliged to act in accordance with any such advice.

(3) The President may at any time refer to the tribunal the case of any person who has been or is being restricted or detained pursuant to any restriction or detention order.

(4) Nothing contained in paragraph (d) or (e) of clause (1) shall be construed as entitling a person to legal representation at public expense.

(5) Parliament may make or provide for the making of rules to regulate the proceedings of any such tribunal including but without derogating from the generality of the foregoing, rules as to evidence and the admissibility thereof, the receipt of evidence including written reports in the absence of the restricted or detained person and his legal representative, and the exclusion of the public from the whole or any portion of the proceedings.

(6) Clauses (11) and (12) of Article 18 shall be read and construed subject to the provisions of this Article.

27. [Reference of certain matters to Special Tribunal]
(1) Whenever --

(a) a request is made in accordance with clause (2) for a report on a bill or statutory instrument; or

(b) the Chief Justice considers it necessary for the purpose of determining claims for legal aid in respect of proceedings under Article 30 or 31;

the Chief Justice shall appoint a tribunal which shall consist of two persons selected by him from amongst persons who hold or have held the office of a judge of the Supreme Court or the High Court.

(2) A request for a report on a bill or a statutory instrument may be made by not less than thirty members of the National Assembly by notice in writing delivered --

(a) in the case of a bill, to the Speaker within three days after the final reading of the bill in the Assembly.

(b) in the case of a statutory instrument, to the authority having power to make the instrument within fourteen days of the publication of the instrument in the Gazette.

(3) Where a tribunal is appointed under this Article for the purpose of reporting on a bill or a statutory instrument, the tribunal shall, within the prescribed period, submit a report to the President and to the Speaker of the National Assembly stating --

(a) in the case of a bill, whether or not in the opinion of the tribunal any, and if so which, provisions of the bill are inconsistent with this Constitution;

(b) in the case of a statutory instrument, whether or not in the opinion of the tribunal any, and if so which, provisions of the instrument are inconsistent with this Constitution;

and, if the tribunal reports that any provision would be or is inconsistent with this Constitution, the grounds upon which the tribunal has reached that conclusion.

Provided that if the tribunal considers that the request for a report on a bill or statutory instrument is merely frivolous or vexatious, it may so report to the President without entering further upon the question whether the bill or statutory instrument would be or is inconsistent with this Constitution.

(4) In determining any claim for legal aid as referred to in clause (2), the tribunal may grant to any person who satisfies it that --

(a) he intends to bring or is an applicant in proceedings under clause (1) or (4) of Article 28;

(b) he has reasonable grounds for bringing the application; and

(c) he cannot afford to pay for the cost of the application;

a certificate that the application is a proper case to be determined at public expenses:

Provided that paragraph (c) shall not apply in any case where the application relates to the validity or a provision of law in respect of which the tribunal has reported that it would be or is inconsistent with this Constitution or where it appears to the tribunal that issues are or will be raised in the application which are of general importance.

(5) Where a certificate is granted to any person by the tribunal in pursuance of clause (4), there shall be paid to that person out of the general revenues of the Republic such amount as the tribunal, when hearing the application, may assess as the costs incurred by that person in connection with the application; and the sums required for making such payment shall be a charge on the general revenue of the Republic.

(6) For the purposes of clause (5) --

(a) the costs incurred in an application shall include the cost of obtaining the advice of a legal representative and, if necessary, the cost of representation by a legal representative in any court in steps preliminary or incidental to the application;

(b) in assessing the costs reasonably incurred by a person in an application regard shall be had to costs awarded against that person or recovered by him in those proceedings.

(7) In this Article, "prescribed period" means --

(a) in relation to a bill, the period commencing from the appointment of the tribunal to report upon the bill and ending thirty days thereafter or if the Speaker, on the application of the tribunal considers that owing to the length or complexity of the bill thirty days is insufficient for consideration of the bill, ending on such later day as the Speaker may determine;

(b) in relation to a statutory instrument, the period of forty days commencing with the day on which the instrument is published in the Gazette.

(8) Nothing in clause (1), (2) or (3) shall apply to a bill for the appropriation of the general revenues of the Republic or a bill containing only proposals for expressly altering this Constitution or The Constitution of Zambia Act, 1991.

28. [Enforcement of protective provisions]

(1) Subject to clause (5), if any person alleges that any of the provisions of Articles 11 to 26 inclusive has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the High Court which shall --

(a) hear and determine any such application;

(b) determine any question arising in the case of any person which is referred to it in pursuance of clause (2);

and which may, make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of Articles 11 to 26 inclusive.

(2)

(a) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of Articles 11 to 26 inclusive, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion the raising of the question is merely frivolous or vexatious.

(b) Any person aggrieved by any determination of the High Court under this Article may appeal therefrom to the Supreme Court:

Provided that no appeal shall lie from a determination of the High Court under this Article dismissing an application on the ground that it is frivolous and vexatious.

(3) No application shall be brought under clause (1) on the grounds that the provisions of Articles 11 to 26 (inclusive) are likely to be contravened by reason of proposals contained in any bill which, at the date of the application, has not become a law.

(4) Parliament may confer upon the Supreme Court or High Court such jurisdiction or powers in addition to those conferred by this Article as may appear to be necessary or desirable of the purpose of enabling that Court more effectively to exercise the jurisdiction conferred upon it by this Article or of enabling any application for redress to be more speedily determined.

29. [Declaration of war]

(1) The President may, in consultation with Cabinet, at any time, by Proclamation published in the Gazette declare war.

(2) A declaration made under clause (1) shall continue in force until the cessation of hostilities.

(3) An Act of Parliament shall provide for the conditions and circumstances under which a declaration may be made under clause (1).

30. [Declaration of public emergency]

(1) The President may, in consultation with Cabinet, at any time, by Proclamation published in the Gazette declare that a State of public emergency exists.

(2) A declaration made under clause (1) of this Article shall cease to have effect on the expiration of a period of seven days commencing with the day on which the declaration is made unless, before the

expiration of such period, it has been approved by a resolution of the National Assembly supported by a majority of all the members thereof not counting the Speaker.

(3) In reckoning any period of seven days for the purposes of clause (2) no account shall be taken of any time during which Parliament is dissolved.

(4) A declaration made under clause (1) may, at any time before it has been approved by a resolution of the National Assembly, be revoked by the President by Proclamation published in the Gazette.

(5) Subject to clause (6) a resolution of the National Assembly under clause (2) will continue in force until the expiration of a period of three months commencing with the date of its being approved or until revoked at such earlier date of its being so approved or until such earlier date as may be specified in the resolution.

Provided that the National Assembly may, by majority of all the members thereof, not counting the Speaker extend the approval of the declaration for periods of not more than three months at a time.

(6) The National Assembly may, by resolution, at any time revoke a resolution made by it under this Article.

(7) Whenever an election to the office of President results in a change of the holder of that office, any declaration made under this Article and in force immediately before the day on which the President assumes office shall cease to have effect on the expiration of seven days commencing with that day.

(8) The expiration or revocation of any declaration or resolution made under this Article shall not affect the validity of anything previously done in reliance on such declaration.

31. [Declaration relating to threatened emergency]

(1) The President may at any time by the Proclamation published in the Gazette declare that a situation exists which, if it is allowed to continue may lead to a state of public emergency.

(2) A declaration made under clause (1) of this Article shall cease to have effect on the expiration of a period of seven days commencing with the day on which the declaration is made unless, before the expiration of such period, it has been approved by a resolution of the National Assembly supported by a majority of all the members thereof not counting the Speaker.

(3) In reckoning any period of seven days for the purpose of clause (2) no account shall be taken of any time during which Parliament is dissolved.

(4) A declaration made under clause (1), may, at any time before it has been approved by a resolution of the National Assembly, be revoked by the President by Proclamation published in the Gazette.

(5) Subject to clause (6) a resolution of the National Assembly under clause (2) shall continue in force until the expiration of a period of three months commencing with the date of its being approved or until revoked on an earlier date of its being so approved or until such earlier date as may be specified in the resolution.

(6) The National Assembly may by resolution, at any time revoke a resolution made by it under this Article.

(7) Whenever an election to the office of President results in a change in the holder of that office, any declaration made under this Article and in force immediately before the day on which the

President assumes office, shall cease to have effect on the expiration of seven days commencing with that day.

(8) The expiration or revocation of any declaration or resolution made under this Article shall not affect the validity of anything previously done in reliance on such declaration.

32. [Interpretation and Savings]

(1) In this Part, unless the context otherwise requires --

"contravention", in relation to any requirement, includes a failure to comply with that requirement and cognate expressions shall be construed accordingly;

"court" means any court of law having jurisdiction in Zambia, other than a court established by a disciplinary law, and in Articles 12 and 14 includes a court established by a disciplinary law;

"disciplinary law" means a law regulating the disciplined force;

"disciplined force" means --

(a) a naval, military or air force;

(b) the Zambia Police Force; or

(c) any other force established by or under an Act of Parliament;

"legal representative" means a person entitled to practise in Zambia as an advocate;

"member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force is subject to that discipline.

(2) In relation to any person who is a member of a disciplined force raised under the law of Zambia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Part other than Articles 12, 14, and 15.

(3) In relation to any person who is a member of a disciplinary force raised otherwise than as aforesaid and lawfully present in Zambia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this part.