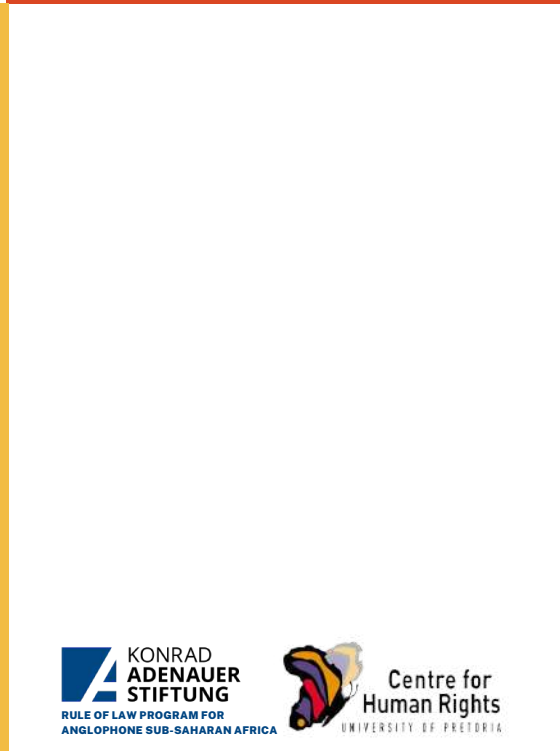




**A GUIDE TO
YOUR RIGHTS**
The Zambian Bill of Rights



A Guide to Your Rights: The Zambian Bill of Rights

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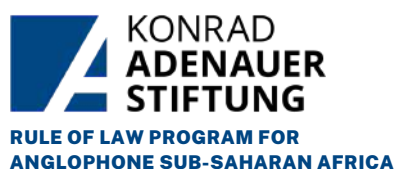
Centre for Human Rights, University of Pretoria

Designed by Judava Worx



The Centre for Human Rights, Faculty of Law, University of Pretoria, is an internationally recognised university-based institution combining academic excellence and effective activism to advance human rights, particularly in Africa. It aims to contribute to advancing human rights, through education, research and advocacy.

www.chr.up.ac.za



Konrad Adenauer Foundation (KAS) is a German Political Foundation that is committed to achieving and maintaining peace, freedom and justice through political education on a national level as well as on an international level with 111 offices worldwide. The KAS Rule of Law Program for Anglophone Sub-Saharan Africa based in Nairobi has been actively promoting the rule of law, democracy and human rights in the region since 2006. Strengthening constitutionalism as well as the enforcement of basic human rights enshrined in the constitutions of Sub-Saharan Africa has always been among the main focus of the Program's work.



FOREWORD

We live in a world where we often hear talk about human rights, often hear about how rights will help people to live lives that are dignified and free. In many countries, including in Zambia, rights are protected in a constitution. This has the potential to give people in Zambia great protection, as they can vindicate their constitutional rights in a range of different ways, including through the courts. Sadly, far too often, people have to struggle to enforce their rights. Sometimes this is the case because they have not been informed about all their rights, and sometimes it might be because they are not sure about what steps they can take to enforce their rights. This booklet is designed to help overcome these obstacles.

This booklet provides an easy-to-use introduction to understand what human rights are, where they come from, and what they mean for citizens and other people living in Zambia. Through this booklet, the Centre for Human Rights (Centre) and the Konrad-Adenauer-Stiftung (KAS) hope to help every citizen, and everyone living in Zambia – hope to help you – know your rights and better understand how they protect you against actions that violate rights, whether by the government, by private entities, like companies, or by other people, and how you can make these rights real.


The Centre and KAS are committed to supporting people's attempts to live in dignity and freedom. Both the Centre and KAS are convinced that providing people with information and help in understanding how to turn this information to action will help people enforce their rights, and ultimately live with more dignity. We are proud to be able to have worked together on this booklet, and we hope that it proves to be a useful tool in helping people enforce the rights that are protected in their Constitution.

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INTRODUCTION

Everyone in Zambia has rights. These rights are meant to protect citizens and help them live dignified and meaningful lives as captured in the Bill of Rights of the Zambian Constitution.

Zambia has had two constitutions since independence, marking independence with a new Constitution, adopted in 1964. This was replaced in 1991. This new Constitution marked an important moment in Zambia's history. This Constitution allowed for multiple parties to contest elections; and tried to create the framework for a responsive and honest government, which people in Zambia could hold answerable for its actions. This booklet will tell you how the Bill of Rights contributes to the protection of the rights of every person in Zambia, and why this matters to you and your community.



(CREDIT: Bioversity International/E.Hermanowicz)

Using this booklet

This booklet is intended to provide you with an introduction to the Constitution of Zambia, to tell you what your rights are and what this means for you. It includes some significant court cases, where people have claimed their rights, and held others, including the government, to account for their actions.

This booklet only provides you with a summary of the rights in the Bill of Rights. If you want to read the Constitution as it is written, in full, you can find the full Constitution online by entering "Zambia Constitution" into a search engine, or by visiting this website:

[https://www.parliament.gov.zm/sites/default/files/documents/amendment_act/Constitution of Zambia \(Amendment\), 2016-Act No. 2_0.pdf](https://www.parliament.gov.zm/sites/default/files/documents/amendment_act/Constitution of Zambia (Amendment), 2016-Act No. 2_0.pdf).

If you would like to find out more about a particular case, you can insert the name of the case into a search engine, and you should be able to find the case that has been under discussion.

CONSTITUTIONS: WHAT ARE THEY?

Most countries in the world have a constitution. A constitution is, in many countries, the highest law in the land. Every law in a country governed by a constitution, and every action taken by the government of that country, must be in accordance with that country's constitution. Constitutions tell us how a country's government should function, about the rights that people in that country have, and about how different government institutions, like the police, should function.



Most countries in the world have written constitutions, but there are some countries with unwritten constitutions. Where a constitution is unwritten, the fundamental rules of society are formed by customs and by practices that have become common in society. Constitutions often make clear the kind of society that a country wants to be. They reflect problems that a country has had in the past, and its hopes for the future. Zambia's Constitution makes clear the commitments that the Zambian people think are important, in the Preamble, a section that comes at the beginning of the Constitution.





PREAMBLE

WE, THE PEOPLE OF ZAMBIA—
ACKNOWLEDGE the supremacy of God Almighty;
DECLARE the Republic a Christian Nation while upholding a person's right to freedom of conscience, belief or religion;
UPHOLD the human rights and fundamental freedoms of every person;
COMMIT ourselves to upholding the principles of democracy and good governance;
RESOLVE to ensure that our values relating to family, morality, patriotism and justice are maintained and all functions of the State are performed in our common interest;
CONFIRM the equal worth of women and men and their right to freely participate in, determine and build a sustainable political,

legal, economic and social order;
RECOGNISE AND UPHOLD the multi-ethnic, multi-religious and multi-cultural character of our Nation and our right to manage our affairs and resources sustainably in a devolved system of governance;
RESOLVE that Zambia shall remain a unitary, multi-party and democratic sovereign State;
RECOGNISE AND HONOUR the freedom fighters who fought for the independence of our Nation in order to achieve liberty, justice and unity for the people of Zambia;
AND DIRECT that all State organs and State institutions abide by and respect our sovereign will;

DO HEREBY SOLEMNLY ADOPT AND GIVE TO OURSELVES THIS CONSTITUTION

THE HISTORY OF ZAMBIA'S CONSTITUTION

In 1964, the newly independent Zambia adopted a constitution that created an independent Zambian state. This Constitution established Zambia as an independent nation, and provided many rights to the people of Zambia. Over time, changes were made to this Constitution, and sometimes these changes caused problems. Amongst other things, individual rights were not properly protected. Perhaps the biggest problem was that this Constitution allowed for a single party system of politics. This undermined the right of people to choose their government, and also gave the President and the ruling party a lot of power.



Over time, many people became unhappy with the amount of power that the government had, and the lack of protection for the rights of individuals. Many groups advocated for multi-party democracy. Trade Unions, student groups, and church groups were involved in thinking about what a new constitution should involve and, eventually, in 1991 a new constitution was introduced. This Constitution took positive steps towards greater protection of people's rights, including their right to free and open elections – for the first time in decades, there could be more than one political party.

Perhaps the most important change was at Article 1 of the new Constitution, which declared that “this Constitution is the supreme law of Zambia.” This means that all of the rights and values contained in Zambia's Constitution could not be ignored – the government of Zambia must act in line with the Constitution. The 1991 Constitution was amended in 1996 and in 2016. The 2016 amendments also proposed changes to the Bill of Rights. In order for these changes to the Bill of Rights to take effect, the Constitution itself requires that the proposed changes be approved by a referendum in which more than 50% of voting-age Zambians (Zambians over the age of 18) vote. In 2016, less than 50% of voters voted in the referendum about the changes to the Bill of Rights so, even though many people wanted to accept these changes, the Bill of Rights could not be changed.

WHAT IS IN THE CONSTITUTION?

The Constitution is the most important law in Zambia. The very first Article of the Constitution states:

“This Constitution is the supreme law of the Republic of Zambia and any other written law, customary law and customary practice that is inconsistent with its provisions is void to the extent of the inconsistency.”

By making clear the fact that the Constitution is the supreme, the most important law in the country, the people who wrote the Constitution made clear that nothing should happen in the country that is not in line with these rights and values.

The Constitution also made clear that the rights and values apply to everyone! Another element of Article 1 of the Constitution states that:

“The Constitution shall bind all persons in Zambia, State organs and state institutions.”

Everyone, no matter how rich, how influential, has to act in accordance with the Constitution and must respect the rights of others. The Constitution makes clear that the people of Zambia can hold the government to account, and can make sure that the government acts in line with the values and rights of the Constitution.

CASE STUDY: STATE ACCOUNTABILITY AND THE CONSTITUTION

Rights help people to hold the State to account for abuses of power

In 2016, a man sued the police, claiming that his constitutional rights had been violated by the Police. The Supreme Court of Zambia heard the case, which was called *Attorney General and Others v Phiri*. The man claimed that the Zambian Police Service (ZPS) had violated his rights because he was arrested without being told why, and because, while he was detained, he was very badly beaten by police officers, which he claimed constituted torture.

The Court upheld the man’s rights, stating that everyone must be told reasons for their arrest or detention as soon as possible after their arrest or detention, and everyone has the right to be free from torture. Because the ZPS violated the man’s rights, the State had to be held accountable, and the man was awarded financial damages, as an attempt to hold the State to account.

The Constitution impacts all areas of life in Zambia. The Constitution consists of 20 Parts. Each part deals with a different element of life and government in Zambia.

THE CONSTITUTION OF ZAMBIA: CHAPTERS

- Preamble
- Part 1: Supremacy of Constitution
- Part 2: National values, principles, and economic policies
- Part 3: Protection of fundamental rights and freedoms of the individual
- Part 4: Citizenship
- Part 5: Representation of the people
- Part 6: Legislature
- Part 7: Executive
- Part 8: Judiciary
- Part 9: General principles of devolved governance
- Part 10: Provinces, districts, wards and provincial administration
- Part 11: Local government
- Part 12: Chieftaincy and house of chiefs
- Part 13: Public Service
- Part 14: Pension benefit
- Part 15: Defence and national security
- Part 16: Public finance and budget
- Part 17: Central bank
- Part 18: Services, commissions and other independent offices
- Part 19: Land, environment, and natural resources
- Part 20: General provisions

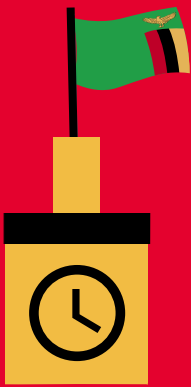


As you can see from the titles of the different chapters of the Constitution, it has an impact on all elements of life in Zambia. This booklet will focus on Part 3: Protection of fundamental freedoms of the individual, but should you wish to read any of the other chapters of the Constitution, you can consult the full Constitution here:

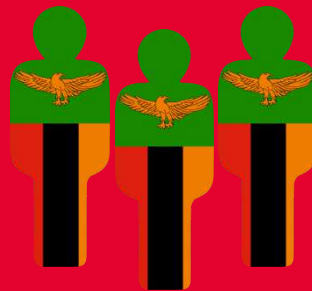
[https://www.parliament.gov.zm/sites/default/files/documents/amendment_act/Constitution%20of%20Zambia%20%20\(Amendment\),%202016-Act%20No.%202_0.pdf](https://www.parliament.gov.zm/sites/default/files/documents/amendment_act/Constitution%20of%20Zambia%20%20(Amendment),%202016-Act%20No.%202_0.pdf)

SEPARATION OF POWERS AND THE THREE ARMS OF GOVERNMENT

Zambia's Constitution recognises that countries often face a problem when one person or one institution has too much power. It is easy for people in such situations to abuse their power, and to undermine the rights of people in that country, and very hard for anyone to stop them when they do. One of the ways that the Constitution protects against anyone in government abusing their power, or the government as a whole abusing its power, is by dividing power amongst different branches of government. Each branch of government exercises some powers of the State, simultaneously with the other branches of government. There are three different branches:



The Legislature, which consists of members of parliament, which makes the laws.



The Executive, made up of the cabinet (all of the ministers) and the president, which puts the laws into effect and ensures the laws are upheld.



The Judiciary, which consists of the courts, judges, and magistrates, that interprets the laws.

Each of the three branches of government is independent of the others, and are all equally important. They act as a check on each other – no one person or branch of government can do whatever it wants, which means that it is much harder for people to abuse their power. This separation of powers is vital for protecting rights – as we will see in our case examples, there are often very important reasons to hold people with power, to hold the government, to account.

CASE STUDY: SEPARATION OF POWERS LIMITS THE POWERS OF GOVERNMENT

The separation of powers ensures that rights are protected

The legislature, also known as Parliament, is responsible for making laws in Zambia. Every law that the legislature makes must be in agreement with the Constitution. In 1995, a case called *Christine Mulundika and 7 others v The People* demonstrated this principle. Eight people were arrested for holding a public gathering. The law the police used, the Public Order Act, said that people had to seek permission before gathering. In Court the people who had been arrested challenged this law, claiming that the Constitution protected the rights of people to gather without seeking permission, as one of the rights in the Constitution is the freedom to assemble.

The Supreme Court of Zambia agreed with the arrested people. The Supreme Court said that the Public Order Act was inconsistent with the Constitution because it was against the principles of a democratic society, and ordered the legislature to amend the law. The legislature followed the orders of the Supreme Court, and passed a law that was in agreement with the Constitution.

In this case, the judiciary used its powers to ensure that the Constitution was upheld, ordering the legislature to make sure laws were constitutional.



THE STRUCTURE OF THE COURT SYSTEM IN ZAMBIA

The Judiciary plays a vital role in the protection of the rights of people in Zambia. Judiciary has the obligation to provide justice to everyone in Zambia, without discrimination. All judicial officers must be impartial, and must apply the law without equally to everyone. The courts must make sure that justice is not delayed and the values of the Constitution are protected and promoted.

There are a number of courts in the Zambian judiciary. The Each court has a different role to play in the justice system. Taken together, the courts in Zambia attempt to ensure that everyone can have their disputes settled quickly and fairly.

There are two levels of courts in Zambia, Superior Courts and Lower Courts. The Superior Courts consist of the Supreme Court of Zambia, the Constitutional Court of Zambia, the Court of Appeal, and the High Court of Zambia. The Lower Courts consist of the Subordinate Courts, the Small Claim Courts, Local Courts, and other courts or tribunals that Parliament might create through an Act of Parliament.



(CREDIT: judiciaryzambia.com)

The court structure

- **The Supreme Court** is the highest court of appeal in Zambia for all matters except constitutional matters (which must be heard in the Constitutional Court). It can only hear matters on appeal from the Court of Appeal, and will generally only hear matters that are of public importance, are in the public interest, or where the matter has reasonable chances of success. All decisions of the Supreme Court are final – that cannot be appealed to any other court in Zambia.
- **The Constitutional Court** is at the same level as the Supreme Court, but only hears matters that have a constitutional element. This could include the interpretation of any provision of the Constitution, election related matters, and the Court can also determine whether a matter is constitutional. All decisions of this Court are final.
- **The Court of Appeal** is a court that deals with appeals against decisions of the High Court for all matters except for matters that only the Constitutional Court can deal with.
- **The High Court of Zambia** – the High Court can hear all criminal and civil courts, as well as appeals from the Lower Courts. There are a number of different divisions of the High Court – including the Industrial Relations Division, the Commercial Division, and the Family and Children’s Division.
- **Subordinate Courts** hear the majority of cases in Zambia, both criminal and civil, and hear appeals from the Local Courts. There are 64 Subordinate Courts in Zambia, across the country.
- **Small Claims Courts** allow anyone – individuals, and not companies – to seek the repayment of small amounts of money (less than K20 000) or to pursue other claims, like the validity of wills, damages, claims under customer law, amongst others. People in the Small Claims Court represent themselves – no lawyers are involved in the Court. Small Claims Courts help people to get quick and affordable justice.
- **Local Courts** are courts that seek to help people access justice. There are many Local Courts in Zambia, so people all of the country can access courts in their area. Local Courts allow people to represent themselves. Local Courts deal with matters related to African customary law, matters dealing with local by-laws and regulations, and minor criminal cases.

The court structure

The Supreme Court and the Constitutional Court are equally high, but deal with different legal issues.

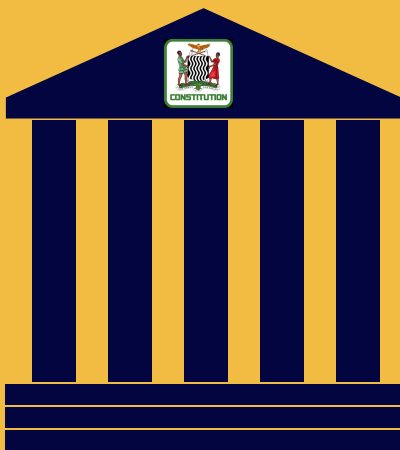
Supreme Court

Constitutional Court

Decisions of the Court of Appeal can be appealed to the Supreme Court.

Court of Appeal

If a matter is heard in a High Court, it can be appealed to the Court of Appeal or, if it involves a constitutional issue, the Constitutional Court.



High Court of Zambia:

Family, Commercial and Admiralty, Constitutional and Judicial Review, Land and Environment, Criminal, Industrial, and the Environmental and Land Courts

If a matter is heard in a Lower Court, it can be appealed to the High Court.

Many disputes are heard by the judiciary for the first time in Lower Courts. These Courts are often easier to access, and are cheaper. Some disputes might start in the High Court.

Lower Courts:

Subordinate Courts;
Small Claims Courts;
Local Courts

WHAT ARE RIGHTS AND WHAT DO THEY MEAN TO YOU?

The rights of every individual are an important part of the Zambian Constitution. Many of these rights are found in the Bill of Rights, which is part of the Constitution, and which you can find at Part 3 of the Constitution.

What is a right?

A right is a 'legal entitlement' – something that someone can claim from the State. It could be an entitlement to be free from State interference – for example, by demanding that the State not violate that person's privacy – or it could be an entitlement to demand something from the State, like access to healthcare.

EXAMPLE

A right can be something that requires the State to do something:

“I have the right to a fair trial”

If someone has a right to a fair trial, it requires the government to provide all of the things that make a legal process fair, which includes the right to be presumed innocent, the right to remain silent, the right to have a trial start reasonably quickly, and to have a legal representative, amongst many other things. The State needs to ensure that all of the requirements are provided to everyone who has a trial

Or it may require the State to not do something:

“I have a right not to be tortured”

The State cannot torture anyone, and must make sure that no one else in the country tortures anyone else.



(CREDIT: Dan Petrescu)

By protecting rights in a constitution, a country shows its commitment to its people and to being held responsible for its actions. The protection of rights helps show that individuals and communities in a country have the ability to protect themselves from the actions of others, whether they are threatened by the government or by other people.

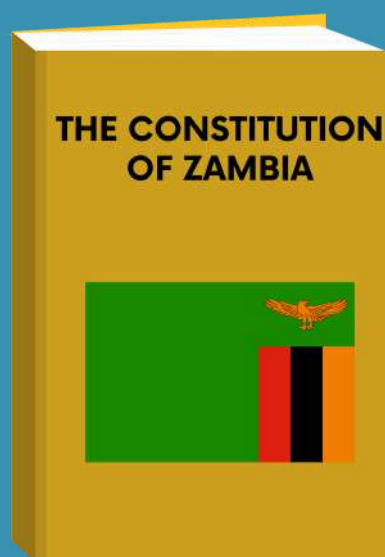
The indivisibility of rights

There are a range of different rights in the Bill of Rights, including, amongst many others, the right to life, the right to privacy, the right to freedom of expression. None of these rights are more important than any of the others. Every right is essential in order for people to be able to live dignified lives, so every right is equally important.

The rights fit together like a puzzle. They rely on each other, otherwise they would not be fully realised. The rights in the Bill of Rights are designed to create the foundation for everyone in Zambia to live with dignity, and to have all of the freedoms necessary to live lives that are dignified and meaningful, and that they have the potential to realise their potential.

Claiming your rights

The rights in the Bill of Rights are designed to ensure that everyone in the country is protected against abuse and mistreatment. Any person whose rights are threatened can take action to enforce their rights – or can even take action to protect the rights of others.



There are a range of different ways to ensure that the rights in the Bill of Rights are protected, but the most common way is to approach the Courts. Courts can order the State to take measures to protect rights, can order compensation, or can order another solution that helps people whose rights and freedoms are threatened or violated. The courts are the ultimate protectors of rights, but people can also obtain rights through other organisations.

There are also a number of organisations created by the Constitution, like the **Human Rights Commission of Zambia (HRC)** or the **Public Protector**. These bodies are mandated to assist people whose rights are threatened – for example, the HRC can investigate suspected abuses, and has a number of powers which it can exercise to make sure that violations of rights end. Anyone can apply to the HRC if they think that their rights are threatened, or they can apply as part of a community.



Other organisations, like non-governmental organisations, can help people claim their rights. The organisations frequently engage with the government in order to protect the rights of people in Zambia, and may have resources to take cases to court or to resolve the matter outside court.

Limiting rights

Although the rights in the Bill of Rights are important, as discussed, there are some circumstances where they can be limited. We can see this in the way that many of the rights in the Constitution are written – many of the rights include limitations. They include lines like the following, which indicates that limitations are allowed when it:



“...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.”

Or

“...is reasonably required for the purpose of protecting the rights or freedoms of other persons.”

This means that the rights in the Bill of Rights can be limited. For example, everyone has the right to assemble freely and to move freely. While these rights are protected by the Constitution, there may be occasions that people are not able to assert their right to assemble or move exactly as they would like. For example, after the outbreak of COVID-19, people could not assemble or move freely due to public health and safety reasons – one such limitation has been that people could not gather inside in groups of more than 50. When a right is limited like this, it must be clearly determined why it is important for the limitation to occur, and it is also important that no other rights are limited without good reason.

However, such limitations should happen as infrequently as possible, in fact, only when the limitation can be “justified in a democratic society.” This means that limitations should be infrequent, and that the reasons for the limitation must be made clear.

CASE STUDY: RIGHTS SHOULD BE LIMITED TO THE MINIMUM POSSIBLE EXTENT

Prisoners should have their rights protected, including the right to vote

When someone is sentenced to imprisonment, some of their rights are limited – movement is the most obvious limitation. The loss of freedom is the punishment, and other rights must still be protected. Having the right to vote, to have a say in who forms the government that runs the country of which one is a citizen, is an important human right. The Constitution, at Articles 45 and 46, protects the right to vote for every citizen over the age of 18.

In 2017, the Constitutional Court of Zambia had to consider whether prisoners should retain the right to vote, or whether their conviction disqualified them from voting. This case was called *Malembeka v The Attorney General*. A law was passed which prevented people who were in prison after having been convicted of a crime, or were in prison waiting for their criminal trial, from voting.

The Court said that “having the right to vote is one of the fundamental civil and political rights accorded to citizens.” The limitation on the right to vote did not accord with the right that is granted in the Constitution, because the Constitution said that everyone over the age of 18 could vote, taking away that right for prisoners was unconstitutional. This means that in this case, prisoners and people awaiting trial could not be denied the right to vote.

This case shows how difficult it should be to limit the rights in the Bill of Rights. These are the rights that are required to lead a dignified existence. Unless allowed for by the Constitution, these rights cannot be taken away.

INTRODUCTION TO THE BILL OF RIGHTS

The Bill of Rights tells us about the rights that every person in Zambia has, about how they can claim these rights, and about the situations where the government can limit rights. Because everyone in the country, including the State, is bound by the Bill of Rights, these rights protect people from having their rights abused by the State and by other people.

Why does Zambia protect human rights?

Amongst the National Values found in Article 8 of the Constitution are “human dignity, equity, social justice, equality and non-discrimination.” Every person in Zambia can demand that they be treated in a manner that respects these values. Human rights are a central part of this. By protecting human rights, the Constitution and the Bill of Rights help people protect their dignity, and their right to be treated fairly and equally. The important position given to “human dignity, equity, social justice, equality and non-discrimination” and the fact that there is a Bill of Rights in the Constitution shows Zambia’s commitment to its people.

What rights are in the Bill of Rights?

There are a number of rights in the Bill of Rights, all of which are designed to make sure that everyone in Zambia has their dignity protected and feels valued as a human being. Some rights require the State to take action and provide people with help, others, for the State to not interfere with people’s lives.



(CREDIT: Anna Fawcus)

THE BILL OF RIGHTS AT A GLANCE

12 - The right to life

13 - The right to personal liberty

14 - Protection from slavery, servitude and forced labour

15 - Protection from inhuman treatment, including torture and degrading punishment

16 - Protection from the deprivation of property

17 - Protection of privacy of the home and other property

18 - Everyone has the right to the protection of the law, including:

- The right to a fair hearing by an impartial court
- The right to be presumed innocent

- To be told about the offence that they are being charged with

- To have a lawyer if they are charged with an offence, or to defend themselves

- To examine witnesses

- To have their trial take place in a language they understand, or to have an interpreter provided

- 19 - Freedom of conscience, which includes

- Freedom of thought and religion

- The right to change religion and belief

- The right to worship

- To receive religious instruction

20 - Freedom of Expression

21 - Freedom of assembly and association

22 - Freedom of movement

23 - Freedom from discrimination on the grounds of race, tribe, sex, place of origin, marital status, political opinions, colour or creed, or disability.

24 - Protection of young persons from exploitation



THE BILL OF RIGHTS: A SUMMARY

This section contains a summarised version of the rights in the Bill of Rights. To read these rights in full, you can find them in Chapter 3 of the Constitution which can be found here:

https://constituteproject.org/constitution/Zambia_2016.pdf?lang=en

PART THREE

Protection of fundamental rights and freedoms of the individual

12 – **Protection of Right to Life** – Everyone has the right to life, unless they have been sentenced to death in a court. Abortion is only allowed when there is a law in the country which allows it. People are allowed to act in self-defence, and this may allow one person to take the life of another.

13 – **Protection of Right to Personal Liberty** – No one can be put in prison or have their freedom taken away, unless they have been sentenced to a jail sentence, or it would be in the interests of public health or safety to detain the person. No one can be arrested without being told why they are being arrested. Anyone who is detained must be kept in decent conditions.

CASE STUDY: RIGHTS WHEN DETAINED BY THE STATE

Everyone has the right to be told why they have been arrested

The case of *Attorney General and Others v Phiri*, discussed earlier, emphasises how important it is for the police to inform people who they arrest why they are arrested. Whether or not the person is suspected of a crime, if they are not informed of the reason for their detention, they are being held illegally.

14 – Protection from Slavery and Forced Labour – No one can be made a slave or kept in enslavement, or made to perform forced labour.



CASE STUDY: PROVIDING PROTECTIONS AGAINST SLAVERY

Laws in Zambia provide more detail about what could be considered slavery

In 2008, Zambia adopted the **Anti-Human Trafficking Act**. This Act was meant to stop a range of activities that were linked to human trafficking, which is where people are coerced, tricked or forced into a situation where they are exploited. This is closely linked to slavery, where someone claims that they “own” a person. Sometimes someone who is trafficked is “owned” by another person, and exploited, made to work for no pay or for very little pay. The Anti-Human Trafficking Law is an important law to make sure that the government is meeting its constitutional obligations, which require it to prevent slavery in Zambia.

15 – Protection from Inhuman Treatment – No one can be tortured or treated in a way that is inhuman or degrading.



CASE STUDY: NO ONE SHOULD BE TREATED IN A WAY THAT DEGRADES THEM

Being detained in unsanitary conditions is inhuman and degrading

In a case called *Mwanza and Beene v The Attorney General*, two people who had been kept in Lusaka Central Prison claimed that the State had breached their rights. They claimed that they were being kept in terrible conditions. They were not receiving the food or the healthcare that they needed, and this threatened their lives and well-being. The Supreme Court agreed, and made clear that being able to access basic necessities, like enough food and healthcare, is part of the right to life and the right to be protected from inhumane treatment. This would be particularly true for vulnerable populations, like people in prison, because they are reliant on the State.

16 – **Protection from Deprivation of Property** – No one can have their property taken away without the law saying that this is allowed – and, if the law does allow property to be taken away, the person who is losing their property must be paid a reasonable amount to compensate them for their loss.

17 – **Protection of Privacy of Home and Other Property** – Everyone has the right to privacy. This means that no one can be searched or have their property searched, unless they consent to the search or there is a good reason for the search. These reasons can include defence, public safety, public order, and public health.

CASE STUDY: EVERYONE HAS THE RIGHT TO PRIVACY

Having medical tests done without consent is degrading and violates privacy

In a case called *Stanley Kingaipe and Another v The Attorney General*, two members of the Zambian Air Force had their blood taken during their routine medical and, without them being told, it was tested for HIV. The High Court said that because they did not give their consent to the test, they had been treated in a degrading manner. Consent, or a good reason is required, or the right to privacy will be violated. Performing medical tests without consent degrades a person. In this case, the blood test and the results invaded the privacy of the individuals, as information about them became known, without them having allowed for it.

18 – **Provisions to Secure Protection of Law** – When someone is charged with a criminal offence, they have the right to a fair hearing, which must take place within a reasonable time. The court that hears the case must be independent and unbiased, and the trial should take place in public. Everyone has the right to be presumed innocent until they are found guilty, and to be informed of why they are being charged. Everyone has the right to an attorney or a legal representative, and if they cannot afford one, the State must pay for them to have one.

19 – **Protection of Freedom of Conscience** – Everyone should be able to follow whatever religion they want to, and this includes being able to take part in religious practices. No one can be forced to take part in a religious activity. Religious expression can be limited sometimes, for reasons like public safety or public health.

20 – **Protection of Freedom of Expression** – Everyone should have the right to express themselves freely, which means they can hold and share information and their own opinions, and listen to other people’s opinions. The freedom of the press is an important part of the right to freedom of expression, and no law can be made that limits the freedom of the press. Freedom of expression can be limited to protect someone’s right to privacy.



CASE STUDY: EVERYONE CAN EXPRESS THEIR OPINION

Freedom of expression protects speech the government does not like

In 2015, the High Court had to think about the kinds of speech that were protected by the freedom of expression, in a case called *The People v Paul Kasonkomona*.

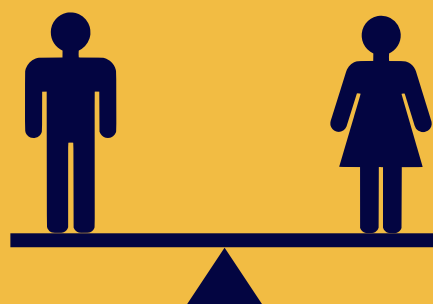
Mr Kasonkomona had participated in a discussion on television about homosexual rights, arguing that consensual same-sex relationships should not be illegal. He was arrested, and charged with a crime, the government claiming that by discussing homosexual rights, Mr Kasonkomona was enticing people to commit immoral behaviour, as sex between two consenting adults of the same sex was illegal. This enticement was, to the government, a crime in terms of the law. However, the High Court held that expressing one’s opinion, or participating in a debate, was not advocating for people to engage in immoral behaviour. Instead, this was an exercise of his freedom of expression.

This case shows that the government must be careful in limiting people’s freedom of expression. Although there are some limitations on the freedom of expression, the right to freedom of expression means that people cannot be prevented from airing opinions merely because the opinion is unpopular, or the government doesn’t like the opinion.

21 – **Protection of Freedom of Assembly and Association** – Everyone in Zambia can meet with whoever they want, form an organisation and is allowed to gather freely. This includes having the right to join a political party of their choice, to join a trade union, or to join any other organisation that will protect their interests.

22 – **Protection of Freedom of Movement** – Every citizen of Zambia has the right to move freely within Zambia and to live wherever they want, and to leave and re-enter Zambia as they wish.

23 – **Protection from Discrimination on the Ground of Race etc** – No law can be made that discriminates against someone, and no one should be discriminated against by anyone who claims to be acting within the law, or who is a public official. To ‘discriminate’ against someone means to treat them in a way that makes their life harder or worse because of their race, tribe, sex, place of origin, marital status, political opinions, colour, or creed.



CASE STUDY: NO ONE SHOULD BE DISCRIMINATED AGAINST

The State has to take additional measures to make sure people with disabilities can participate in society

In *Sela Brotherton v The Electoral Commission of Zambia*, several people with disabilities claimed that the laws governing elections in Zambia were discriminatory against them, and prevented them from voting, even though the Constitution protected their right to vote. They claimed that they should be provided with additional measures that would help them to vote – measures like ensuring that places where voting was taking place (polling stations) were accessible to people with disabilities, including people in wheelchairs, and that election material was available in braille for people who had impaired vision. The High Court of Zambia agreed that the laws were discriminatory and instructed the Executive to put in place measures that would ensure persons with disabilities were able to participate in elections without unfair difficulty.

24 – **Protection of Young Persons from Exploitation** – Everyone under the age of 15 ('young people') has additional protections, including the right not to be employed or to be engaged in any occupation that would harm their health or education, or would undermine their physical, mental or moral development. All young people must be protected against neglect, cruelty or exploitation, and against being trafficked.

25 – **Derogation from Fundamental Rights and Detention** – When there is a war or a public emergency, many of the rights in the Bill or Rights can be temporarily disregarded. Some rights cannot be ignored, including the right to life, the protection from slavery, the protection from inhuman treatment, and the right to be protected by the law.

26 – **Provisions relating to Restriction and Detention** – When someone is detained or has their movement restricted, they must be told, in a language that they understand, why they are being restricted or detained. Everyone who is detained has the right to have their case reviewed by an independent and unbiased tribunal, and to consult a legal representative who can make representations at this tribunal.



(CREDIT: Mokhammad Edliadi/CIFOR)

CONCLUSION

The point of knowing your rights, of knowing about the Constitution, is for you to be able to lead a dignified life, to have the opportunity to fulfil your potential as a human being. But this opportunity, these rights, come with responsibilities. Each of us needs to make sure that we hold the government to account. We need to make sure that the government fulfils the obligations that the Constitution imposes on it, and doesn't violate our rights or the rights of any other residents of Zambia. Each one of us has a responsibility to treat other people with the dignity and the respect they deserve. If we think our rights should be respected, we need to respect other people's rights.

The Constitution has a vision of the society that Zambia can be. Progress has been made in realising this vision. But there is still much to do, still so many steps that need to be taken in order for everyone in Zambia to enjoy their rights. By monitoring the government, and by exhibiting the constitutional values in our lives, each of us can bring this vision closer to coming to life.



(CREDIT: Mellisa Thompson, USAID)

ORGANISATIONS THAT CAN HELP YOU CLAIM YOUR RIGHTS

Human Rights Commission of Zambia

The Human Rights Commission seeks to protect and promote human rights for all people in Zambia. It investigates human rights abuses, seeks to rehabilitate the victims of human rights abuses, educates communities, and advocates for policy and legal changes based on research.

Physical address: Human Rights House, Independence Avenue, Lusaka

Telephone: +260 211 251327/ +260 211 251 357

Toll free: 8181

Email: info@hrc.org.zm

Website: <http://www.hrc.org.zm/>

Twitter: @hrc_zambia

Instagram: hrc.zambia

Judiciary

The Judiciary is the ultimate protector of the Constitution and the rights within it.

Physical address: Plot 438, Independence Avenue, Lusaka

Telephone: +260 211 251884/ +260 211 255104

Email: info@judiciaryzambia.com

Website: <https://judiciaryzambia.com/>

Office of the Public Protector of Zambia

The Public Protector is the ombudsman institution of Zambia, and has a mandate to ensure that individuals and communities in Zambia receive public services of a high quality. The Public Protector promotes good governance within public institutions. It can help people who feel that they have been unfairly treated by a public official.

Physical address: Off Lake Road, Plot No. Kabul/100/120


Postal address: P.O.Box 50494, Ibex Hill, Lusaka

Telephone: +260 211 228330/1

WhatsApp: +26 0955 399655

Email: info@oppz.gov.zm

Website: <https://oppz.gov.zm/>



The Zambian government has begun to initiate other mechanisms that will help people protect their rights, including a **Gender Equity and Equality Commission**, which would help promote gender equity and equality in society, and a **Police Public Complaints Commission**, which would investigate complaints against police actions. In years to come, these commissions will help Zambians enforce their rights.