

LEGAL MEDIA HANDBOOK

REPORTING ON COURT AND LEGAL
DEVELOPMENTS IN ZAMBIA

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Foreword

In a society founded upon the principles of justice, transparency, and the rule of law, the role of the media is paramount. As the Fourth Estate, the media holds a significant responsibility in ensuring that accurate and pertinent information reaches the public, thereby fostering an informed citizenry and upholding the pillars of a just society. It is with great pleasure and a profound sense of purpose that I introduce this Legal Media Handbook, a resource that stands as a beacon of guidance for the media fraternity in Zambia.

The dissemination of legal information to the public is a task that requires utmost accuracy, clarity, and understanding. The complexities of the law can be daunting, and it is our shared duty to bridge the gap between the intricacies of legal systems and the general public's comprehension. This handbook is designed to serve as a bridge, offering insights, explanations, and a comprehensive overview of the interaction between the media and the legal sphere.

In our great nation of Zambia, where the courts are entrusted by the people with upholding justice and safeguarding the rights of every individual, the media's role in accurately portraying legal proceedings and outcomes cannot be overstated. The public's trust in the court system hinges on the media's ability to convey information transparently and without distortion. This handbook not only equips the media with the tools to understand and interpret legal matters but also guides them in presenting these matters to the public with the nuance and accuracy they deserve.

The Legal Media Handbook delves into the intricate dance between the media and the courts, providing practical insights into how media professionals can navigate the world of legal proceedings while maintaining the highest standards of ethical reporting. From the principles underpinning our judicial system to guidelines on courtroom etiquette and the responsible use of legal terminology, this handbook serves as a compass for the media's interaction with the legal arena.

I applaud my Advisory Committee on Public Relations and Information for seizing every opportunity to work with organisations that share our vision to continue to demystify the operations of the peoples' courts. In the same vein, I commend the collaborative effort that has gone into crafting this invaluable resource, which I believe will serve as an indispensable reference tool for journalists, reporters, editors, and all media professionals. By enhancing our understanding of legal processes, rights, and responsibilities, we will be contributing to the realization of a more informed and engaged society.

May this handbook empower those that will read it, particularly media personnel, to engage with legal information confidently, ethically, and responsibly. As we collectively strive for a Zambia where justice and knowledge prevail, I am confident that this resource will aid the media fraternity in achieving its noble task of illuminating the path to a more just and equitable society.

Dr. Mumba Malila, SC
CHIEF JUSTICE

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Introduction

Aim and Purpose of the Handbook

The purpose of the handbook is to provide the media with accurate and relevant information to aid them in their mandate of disseminating information to the public. The handbook particularly focuses on the interaction of the media with legal information and its interaction with the court systems in Zambia.

This legal media handbook will serve as a reference tool/resource for the media in their interactions with legal information and with the general court system and its operations.

Who is the handbook for?

This handbook is made for media practitioners and journalists working in various sectors of the media such as broadcasting media, print media as well as online and electronic media.

These various forms of media require reliable access to information that empowers them to disseminate accurate and truthful information to the general public. This handbook was developed by [SAIPAR](#), which hosts the [Zambian Legal Information Institute \(ZambiaLII\)](#), in partnership with the [Judiciary of Zambia](#) and [Laws.Africa](#) with funding from the [National Endowment for Democracy \(NED\)](#).

Objectives of the Handbook

In compiling this handbook, we seek to

- foster a culture of free flow of accurate legal information
- promote a clear understanding among media practitioners and journalists of key legal information and a general understanding of court operations in Zambia
- develop the media's capacity to report on legal and court-related information, and thus facilitate greater and accurate reporting of legal developments in Zambia to citizens and the international community.

The Media and Access to Information in Zambia

Globally, the media play an important function in every democratic society, and media practitioners and journalists in Zambia are not an exception. The media disseminates information to the public which enables the public enjoy the right to receive information that is derived from the constitutional right to freedom of expression. Generally, legal information and court operations are not necessarily the expertise of the media. It is therefore important to develop resources such as this handbook that build the capacity of the media in relation to legal information and court operations in Zambia.

International Framework on Access to Information

There are limited legal instruments at the regional level (or international level), that specifically touch on the use of court records by media and journalists. There are, however, more legal frameworks or guidelines on this at the domestic level. The limited number of legal instruments at the regional level, particularly in Africa, can be attributed to a few factors.

Firstly, regional organizations in Africa, such as the African Union (AU), have predominantly focused on themes that have a broader impact on its member states, (such as human rights issues, regional trade, democracy and governance frameworks) rather than specific regulations concerning access to court records by journalists. While the paramount regional organization has developed regional instruments like the [African Charter on Human and Peoples' Rights \(1981\)](#) and the [African Charter on Democracy, Elections and Governance \(2007\)](#), which touch on press freedom and access to information, they provide general principles rather than detailed guidelines specifically addressing court records and their use by journalists.

Secondly, the issue of open justice and access to court records is largely within the purview of domestic judiciaries. Each country has its own legal system, and the responsibility to regulate media access to court records is typically assigned to domestic courts. As a result, legal instruments pertaining to court records are more commonly found at the domestic level, where specific guidelines, protocols, and

codes of ethics are developed to address the practical aspects of media access to court proceedings and the use of court records.

Furthermore, the role of journalistic unions and media associations is crucial in advocating for journalists' rights and professional standards. These organizations often establish their own codes of ethics and conduct, which provide guidance on responsible reporting and the use of court records. While these codes may not have the force of law, they play an important role in promoting ethical journalism and setting standards for media professionals.

In Africa, civil society groups, NGOs, and media associations have been actively involved in promoting access to information and press freedom. They have played a significant role in drafting declarations and guidelines related to open justice and access to court records. Examples include the [African Platform on Access to Information Declaration of 2011](#), the [Lagos Declaration on the Right of Access to Information](#), and the [African Regional Findings and Plan of Action for the Advancement of the Right of Access to Information](#).

It is worth noting that the issue of open justice and access to court records is a complex and multifaceted one, influenced by various factors such as legal systems, cultural contexts, and political environments. While regional instruments provide a broader framework for promoting press freedom and access to information, the practical implementation and regulation of media access to court records primarily lie with domestic judiciaries and the efforts of journalistic unions and media associations.

International Instruments

At the international level, there are several key instruments that touch on press freedom, open justice, and access to information. The [Universal Declaration of Human Rights \(1948\)](#) and the [International Covenant on Civil and Political Rights \(1976\)](#) emphasize the right to fair/public hearing, freedom of expression, and access to information. The [European Convention for the Protection of Human Rights and Fundamental Freedoms \(1950\)](#) contains provisions on fair/public trial and freedom of expression, including exceptions to the rule on open justice. The [Inter-American Convention on Human Rights \(1969\)](#) also protects freedom of expression and provides for fair trials in the Americas. These international instruments set the

overarching framework for protecting journalists' rights to access court records and promote open justice.

African Regional Instruments

In the African region, the [African Charter on Human and Peoples' Rights](#) (1981) guarantees the right to receive information and express and disseminate information within the law.

The [Revised Declaration of Principles on Freedom of Expression in Africa](#) (2019) reaffirms the principles of freedom of expression and access to information. The [Model Law on Access to Information for Africa](#) (2013) provides standards for access to information at the regional level and aims to facilitate the adoption of national legislation on access to information. The [African Charter on Democracy, Elections and Governance](#) (2007) emphasizes freedom of expression and fostering a professional media. These regional instruments highlight the importance of access to court records and open justice in promoting democratic governance and media freedom in Africa.

Domestic Instruments

The research revealed that legal instruments specifically addressing the use of court records by journalists are more prevalent at the domestic level. Examples include guidelines, protocols, and codes of ethics in various countries (See tabulated summary of mostly SADC countries). In South Africa, there are guidelines regarding media access during court proceedings and applications for permission to photograph, film, or record such proceedings. Other countries, such as Botswana, Namibia, and Kenya, have codes of ethics and conduct for journalists and media organizations. These domestic instruments provide guidance and regulations for journalists' use of court records while upholding principles of open justice and responsible reporting.

The majority of instruments related to media access to court records can be found at the domestic level, including guidelines, protocols, and codes of ethics. However, international and regional instruments on press freedom, open justice, and access to information provide a broader framework for protecting journalists' rights and promoting transparency in judicial proceedings. It is important for countries to align their domestic laws and regulations with these international and regional standards

to ensure journalists' access to court records while maintaining the principles of open justice and responsible reporting.

National Legal Framework

In Zambia, the [Constitution](#) is the Supreme Law of the land.¹ Any other law must be in conformity with the Constitution. [Part III of the Constitution of Zambia](#) is titled Protection of the Fundamental Rights and Freedoms of the Individual. This part contains several salient provisions including the provisions that protect the role and work of the media. One such provision is the provision relating to protection of freedom of expression.

Protection of Freedom of Expression

[Article 20 of the Zambian Constitution](#)² is an important constitutional provision that protects the role and work of the media in society. Article 20 (1) and (2)³ provide for the right to freedom of expression as follows:

Article 20 – Protection of freedom of expression

- (1) Except with his own consent, a person shall not 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, a law shall not make any provision that derogates from freedom of the press.

From the above provisions, it is clear that the Constitution protects the work of the media by providing that the right to freedom of expression also encompasses the liberty to hold opinions without interference as well as the freedom to impart and communicate ideas to the public without interference.

¹ Constitution of Zambia, Cap 1, Art 1(1), available at <https://zambialii.org/akn/zm/act/1991/1/eng@2009-08-31>

² Constitution of Zambia, Cap 1, available at https://zambialii.org/akn/zm/act/1991/1/eng@2009-08-31#att_1_part_III_art_20

³ Ibid.

The right of the media to write or publish opinions and impart ideas and information to the public is constitutionally protected.

Article 20⁴ also illustrates that the right to freedom of expression consists of two essential elements. These are, the **right to impart ideas and information**, and the **right to receive ideas and information without interference**.

This effectively entails that the media as part of its mandate has the right to disseminate information to the general public and the general public has the right to receive this information without interference. Combining these two elements of freedom of expression results in the free flow of information in the country. Article 20 thus protects the information needs of the public as well as the information and expression rights of the media. Therefore, although the Constitution of Zambia does not expressly state that the media has a right to impart or disseminate information, the freedom of expression enshrined in Article 20 gives the media and the press constitutional protection to disseminate or impart information to the general public.

The public's right to information is also protected by the Constitution.

Limitations that derogate from media/press freedom

The rights enshrined in the Constitution and indeed other rights outside the Constitution are not absolute. This includes the right to freedom of expression enjoyed by the media and the public. The state has an obligation to protect citizens from media expression that is irresponsible and devoid of truth. Thus, the state in fulfilling its obligation may in certain circumstances limit the right to freedom of expression in order to safeguard the interests of the public. More importantly,

⁴ Ibid.

however, such **limitations must always be done within the parameters of the Constitution and in accordance with democratic values and principles.**

Article 11⁵ of the Constitution provides important guidance on the limitation of rights contained in part III of the Constitution. According to Article 11, the provisions of part III shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations as are contained in part III. These limitations are designed to ensure that the enjoyment of these rights does not prejudice the rights and freedoms of others or the public interest. A clear reading of Article 11 entails the following:

1. The rights enshrined in Part III of the Constitution of Zambia are subject to limitations that are provided for within the right itself. Meaning, you do not have to look outside for a limitation. For example, Article 20(1) in part III of the Constitution creates the right to freedom of expression. On the other hand, Article 20(3) sets out the circumstances upon which the right to freedom of expression may be limited. It provides that any law will not be inconsistent with the right to freedom of expression in Article 20(1) if it can be shown that such law is:
 - a. reasonably required in the interests of defence, public safety, public order, public morality or public health or;
 - b. 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. imposes restrictions on public officers;

⁵ Ibid, available at <https://zambialii.org/akn/zm/act/1991/1/eng@2009-08-31#att 1 part III art 11>

2. Rights can be limited to protect the rights of other persons and the public interest

The Independent Broadcasting Authority and Regulation of the Media in Zambia

The [Independent Broadcasting Authority](#) (IBA) is a statutory body established pursuant to the IBA Act No.17 of 2002 as amended by the IBA Act No. 18 of 2017. The primary responsibility of the IBA is to regulate the broadcasting industry in Zambia. The functions of the IBA include the following:

- (a)* to promote a pluralistic and diverse broadcasting industry
- (b)* to establish guidelines —
 - (i)* for the development of broadcasting in Zambia through a public process which shall determine the needs of citizens and social groups in regard to broadcasting;
 - (ii)* for the issuing of licences, giving due regard to the need to discourage monopolies in the industry in accordance with the Competition and Fair Trading Act.
 - (iii)* on the required levels of local content and other issues that are relevant for a pluralistic and diverse broadcasting industry;
- (c)* to safeguard the rational and efficient use of the frequencies allocated to broadcasters by developing a frequency plan for broadcasting, which shall be a public document, in compliance with international conventions;
- (d)* to grant, renew, suspend, and cancel licences and frequencies for broadcasting and diffusion services in an open and transparent manner;
- (e)* to enforce the compliance of broadcasting and diffusion services with the conditions of the licences issued under this Act;
- (f)* to issue to any or all broadcasters, advisory opinions relating to broadcasting standards and ethical conduct in broadcasting;

- (g) to oblige broadcasters to develop codes of practice and monitor compliance with those codes;
- (h) to develop program standards relating to broadcasting in Zambia and to monitor and enforce compliance with those standards;
- (i) to receive, investigate and decide on complaints concerning broadcasting services including public broadcasting services;
- (j) to develop regulations in regard to advertising, sponsorship, local content, and media diversity and ownership;
- (k) to perform such other functions as may be conferred on it by this or any other Act; and
- (l) to do all such other acts and things as are connected with or incidental to the functions of the Authority under this Act.

General Operations of the Courts: An Interlink with the Media

Offices within the courts that can be of assistance to the media

There are several offices within the Judiciary that may be of assistance to the media. The first point of call is the office of the Deputy Director – Corporate Communications. The office of the Deputy Director may, in certain instances, obtain any information that the media may require from the relevant offices. Apart from the Deputy Director, the only other office that may issue statements for an on behalf of the Judiciary is the office of the Chief Registrar and Director of Court operations.

The media must always remember that interaction with the judiciary is primarily through the office of the Deputy Director Corporate Communications. This office will link the media to any other office should the need arise.

Decision-Making in Collegiate Courts

The term "collegiate court" typically refers to a type of court where cases are heard and decided by a panel or group of judges working together. This is in contrast to a single judge or magistrate making decisions. The term "collegiate" emphasizes the collaborative and collective nature of decision-making within the court.

In a collegiate court, multiple judges convene to hear and deliberate on cases. This can have several benefits, such as ensuring diverse perspectives are considered, promoting thorough discussions, and potentially enhancing the quality and fairness of the decisions. Collegiate courts are often found in higher or appellate courts, where complex legal issues are at stake and where having multiple judges review and discuss the case can lead to more well-rounded judgments. The Supreme Court, Constitutional Court and the Court of Appeal are characteristically collegiate courts. While the High Court is typically constituted by one Judge, the Chief Justice has been given powers by the Zambian Constitution to decide that more than one Judge may hear a matter in the High Court. When the High Court is constituted by more than one Judge, the principles of collegiality will apply.

In collegiate courts, decision making typically involves a panel of judges collectively deliberating and reaching a consensus or **majority decision**.

At a hearing, before reaching a decision, collegiate courts often allow for oral arguments where lawyers or parties appearing in person present their case before a panel of judges. During oral arguments, the judges may ask questions, seek clarifications, and engage in a dialogue with the lawyers.

Following the oral arguments, the judges may give their decisions there and then or reserve their decision to be given at a different time. When the judges retire to their chambers, they may engage in a period of deliberation. Deliberation involves a thorough discussion and analysis of the legal issues, facts, and arguments

presented in the case. Judges may consider relevant statutes, precedents, legal principles, and constitutional provisions while deliberating.

Once the deliberation is complete, one or more judges from the panel are typically assigned to write the court's opinion. The opinion serves as a written explanation of the court's decision, including the legal reasoning and analysis supporting the decision.

In collegiate courts, decisions are generally reached by majority vote. The judges deliberate and cast their votes on the outcome of the case. **A majority of the judges must agree on the decision for it to be considered the court's official ruling.**

In some cases, judges may have differing viewpoints on certain legal issues or the outcome of the case. **If a judge disagrees with the majority decision, they may choose to write a dissenting opinion, explaining their disagreement. Conversely, a judge who agrees with the majority decision but for different**

In collegiate courts, the majority decision carries the day. One judge will normally write the decision of the collegiate court. **This does not mean that the decision is that of a particular judge.** The judgment or ruling still remains a collective decision of the court.

reasons may write a concurring opinion. Once the opinions are finalized, they are typically published in form of rulings of judgments and made available to the public. These rulings and judgments serve as precedents and provide guidance for future cases. They help establish legal principles, interpretations, and the court's position on various legal issues.

A ruling is an order/outcome of a court's decision on some point of law that arises during the course of determining the main matter before court.

A judgment is a court's final decision on the entire matter before it and determines the rights and obligations of the parties.

A consent judgment (also known as a consent order) is a decision made by a court with the consent of all the parties. It is not strictly a judgment, but rather a settlement agreement by the parties and approved by the court

In collegiate courts, the decisions often have precedential value. **Precedents are legal principles established by earlier court decisions that guide subsequent similar cases.** Lower courts are generally expected to follow the precedents set by higher courts, thus promoting consistency and predictability in the legal system.

Access to the Courts during court proceedings

Generally, court proceedings in Zambia are open to the public unless specifically restricted by law or for certain sensitive matters. This principle promotes transparency and accountability within the judicial system.

The media has the right to report on court proceedings in Zambia, subject to certain restrictions. Journalists are typically allowed to attend hearings, take notes, and report on the proceedings, provided they do not disrupt the court proceedings or violate any specific restrictions imposed by the court.

[Section 117 of the Penal Code](#) prohibits taking photographs in court. Thus, **the use of cameras and recording devices during court proceedings is typically not allowed, particularly for photography or video recording.** The primary reason is to ensure the integrity of the proceedings, protect the privacy and dignity of the parties involved, and prevent potential interference.

The judiciary may, from time to time, issue specific guidelines and accreditation processes for media representatives and journalists who wish to cover court proceedings. These guidelines may include procedures for obtaining permission to

attend hearings, guidelines for reporting, and restrictions on certain sensitive matters, such as cases involving minors or national security issues.

It is important to note that judges have discretion to restrict or control access to court proceedings, including the presence of media representatives in certain circumstances. This may occur to safeguard the rights of the parties, protect sensitive information, or maintain order and decorum in the court.

Currently, it is an offence to take in any court a photograph or with a view to publication, make or attempt to make in any court a portrait or sketch, of a Judge, Magistrate, witness or a party to proceedings. It does not matter whether the proceedings are civil or criminal.

In some cases, courts may impose reporting restrictions, such as issuing gag orders or prohibiting the publication of certain details or evidence that could prejudice ongoing investigations, endanger national security, or infringe on the privacy of individuals involved in the case. Compliance with such restrictions is essential to ensure compliance with the law.

However, it is important to note that the law allows the Hon. Chief Justice, on special occasions, photos to be taken in Court. Such special occasions may include valedictory sessions or official opening of High Court Sessions. It is always prudent to enquire from the office responsible for Corporate Communications or the office of the Chief Registrar (who is the Director of Court Operations) whether or not photographs may be taken at a particular special court function.

Access to Records

The principle of open justice generally applies to court records and documents in Zambia. **This means that court records are generally accessible to the public, including the media, unless specific restrictions or limitations apply.** These

records are accessible when the media approaches registries and presents a search form. ***The search is conducted at a fee.***

Each court may have its own rules and procedures regarding access to court records and documents. These rules outline the process for requesting access, the types of documents that are accessible, any restrictions or limitations, and the applicable fees, if any.

To obtain access to court records and documents, media representatives usually need to make a formal application for a search. The search will typically require providing specific details about the case, the documents requested, and the purpose for which the documents will be used.

Certain court records and documents may be subject to restrictions or confidentiality requirements, particularly in cases involving sensitive information, national security matters, or protection of personal privacy. In such cases, the court may limit or deny access to those specific documents.

In some instances, the court may allow access to court records while redacting or anonymizing certain sensitive information. This is done to protect the privacy and safety of individuals involved or to safeguard confidential information.

Courts will charge fees for accessing court records and documents. The fees may vary depending on the nature of the request and the court in question. It is important to note that if a court has issued an order restricting access to specific court records or documents, compliance with that order is crucial. Violating such orders may have legal consequences.

Media representatives accessing court records and documents should adhere to professional conduct and ethical guidelines. This includes ensuring the accuracy and fairness of reporting, respecting the privacy of individuals involved, and refraining from publishing or disclosing information that is prohibited or restricted by law.

Court records are generally accessible to the public including the media.

However, some records may be restricted or subject to confidentiality.

General Guidelines when reporting on the Judiciary

Maintaining a balance between sensationalism and facts when reporting on the judiciary is crucial because the judiciary is a unique organ of the state responsible for upholding the rule of law and ensuring justice. Sensationalism can distort the public's perception of the judiciary, undermine trust in the legal system, and potentially influence the outcome of legal cases. Therefore, the media, as a key player in ensuring that the operations of the judiciary are 'demystified' must ensure that accurate reporting is primary. While the need to capture the attention of the reader is appreciated, this must not be done at the expense of misinforming the public. Misinformation through cherry picking or making reports out of context may in fact damage an institution such as the judiciary that has limited avenues through which to correct or clarify any misinformation. Below are some general considerations for achieving the balance between sensationalisation and factual reporting:

1. **Accuracy and Verification:** Journalists should prioritize accuracy and verification of information when reporting on judicial matters. Before publishing a story, they should fact-check their sources and confirm the accuracy of the information they are presenting. Reporting false or unverified information can be damaging to the reputation of the judiciary.
2. **Avoiding Speculation:** Reporters should refrain from speculating on the motives, intentions, or decisions of judges, lawyers, or parties involved in legal cases. Speculation can lead to sensationalism and misinformation. Stick to the known facts and avoid making unfounded claims.
3. **Understanding Legal Processes:** Journalists should have a solid understanding of legal processes and terminology to accurately convey the

nuances of judicial proceedings. Misrepresenting legal concepts can lead to confusion and sensationalism.

4. **Balanced Reporting:** Provide balanced reporting that presents both sides of a legal case or issue. Avoid one-sided narratives that may sensationalize the actions or decisions of the judiciary.
5. **Respect for Sub Judice Rule:** The sub judice rule prohibits the discussion of ongoing legal cases in a way that could prejudice the outcome. Journalists should be aware of this rule and avoid making statements that could influence the course of justice.
6. **Ethical Reporting:** Uphold ethical standards in journalism, including principles such as fairness, objectivity, and integrity. Avoid using inflammatory language, personal attacks, or sensational headlines that could harm the reputation of individuals involved in legal matters.
7. **Avoiding Personal Bias:** Journalists should strive to separate their personal biases and opinions from their reporting. Neutral and objective reporting is essential when covering judicial proceedings.
8. **Legal Experts and Commentary:** When providing analysis or commentary on legal matters, seek input from legal experts who can provide context and insight into the legal issues at hand. This can help ensure that reporting is fact-based and well-informed.
9. **Responsible Use of Court Documents:** Journalists should responsibly use court documents and transcripts, ensuring that they accurately reflect the proceedings. Misrepresentation of court documents can lead to sensationalism.

10. **Transparency in Reporting:** Be transparent about sources and methodology. If information is obtained from anonymous sources, clearly state the reasons for protecting their identities and the steps taken to verify the information.

11. **Public Interest vs. Sensationalism:** Consider whether the information being reported is genuinely in the public interest. While certain legal cases may be of significant public interest, journalists should avoid exploiting sensitive issues for sensationalism.

Maintaining this balance between sensationalism and facts in judicial reporting is essential for preserving the integrity of the judiciary and ensuring that the public has accurate and reliable information about legal matters. It also contributes to upholding the principle of the presumption of innocence and the right to a fair trial for all individuals involved in legal proceedings.

The Role of the Media in the Courtroom

The media plays an important role in the administration of justice as it provides the public with information, which helps to ensure that the public is aware of the law and how it is being applied. This not only assures the actualisation of the freedom to receive ideas and information but also furthers judicial accountability, as output of the Courts is in public domain. The important role of the media has been extolled by the Supreme Court of Zambia in [Attorney General v Clarke \(2008\) S.C.Z. No. 4 of 2008](#) [2008] ZMSC 4.⁶

However, the media must also be careful not to interfere with the judicial process. Reporting on active cases before the courts should be cautiously done, as a lack of caution could prejudice the ends of fair trial.

⁶ Attorney General v Clarke (96 of 2004) [2008] ZMSC 4 (23 January 2008) *available at* <https://zambialii.org/akn/zm/judgment/zmsc/2008/4/eng@2008-01-23>

Ethical Considerations

When reporting on court matters, media professionals must be mindful of the following ethical considerations:

- Accuracy: The media must ensure that its reporting is accurate and fair. The media should not publish information that is false or misleading;
- Impartiality: The media should strive to be impartial in its reporting and should not favour one side in a case over another;
- Respect for the Rights of the Individual: the media should respect the rights of individuals, including the right to privacy and the right to a fair trial;
- Be respectful of all parties involved in the case; and
- Consider the impact of your reporting on the parties involved.

Flowing from the five ethical considerations is the need to exercise circumspection in reporting certain sensitive cases.

The role of the media is to provide the public with information that ensures that the public is aware of the law and its application. The media should report matters accurately, impartially and respectfully whilst considering the impact of the report on the affected parties.

General Guidelines on Media Coverage of Cases Involving Children

Because the Media plays an important role in disseminating information, it is important that the ethical considerations are strictly adhered to. Dissemination of information relating to Court cases will require access to information from the judiciary and this includes not only the ability of the press to report on decisions of the courts but more importantly to also report on court proceedings. In order for this to happen, the press must, among other things, be present in the courtroom.

When children are involved in Court proceedings, the media must conduct itself in a manner that protects the rights and best interests of children. There are mainly three ways in which children can be involved in Court proceedings.

1. Children can be child offenders, sometimes known as children in conflict with the law;
2. Children can be called as witnesses in proceedings; and
3. Children can also be the subject of Court proceedings such as proceedings relating to custody or adoption.

The [Children's Code Act](#) is the primary legislation that protects the rights of children. [Section 3](#) of the Act states that:

“3. Best interest of child

- (1) A child's best interest is the primary consideration in a matter or action concerning the child, whether undertaken by a public or private body.”

Where proceedings relate to a child offender, the child offender is referred to as a juvenile offender in criminal proceedings. A juvenile offender appears before a Court that constitutes itself as Juvenile Court or may appear before a Children's Court. During these proceedings access into court is restricted. Individuals who are allowed access to the Courtroom in such instances are:

- (a) a member or officer of the juvenile court or Children's Court;
- (b) a party to the case before the juvenile court or Children's Court;
- (c) a party's legal representative;
- (d) a witness;
- (e) a parent, guardian or person having parental responsibility for the child;
- (f) a person that the juvenile court or Children's Court may authorise to be present; and
- (g) any other person directly concerned with the case.

A member of the media can therefore be among those who can be authorized to be present in Court. By law a juvenile court or Children's Court ensures that a child

welfare inspector or any other authorised officer is present at all stages of the proceedings in a juvenile court or Children’s Court to safeguard the interests of the child.

During proceedings involving children, whether as child offenders, as child witnesses, or in a matter where the child is the subject of the proceedings, their privacy must be protected.

[Section 81 \(5\) of the Children’s Code Act](#) stipulates that in any proceedings concerning a child, whether instituted under the Act or any other written law, a child’s name, identity, home, last place of residence, school or the particulars of the child’s parents, photograph, depiction or caricature of the child shall not be published or revealed in any publication, report or otherwise.

This guidance entails that when the media has been allowed to be present in matters relating to children in accordance with the provisions of section 68 of the Children’s Code Act, the name, identity and other particulars of the child should not be published.

In other instances, the media may have access to Court proceedings after the matter has been heard. The media is responsible for ensuring that the best interests of the child continue to be protected in the manner in which they report the proceedings.

Guidelines on How the Media Should refer to Parties in their Reporting

Coverage of cases involving children in conflict with the law

In cases involving children in conflict with the law, media reporting should not divulge the name of the child as a child is protected from carrying past convictions and any offences committed by minors are not supposed to be in public domain so as to encourage reformation and rehabilitation. According to [section 46 of the Children’s Code Act No. 12 of 2022](#) publication of personal details of the Child is an offence at law.

Coverage of sexual offences

The media should not use the name of a victim of sexual assault as identifying a victim of sexual assault can have a devastating impact on the victim's life.

In such cases, the media should use a pseudonym or a description, such as "the victim". Graphic descriptions of sexual crimes should also be avoided as well as publishing the victim's home address.

Children and victims of sexual assault should not be named in the media.

Coverage of divorce matters

Divorce matters are yet another type of suit in which like caution ought to be employed. Publishing information that could harm the children involved in the divorce should be avoided. The avoidance should extend to information about the children's custody arrangements, their financial situation, or their health. By extension of this, and as per [Part II of the Children's Code Act No. 12 of 2022](#), any injurious information to the reputation of the parents involved must be avoided.

Coverage of health matters

When reporting cases involving health matters, the media should be selective in the details captured in the report so as not to unnecessarily expose the health condition of the parties as this encroaches on privacy rights. Publication should only be with the consent of the individual or their family.

Coverage of state secrets

The media should be careful when reporting on cases that involve classified state secrets as the Court may, pursuant to [section 15 of the State Security Act](#), order

that the public are excluded from the proceedings and therefore, the media can only report on such issues that do not fall within classified information. They should only publish information that is in the public interest and that does not pose a threat to national security. Publication of classified information can be a basis for prosecution and legal action.

Coverage of trade and company secrets

The media should be careful when reporting cases on trade and company secrets. They should only publish information that is in public interest and that does not give competitors an unfair advantage. Publication of trade secrets may be subject to legal action.

Enforcement Mechanism at the Disposal of the Courts to Ensure Responsible Media Coverage of Cases

Gag orders

A gag order is a court order that prohibits a person from speaking about a case.

Gag orders are often issued in cases involving children or victims of sexual assault or sensitive issues.

Contempt of court

Contempt of court is generally categorized in two categories, namely, criminal contempt and civil contempt. Criminal contempt is any conduct that mocks or disrespects the court. This may include deliberately insulting the court or interrupting court proceedings. On the other hand, civil contempt is intentionally refusing to comply with an order of the court without a lawful justification. In Zambia, all Courts of law have inherent jurisdiction to hold in contempt any person who compromises the integrity of the proceedings before the Court.

Publishing information subject to a **gag order** may warrant contempt of court proceedings.

Publication of injurious reports or opinions about the Court constitutes criminal contempt which can result in fines or imprisonment.

For more information see [Savenda Management Services Limited v Stanbic Bank Zambia Limited & Gregory Chifire \(Alleged Contemnor\) \(Appeal 37 of 2017\) \[2018\] ZMSC 11 \(23 November 2018\)](#)

Guidelines on the Right of the Media to Access the Cause List at the Courts

Simply put, **a cause list is a list of cases that are scheduled to be heard by a Court.** A Court prepares a cause list and this cause list is published to give notice to the parties to proceedings and interested parties of matters that are scheduled to be heard by the Court.

Access to cause lists is not restricted as this information is also published on the Zambian Judiciary website. The media, therefore, has access to the cause lists on the Judiciary website without any restrictions.

With respect to civil matters, cause lists are published every week setting out the matters scheduled for the week. In criminal matters, the cause list outlines all the cases that will be scheduled for the whole duration of the criminal session. Members of the media may additionally access cause lists from the Court Registries through the Court Clerks.

Guidelines on the Behavior and Conduct of Media in Court

During court proceedings

The media are allowed to attend court proceedings and sit in the gallery. In the exercise of their duties, they must ensure that they are appropriately dressed and that their phones are switched off. During the proceedings, the media is at liberty to make voice recordings of the proceedings **if they have been given prior permission to do so by the Judiciary administration.** However, media personnel are not allowed to take pictures or video recordings in the Courtroom.

After court proceedings

Proceedings of the Court are public documents which can be accessed by conducting a search at the relevant court registry at a fee. It is important to note that while the media is allowed access to Court proceedings and can report on the ongoing proceedings, **it is prohibited to engage in discussions on matters that are still under consideration by the Court. These matters are referred to as sub judice.** because they are still active before the Court. Therefore, it is the duty of the media to be well aware of the extent to which it can report matters without preempting or influencing the outcome of matters.

A matter is **sub judice** when it is still active before court pending determination. The media is prohibited from discussing matters that are **sub judice**.

Guidelines on How to Address Judges

A Judge is an adjudicator who presides over a superior court such as the High Court, Court of Appeal, Constitutional Court, the Supreme Court and any other Superior Court as prescribed. A Magistrate on the other hand presides over the Subordinate Courts and the Local Court.

Judges and Magistrates are addressed differently in Court. In official communication, Judges are referred to as **Honourable Justices**. When addressing a male judge in the courtroom, he is referred to as "**My Lord** " whereas a female judge is referred to as "**My Lady**".

Superior Court

Superior Courts in Zambia include **the Supreme Court, the Constitutional Court, the Court of Appeal** and **the High Court of Zambia**. The High Court is divided into divisions. These are the **Economic and Financial Crimes Court, Industrial Relations Court, Commercial Court, Family Court and Children's Court**. In these Courts, Judges are addressed as My Lord and My Lady.

The High Court also comprises of Registrars and District Registrars who are adjudicators who sit and determine matters referred to them by High Court Judges such as assessment of damages and taxation of costs. These registrars are addressed as “**Your honour**” in court or chambers.

Subordinate Court

In the Subordinate Court, Magistrates who sit to hear and determine matters are addressed as “**Your Honour**” or your Worship.

Local Court

The Local Court is the lowest ranking Court in the Judiciary which hears specific matters such as those that relate to customary law. Local Court Magistrates are addressed as “**Your worship**”.

Guidelines on How to Cite Case Law and Legislation

Guidelines when citing legislation

When citing and making references to legislation in Zambia, it is important to follow the guidelines and conventions specific to Zambian legal citations. The following guidelines provide an overview of how to cite and make references to legislation in Zambia:

Identify the Legislation

Begin by identifying the legislation you are referencing. Include the title of the legislation and any specific information that helps distinguish it from other laws or regulations.

Year of Enactment: Include the year in which the legislation was enacted in Zambia. This helps identify the specific version of the law you are referencing.

Chapter or Act Number: Many Zambian laws are organized by chapters or acts. Include the chapter or act number if applicable to the legislation you are referencing.

Section Numbers: If you are referencing a specific section or provision within the legislation, include the relevant section number(s).

Publisher or Source: Provide information about the publisher or the source from which you accessed the legislation. This could be the official government website, an online legal database, or a print publication.

Guidelines on Citing Cases

The following guidelines provide an overview of how to cite and reference cases in Zambia.

Cases not published in the Law Reports

Judgments are published by the Judiciary soon after they are handed down in court. These judgments are disseminated via the website of the Judiciary of Zambia, and through websites such as www.zambialii.org

The following rules are used to reference judgments before they are published in a book or a printed law report.

Case Name: Begin by providing the names of the parties involved in the case. Include the names of the parties in the order they appear in the case title.

Year of Decision: Include the year in which the case was decided. This helps identify the specific version of the case you are referencing.

Case Number: Include the case number of the decision.

Sequential Number of the Decision: Include the sequential number of the decision as it is published on the relevant website.

Mabvuto Banda v Timothy Mwape 2022/HP/1 (**Unreported**).

On ZambiaLII a recent judgment can be cited as follows:

**Straight Line Investment (Z) Ltd v Ngonga (Appeal No. 164/2021) [2023]
ZMCA 235 (31 August 2023)**

The aim of this system is to uniquely reference a judgment to enable readers ease of use of the material.

Law Reports Citation

In Zambia, cases are often published in law reports. Include the citation to the law reports where the case is published. The citation should include the volume number, the abbreviation for the law reports series, the page number(s) where the case can be found, and the year of the law report volume. Where a case is not reported, it is common practice to indicate in brackets the words “unreported”. Only indicate that the case is unreported when sure that it has not been reported by the official law reports, the Zambia Law Reports.

Court: Specify the court that decided the case. Include the full name of the court, such as the Supreme Court of Zambia, Constitutional Court, Court of Appeal or High Court of Zambia as the case may be.

Pinpoint Reference: If you are referring to a specific page or paragraph within the case, provide a pinpoint reference by indicating the page number or the paragraph of the judgment if the judgment is paragraphed. This helps readers locate the exact passage you are referencing.

Here is an example of a citation for a civil case in Zambia:

Case Name: Plaintiff v Defendant [Year] Z.R. Volume Page (Court).

Mabvuto Banda v Timothy Mwape [2022] Z.R. 567 (Supreme Court of Zambia).

If the above case was not reported in a Law Report, the words unreported will have to be added to the citation.

Reading and Analysing Court Cases

When it comes to reading and analyzing court decisions in Zambia, there are several guidelines you can follow to ensure a comprehensive understanding of the judgments. Here are some steps to consider.

Obtain the Court Decision

Locate and acquire the specific court decision you wish to read and analyze. Court decisions can be found in various sources, including official court websites, legal databases, law libraries, and sometimes through official publications. The face of first page of every court judgment or ruling will have vital information that one may not ignore. The first page will indicate where the matter was heard, whether or not the court was exercising civil, criminal, constitutional or appellate jurisdiction. The registry where the matter was filed will also be indicated. It will also show which judge or judges heard the matter and which lawyers appeared before the Judge or Magistrate. Below is an example of the first page of a judgment in the High Court.

IN THE HIGH COURT FOR ZAMBIA **2090/HP/0001**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

ABCD

PLAINTIFF

AND

EFGH

DEFENDANT

Before the Hon. Mr. Justice IJKL in chambers.

For the Plaintiff : Mr. MNOP of Messrs QR Legal Practitioners

For the Defendant : Ms. STUV OF Mesdames XY and Partners

J U D G M E N T

Apart from the example given above, it is important to note that collegiate courts will indicate the panel of judges that sat to hear the matter and it will also indicate which judge, from those that heard the matter, was tasked to write the judgment on behalf of the entire court. That decision remains a collective decision of the Court.

The cause number on the top left of the example above will also assist in identifying which registry a matter was filed in. The Sample shows the cause number as 2090/HP/0001. The “HP” means that the matter was filed in the principal registry which is only situated at Lusaka. All other High Court registries are District Registries. They too have their own “code”. For example, **HK = Kitwe, HN=Ndola, HL=Livingstone, HJ=Chipata, HW=Kasama, HV=Solwezi, HR=Mansa, HF=Chinsali, HB=Kabwe and HT=Mongu.**

With regard to the Supreme Court, Constitutional Court and Court of Appeal, the cause number or appeal number will also be indicative as to which court heard the Matter. **SCZ = Supreme Court, CCZ = Constitutional Court and CAZ = Court of Appeal.**

Read the Entire Decision

Begin by reading the entire court decision from start to finish. This will provide you with an overall understanding of the case, the legal issues involved, and the court’s reasoning.

Identify the Key Parties

Determine the parties involved in the case. Understanding their positions and arguments is essential to comprehending the court’s decision.

Understand the Legal Issues

Identify the legal issues addressed in the court decision. These issues represent the core questions of law that the court had to resolve. Pay attention to how the court frames and analyzes these issues.

Analyse the Facts

Grasp the factual background of the case. Courts base their decisions on the facts presented to them. Understanding the facts is crucial for comprehending the court’s reasoning and conclusions.

Examine the Court's Reasoning

Carefully analyze the court's reasoning and the legal principles it applies. Look for the legal authorities cited, such as statutes, regulations, and prior court decisions. Consider how the court interprets and applies these authorities to the specific case.

Assess the Holding

Determine the court's holding or decision on each legal issue. The court may affirm, reverse, modify, or remand the lower court's decision. Understand the implications of the court's holding for the parties involved and its potential precedential value.

Consider Dissenting or Concurring Opinions

In some cases, judges may write separate opinions expressing a different viewpoint from the majority. Pay attention to any dissenting or concurring opinions, as they can provide alternative analyses and perspectives.

Evaluate the Impact

Consider the potential impact of the court's decision. Assess how the judgment may affect future cases and legal interpretations in Zambia. If the decision has broader implications, it may be cited as a precedent in future legal arguments.

Consult Legal Commentary

To gain a deeper understanding and analysis of the court decision, consult legal commentaries or scholarly articles written by legal experts. These resources may provide insights, critiques, or further explanations of the judgment.

Legislation Lifecycle

Legislation is the whole body of enacted laws in a country.⁷ Legislation lifecycle refers to the different stages that a bill undergoes before it becomes a law. [A Bill is a proposal for a new law, or a proposal to change an existing law.](#)⁸ [In Zambia, Parliament is the legislative body responsible for the creation of new laws and](#)

⁷ Bryan A. Garner, Black's Law Dictionary (8th edn, Thomson West 2004) 2635.

⁸ National Assembly, 'Legislative Process: Stages through which a Bill passes to become law' available at https://www.parliament.gov.zm/sites/default/files/images/publication_docs/Abstract%201%20Legislative%20Process%20Stages%20Through%20Which%20A%20Bill%20Passes%20To%20Become%20Law.pdf

[amendment of existing laws](#).⁹ Parliament adheres to a strict procedure in enacting new laws, making amendments, and repealing laws. The various stages of a Bill are as follows:

First Reading

When the bill is introduced in the National Assembly, it is introduced during the First Reading. The First Reading of the Bill is a formality. During this stage, the Bill is presented and read for the first time and no debate takes place.¹⁰ The Speaker refers the Bill to a relevant Committee to subject it to detailed scrutiny, and the Committee reports to the House thereafter. For the Committee to come up with a report on the Bill, consultations with various stakeholders are conducted.¹¹ The report produced is referred to as the Committee Report and is used to inform the debate in the House on the Bill.¹²

For the majority of Bills, there is no set time within which they should be published before being introduced in the House. However, a Bill for the alteration of the Constitution is required to be published in the Government Gazette not less than thirty (30) days before the First Reading.¹³

Second Reading

The second reading is the most important stage. At this stage, the principle behind the Bill is debated in detail. The Member of parliament responsible for the Bill reads a prepared speech that gives detailed explanations of what is involved in the Bill, and its implications and outlines the advantages and disadvantages of the Bill.¹⁴ This is followed by a general debate on the Bill. This debate must be informed by the report of the relevant Committee on the Bill.

⁹ Article 62(2), 62(3) and Article 63(1) of the Constitution of Zambia, available at https://www.constituteproject.org/constitution/Zambia_2016

¹⁰ National Assembly, 'Legislative Process: Stages through which a Bill passes to become law' available at https://www.parliament.gov.zm/sites/default/files/images/publication_docs/Abstract%201%20Legislative%20Process%20Stages%20Through%20Which%20A%20Bill%20Passes%20To%20Become%20Law.pdf

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

During the debate, unless one has been misquoted or one needs to clarify a point made earlier, a member of parliament speaks once to ensure that as many Members as possible have an opportunity to contribute to the debate.¹⁵ The only exception to this rule is that the initiator of the Bill reserves the right to wind up the debate.

At the end of the debate, the Speaker questions the House on whether or not the Bill should be read a second time. Members indicate by saying ‘AYE’ if they are in favour of the Bill or ‘NO’ if they are against it. If the ‘AYES’ are in the majority, the Speaker orders the Bill to be read a second time. If the ‘NOES’ are in the majority the Bill is withdrawn and it cannot be reintroduced during the same Session. If it is not clear whether the “AYES or the “NOES” are in the majority, a Division is called.¹⁶

In the case of a Bill to amend the Constitution, when the question is put by the Speaker that the Bill be read a second time, a vote is immediately conducted and the Bill requires the support of at least two-thirds of the total membership of the House on Second Reading.¹⁷

Committee Stage

During this stage, a Bill is ordered to be considered by the Committee of the whole House. The Committee examines the Bill in detail, clause by clause, and members of parliament are free to speak more than once and can introduce amendments to the Bill provided such amendments are compatible with the Bill.¹⁸ The Committee Stage is chaired by the First Deputy Speaker or the Second Deputy Speaker.¹⁹ Any amendments made during the committee stage are reported at the report stage.

Reporting Stage

The Report Stage is similar to the Committee Stage. However, at the report stage only additional amendments to the Bill not moved at the Committee Stage, and not Clauses, are considered.²⁰ If a Bill has not been amended at Committee Stage, the Third Reading-which is a precursor to the last stage of the legislative process- is promptly proceeded with. It should be noted that the Report Stage affords Members

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

an opportunity to make further amendments and the proceedings during this stage are presided over by the Speaker.²¹

Third Reading

During this stage, the Bill is reviewed in its final form and no debate takes place. When the question has been put and agreed to, the Bill is deemed to have been passed and, thereafter, is presented to the President for assent.²² However, for a Bill amending the Constitution, it must be passed at Third Reading with at least a two-thirds majority of all Members of the Assembly.²³

Presidential Assent

Once a Bill is presented to the President for assent, the President must **within twenty-one days assent to the Bill.**²⁴ If the President withholds assent to the Bill, the Bill is returned to the National Assembly with a message for the National Assembly to reconsider.²⁵

At this point the National Assembly may amend the Bill taking into account the President's reservations or pass it without amendments on a vote supported by at least two-thirds of the Members of Parliament.²⁶ Where the National Assembly fails to pass the Bill referred to it on a vote, the Bill shall not be presented to the National Assembly in that session.²⁷

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Constitution of Zambia, Cap.1, Article. 66(1) available at https://www.constituteproject.org/constitution/Zambia_2016#s915

²⁵ Constitution of Zambia, Cap.1, Article. 66(1)(b) available at https://www.constituteproject.org/constitution/Zambia_2016#s915

²⁶ Constitution of Zambia, Cap.1, Article. 66(2) (a) and (b) available at https://www.constituteproject.org/constitution/Zambia_2016#s915

²⁷ Constitution of Zambia, Cap.1, Article. 66(5) available https://www.constituteproject.org/constitution/Zambia_2016#s915

If the President does not assent to a Bill resubmitted to him/her by the Speaker, within seven days, the Bill shall be considered assented to upon the expiry of the said stipulated period.²⁸

Types of Legislation in Zambia and Who is Responsible for Making Them

Acts of Parliament

Acts of Parliament are laws passed by the Parliament of Zambia. Generally, Acts of Parliament are considered to be the country's primary legislation.²⁹ This is because Acts of Parliament are not dependent on any other legislative authority. They are laws passed by parliament and are used to create new laws or change existing ones. The power to make Laws is vested in Parliament pursuant to Article 62(2) and Article 63(1) of the Constitution of Zambia. Every Act of Parliament must be published by the government printer as soon as may be possible after the President's assent has been signified.

Commencement of Legislation/Act of Parliament

Commencement is the point at which an Act of Parliament or a statutory instrument comes into force and takes legal effect. The commencement of an Act is provided in or under the Act. The provision speaking to commencement is normally the second or third section of the Act or the Statutory Instrument. Where the commencement date is not provided under the Act or Statutory Instrument, the commencement date shall be the date of its publication as notified in the Government Gazette. In most circumstances an Act of Parliament commences at a date specified in the act itself. If an act comes into force at a later date, that date must be notified in the Government Gazette.

Statutory Instruments

In addition to the power to make laws, parliament has powers, in accordance with the Constitution, to delegate this law-making function to a lower body.³⁰ Legislation that emanates from such delegation is referred to as delegated legislation or

²⁸ Constitution of Zambia, Cap.1, Article. 66(6), available at https://www.constituteproject.org/constitution/Zambia_2016#s915

²⁹ The Lawyers and Jurists: Barristers, Advocates and Legal Consultants, 'Primary and Secondary legislation' available at www.lawyersnjurists.com

³⁰ Constitution of Zambia, Cap. 1, Article Article 67, available at https://www.constituteproject.org/constitution/Zambia_2016#s940

secondary legislation. This delegated legislation is usually in the form of statutory instruments. Article 67(1) of the Constitution gives Parliament authority to confer on any person or authority power to make statutory instruments. Section 2 of the Interpretation and General Provisions Act³¹, defines a Statutory Instrument as:

"statutory instrument" means any proclamation, regulation, order, rule, notice or other instrument (not being an Act of Parliament) of a legislative, as distinct from an executive, character;

Statutory Instruments must be in conformity with the main Act enacted by Parliament. It is a constitutional requirement that a Statutory Instrument must be published in the Government Gazette not more than twenty-eight days after it is made or, in the case of a statutory instrument which will not have the force of law unless it is approved by a person or an authority, other than a person or an authority by which it was made, not later than twenty-eight days after it is so approved.³² If a statutory instrument is not published in the gazette as per the requirement stated above, it is void from the date on which it was made.³³

Commencement of Statutory Instruments

The commencement date of a statutory instrument is the date of its publication in the government gazette or where a later date is specified in the SI, or such later date. Every SI shall be deemed to come into effect immediately on the expiration of the day next preceding the date of its commencement.

How Do Legislation and Caselaw Work Together

Case Law refers to the collection of reported cases that form all or part of the body of law within a given jurisdiction.³⁴ It is law which is derived from decisions or judgments of the courts and is also referred to as Judge made law. While case law is created by judges through their judgments or rulings, legislation is created by parliament or other bodies to whom parliament delegates its legislative powers. The relationship between case law and statute law made by the legislature is thus

³¹ Chapter 2 of the Laws of Zambia available at <https://zambialii.org/akn/zm/act/1964/60/eng@1996-12-31>

³² Constitution of Zambia, Cap.1, Art.67(2).

³³ Ibid.

³⁴ Bryan A. Garner, Black's Law Dictionary (8th edn, Thomson West 2004) 644.

complementary in nature. When a specific case comes before the court and the court decides on the meaning of that Act, the interpretation of the court is then read with the Act to make up the law on that topic. Legislation, therefore, provides a framework for the legal system, while case law interprets and applies that framework to specific situations.

In Zambia, the Constitution is the Supreme Law and any other law which is inconsistent with the provisions of the Constitution is void to the extent of the inconsistency. Article 119 of the Constitution of Zambia vests judicial authority in the judiciary to be exercised in accordance with the Constitution.

Where a specific case comes before the court and the court is tasked with interpreting a specific statute, the interpretation of the court is read with the Act to make up the law on that topic. Legislation provides a framework for the legal system, while case law interprets and applies that framework to specific situations.

Guidelines on What to Look for and How to Use the Government Gazette

A gazette is an official publication by the Government. It is a publication used by the government to publish official government announcements or notices such as:

- Bills
- Acts of Parliament
- Statutory instruments/Regulations
- Change of names (deed polls)
- Government Notices
- Legislative notices
- Company notices/updates

A Gazette containing any written Law, order or any notice purporting to be printed by the government printer shall be sufficient evidence in all courts and for all other purposes that such written law, order or notice was actually made.³⁵

Guidelines on How to Approach Other Justice and Legal Sector Institutions

Police

Zambia Police Service is charged with the responsibility to inter alia protect life and property.³⁶ The police remain the primary and most commonly used avenue to bring persons in conflict with the law to order. When a crime is reported, a docket is opened and investigations are launched. The investigator investigates the report by obtaining physical evidence and speaking with witnesses to ascertain if there is likely cause to effect an arrest.³⁷

[Section 18 of the Criminal Procedure Code](#) provides that arrests in Zambia can be done by either police officers or by a private person. In the first scenario, [Section 26 of the Criminal Procedure Code](#)³⁸ defines the situations in which a police officer may arrest a person without a warrant; the arrest may occur without a warrant as well when any officer in charge of a police station requires any subordinate officer to arrest without a warrant. In the second scenario it is interesting to note that according to [sections 31](#) and [32](#) of the Criminal Procedure Code,³⁹ any private person can arrest another person who, in his presence, commits a cognizable offense or provides reasonable suspicion of committing a felony, even without a warrant as long as the individual is taken immediately to a police officer or police station. Depending on the complexity of the case, the investigation could take some time.

The investigator will keep the victim of crime or the complainant updated throughout their investigation. Additionally, the Police have a duty to take all

³⁵ Section 48 of the Interpretation and General Provisions Act Chapter 2 of the Laws of Zambia available at https://zambialii.org/akn/zm/act/1964/60/eng@1996-12-31#part_VIII_sec_48

³⁶ Constitution of Zambia, Cap. 1, Article. 193(2) available at https://www.constituteproject.org/constitution/Zambia_2016#s2878

³⁷ National Prosecution Authority, 'Investigation', available at www.npa.gov.zm

³⁸ The Criminal Procedure Code Act Chapter 88 of the Laws of Zambia available at https://zambialii.org/akn/zm/act/1933/23/eng@1996-12-31#part_III_subpart_nn_1_sec_18

³⁹ Ibid.

reasonable precautions to ensure the safety of the suspected criminal, the witnesses, and the victim of a crime

Once investigations are concluded, the suspect is formally arrested, the compiled docket is then forwarded to the National Prosecution Authority for possible prosecution

The police also have a Victim Support Unit (VSU) in almost all parts of the Country which deals with violation of human rights, especially women and children's rights. Women and children whose rights are abused can report to the VSU for quick response. The VSU has been progressive in curbing domestic violence.

National Prosecution Authority

[In Zambia, the power to institute and undertake criminal proceedings is vested in the Director of Public Prosecutions \(DPP\).](#)⁴⁰ .The Director of Public Prosecutions (DPP) is responsible for making the crucial decision of whether to prosecute or not. Before making this decision, the DPP must carefully examine the evidence and act independently. This means that no person, including the Government can influence the DPP's decision.⁴¹

Charging the Accused

When a decision is made to prosecute or not, the DPP will decide the appropriate charge for the accused. It is the duty of the DPP to identify the correct charge having due regard to the evidence on the docket. In some instances it may be appropriate for the DPP to reduce a charge to a lesser one. In doing so, the DPP takes into account the strength of the case, the likelihood of adverse consequences of the criminal trial on witnesses, availability of witnesses, the need to avoid delay in disposing off a pending case or lack of evidence to support a more serious charge.

⁴⁰ Constitution of Zambia, Cap.1, Article.180(3), *available at* https://www.constituteproject.org/constitution/Zambia_2016#s2714

⁴¹ Constitution of Zambia, Cap. 1, Article. 180(7).

What influences the decision of the DPP to prosecute

Once investigations are concluded and the docket is forwarded to the NPA, the DPP must carefully examine the evidence on the docket and decide whether it is sufficient to take the matter to Court. This involves a two tier approach:

The first stage is the evidential stage. At this point, the DPP will review all the evidence and assess whether the court is more likely than not to find the accused guilty.

The second stage is the public interest test. At this point, the DPP will consider whether it is in the public interest to prosecute. The DPP will consider factors such as the gravity of the offence, the harm done to the victim, the impact on the community, the accused's age and maturity at the time of the offence. A prosecution will proceed unless the DPP determines that the public interest factors against prosecution outweigh those in favour of prosecution.

Human Rights Commission

The Human Rights Commission (HRC) is a creature of the Constitution. The HRC is birthed in Article 230 (1) of the Constitution. The commission's primary mandate is to ensure that the Bill of Rights is upheld and protected.⁴² Further, The Commission's mandate is expanded in Article 230(3) of the Constitution. The commission's mandate is to inter alia:

- (a) investigate and report on the observance of rights and freedoms;
- (b) take necessary steps to secure appropriate redress where rights and freedoms are violated;
- (c) endeavour to resolve a dispute through negotiation, mediation or conciliation;
- (d) the functions of the Human Rights Commission are prescribed under the HRC Act, Chapter 48 of the Laws of Zambia.

In [Section 9 of the Human Rights Commission Act](#), the HRC is mandated to:

⁴² Constitution of Zambia, Cap. 1, Article. 230(2).

- (a) investigate human rights violations;
- (b) investigate any maladministration of justice;
- (c) propose effective measures to prevent human rights abuse; and
- (d) do all such things as are incidental or conducive to the attainment of the functions of the Commission.⁴³

Complaint handling mechanism amounts to the large chunk of the HRC work. Therefore, it is imperative to know who should report? What should they report and what actions will be taken by the commission

Who should report

The commission can receive complaints of violated or threatened human rights from an aggrieved person, a person acting on behalf of an aggrieved person or group of persons, or an association acting in the interest of its members. The Commission also has powers to investigate human rights abuses on its own initiative.⁴⁴

What happens

On receipt of a complaint, the Commission carries out preliminary investigations to assess whether it constitutes a case of human rights violation or a threat to a human right and falls within its jurisdiction. The complainant is advised as to whether the case is admissible or not. On matters where the Commission has no jurisdiction, the cases are referred to appropriate institutions that can effectively deal with them. It should be noted, however, that the enabling law does not allow the Commission to deal with matters pending in court or complaints that are submitted more than two years after knowing of a violation.

Unless the investigation is in public interest, complainants are allowed to withdraw complaints provided that the Commission accepts to discontinue the matter. The Commission may also discontinue investigations if a complaint lacks evidence or is pending in court, and accordingly the complainant is informed of the decision

⁴³ Human Rights Commission Act Chapter 48 of the Laws of Zambia *available at* <https://zambialii.org/akn/zm/act/1996/39/eng@1996-12-31>

⁴⁴ Human Rights Commission, 'Complaints Procedure' *available at* www.hrc.org.zm

The Human Rights Commission has the power to investigate Human Rights violations

Various Commissions and Tribunals

Tribunals are an essential component of the Judiciary ‘structure’ because they perform quasi-judicial functions that are specialized, efficient, accessible, and in line with principles of justice. They complement traditional courts by addressing specific types of disputes and ensuring that the legal system remains responsive to the diverse needs of society. Their role in the administration of justice is crucial for upholding the rule of law and providing fair and effective dispute resolution mechanisms. The decorum and conduct in tribunal hearing is generally the same as in traditional court hearings. The same rules applicable when dealing with traditional courts apply to tribunals. Below are some of the tribunals that exist in our jurisdiction.

Lands Tribunal

The Land Tribunal was initially created via the Lands Act of 1995 but is also provided for in the Lands Tribunal Act of 2010⁴⁵ as a specialised court to administer disputes pertaining to land. It hears disputes under a number of statutes as well as disputes arising under customary land tenure.

A person may apply to the tribunal to determine any matter pertaining to land. The application can either be in the form of a complaint, application or other documents required by the Act and should be filed with the registrar. Any appeals from this court are to go to the High Court.⁴⁶

⁴⁵ Section 3 of the Lands Tribunal Act No. 39 of 2010 *available at* <https://zambialii.org/akn/zm/act/2010/39/eng@2010-11-19>

⁴⁶ Section 16 of the Lands Tribunal Act No. 39 of 2010.

Local Government Election Tribunal

[As per the Local Government Elections Tribunal Rules of 2016](#), this tribunal has the power to hear a petition regarding a local government election within the province in which the tribunal is constituted.⁴⁷ It hears and determines whether a person has been validly nominated as a candidate for election as a councilor.⁴⁸

A petition may be instituted either by the Attorney General, candidate to which the petition relates, a person claiming to have the right to be nominated as candidate or elected councilor or a person who lawfully voted or had the right to vote. The law allows that a petition should be filed within 14 days from the date the results are announced. The petition should be filed in the secretary's office.

An appeal of a decision from the tribunal can be lodged with the Constitutional Court within 14 days of the decision from the tribunal.

The Tax Appeals Tribunal

The Tax Appeals Tribunal (TAT) was established by the [Tax Appeals Tribunal Act of 2015](#).⁴⁹

The purpose of TAT is to hear and determine appeals from decisions of the Commissioner-general under the Customs and Excise Act, the Income Tax Act, the Property Transfer Tax Act, the Value Added Tax Act and other tax legislation. Therefore, any person may appeal to the tribunal for determination of any matter which falls within the jurisdiction of TAT. An appeal, application or other documents required to be filed shall be submitted to the registrar. The Act allows for legal representation before the tribunal.

Appeals from the Tribunal lie in the Supreme court.⁵⁰ However, the appeal can only be sustained if it is based on law or a mixture of law and facts but not on facts alone.

⁴⁷ Section 3 of the Local Government Elections Tribunal Rules of 2016.

⁴⁸ Section 4 of the Local Government Elections Tribunal Rules of 2016.

⁴⁹ Section 3 of the Tax Appeals Tribunal Act No.1 of 2015.

⁵⁰ Section 15 of the Tax Appeals Tribunal Act No.1 of 2015.

The Capital Markets Tribunal

The Capital Markets Tribunal is a tribunal established under the Securities Act No.41 of 2016. The jurisdiction of this tribunal is to hear and determine appeals from decisions of the Securities and Exchange Commission; cases of misconduct in the securities market and other matters. Applications and appeals to the tribunal should be filed with the Registrar of the tribunal who is also the chief administrative officer. An appeal against the decision of this tribunal lies to the Court of Appeal.

Energy Regulation (Appeals) Tribunal

The Energy Regulation (Appeals) Tribunal is an ad hoc tribunal established pursuant to the Energy Regulation Act No. 12 of 2019. The mandate of this tribunal is hear and determine appeals from persons who are aggrieved with a decision of the Energy Regulation Board and other appeals made to it under the Energy Regulation Act. Any person aggrieved with the decision of the tribunal may appeal to the High Court.