

**GUIDE TO THE ZAMBIAN LEGAL SYSTEM**  
**FOR PERSONS IN CUSTODY AWAITING TRIAL AND THOSE**  
**CONVICTED AND SENTENCED**

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Note: This document is not intended to be an exhaustive outline of the Zambian Legal System nor as a comprehensive treatise on the Criminal Procedure Code but a brief outline for reference purposes of the main issues persons in custody should be aware

**1. The Zambian Legal System**

The Zambian legal system is based in the accusatorial system in which accused persons are deemed innocent until proved guilty by a Court of competent jurisdiction.

Article 18(1) of the Zambian Constitution requires that an accused person be afforded a fair hearing within a reasonable time, and Article 18(1) (2) (c) (e) of the Constitution requires that any person charged with a criminal offence should be informed as soon as reasonably practicable of the nature of the charge to enable him to prepare his defence

**2. Offences**

The possible minor and serious criminal offences one may commit are too numerous to list. However reference may be made to the Penal Code and Criminal Procedure Code for the list of offences and their respective penalties. In addition, other offences may be committed under other statutes such as the Narcotic Drugs and Psychotropic Substances Act No. 37 of 1993, Anti Corruption Commission Act, the Companies Act, etc.

**3. The Criminal Procedure Code Act**

- This Act provides for the procedure to be followed in criminal cases
- Criminal cases in Zambia are dealt with by the Subordinate Court and High Court for Zambia
- The Director of Public Prosecutions office has the constitutional responsibilities to prosecute offenders – in practice about 60% prosecutions are conducted by the Zambia Police Service (with no constitutional or statutory power to prosecute). The DPPs office handles about 20% of the cases (mainly in the High Court). Other Investigations Agencies such as the Immigration Department, Anti Corruption Commission and Drug Enforcement Commission handle the other 20% of cases

**3.1 The Subordinate Courts**

- These are presided over by Senior Resident Magistrate, Resident Magistrate, and Magistrates with differing powers of imprisonment they may impose on a prisoner depending on the seniority of the magistrate

- The jurisdiction of Subordinate Courts is limited to their local jurisdiction specified by the Subordinate Courts Act

### **3.2 The High Court for Zambia**

The High Court has original jurisdiction throughout Zambia and is presided over by High Court Judges. The High Court for Zambia hears appeals from the Subordinate Courts

### **3.3 Trials**

The Subordinate Court Magistrates and High Court Judges normally sit alone (or with assessors). Judges are not bound by assessor's opinion. There is no jury system in Zambia

## **4. Legal Representation**

Arrested person are entitled to legal representation from the time of their arrest and allowed access to their legal representation whilst in custody, subject to Prison Rules

## **5. Institution of Proceedings**

- 5.1** Proceedings may be instituted by making a complaint or bringing before a Magistrate of a person who has been arrested without a warrant
- 5.2** On receipt of a complaint-orally or in writing a magistrate draws up and signs a formal charge containing a statement of offence the accused is to be charged with
- 5.3** Once the charge is signed a Summons or Warrant of arrest is issued for the attendance of the accused in Court for an inquiry into the alleged offence
- 5.4** A magistrate may refuse to grant the warrant where in his opinion the alleged charge does not disclose an offence – the complainant may appeal against such decision to the High Court and the High Court may either reverse the Magistrates Order or uphold it.
- 5.5** Arrested persons must be brought before the Court within 24 hours
- 5.6** Arrested persons may be admitted to bail where the offences areailable (Murder, treason. aggravated robbery etc are notailable offences).
- 5.7** An arrest may be effected by a police officer or private citizen for the commission or prevention of the commission of a cognizable offence
- 5.8** The Director of Public Prosecutions may enter a *nolle prosequi* to discontinue criminal proceedings against an accused person-upon which he id released and his sureties discharged. However the *nolle prosequi* does not act as a bar to any subsequent proceedings on account of the same facts.

- 5.9** The DPP's fiat or consent is required for arrest in certain cases, but where an arrest is nevertheless made, then proceedings are stayed until the DPP's consent is produced in Court.
- 5.10** Arrested persons are remanded in prison and brought to Court from time to time for the hearing of their case.

## **6. Investigation and Indictment**

- 6.1** Whilst an arrested person is in remand the police service investigate the alleged offence. The accused and his witnesses may be interviewed and depositions and statements of witnesses and the accused are drawn up and signed. Once adequate evidence is compiled by the prosecution, the investigation stage is closed and the trial stage commenced.
- 6.2** The formal charge and information is drawn up by the prosecutor and contains particulars of the accused, venue of the alleged offence, statement of the offence and particulars of the offence.

## **7. The Trial**

The trial of an accused may, depending on the nature of the case, be by the Subordinates Court or the High Court. Where the offence is triable by the High Court, the Magistrate conducts a Preliminary Inquiry prior to committing the accused for trial by the High Court

The prisoner is meanwhile remanded in prison or admitted to bail pending trial by the High Court. Before trial by the High Court the DPP may order further investigations.

### **7.1 Trial by Subordinate Court**

- 7.1.1** All trials before a subordinate Court are heard before a magistrate sitting alone or with two or more assessors. There is no jury system in Zambia.
- 7.1.2** If the complainant does not appear, the Court may dismiss the charge or adjourn the matter to a later date, remand the prisoner in custody or admit him to bail
- 7.1.3** A complainant may withdraw a complainant and the accused is discharged/ acquitted
- 7.1.4** Adjournments are stated to be for less than 30 days, but in practice the Court diary may be too full to accommodate short adjournments
- 7.1.5 The Plea**

At the trial, the accused will be asked to plead 'guilty' or 'not guilty'. If the accused pleads 'guilty', he is convicted and sentenced. If he pleads 'not guilty' he is put on his defence and the trial proceeds. If the accused refuses to plead and is mute of malice, the Court records a plea of "not guilty" and proceeds with the trial.

### **7.1.6 During the Trial**

- The prosecution opens its case and calls its witnesses after which they are cross-examined by the defence and re-examined by the prosecution
- If at the close of the evidence in support of a charge, the Court decides that a case is not made out against the accused to require his defence the Court shall dismiss the case and acquit the accused
- If the Court decides that the accused has a case to answer the charged is explained to him and of his right to give evidence and examine witnesses
- The prosecution may give evidence in Reply to the accused evidence
- Once both parties are heard, the Court may either convict the accused and pass sentence against him or as the case may be acquit him
- The order of the Court is drawn by the Magistrate or Clerk of Court and shall state the whole decision and reason for such decision
- A magistrate may upon conviction refer the matter to the High Court for sentence where in his opinion the offence requires a longer sentence than allowed by the Subordinate Court

## **8. Trial by The High Court**

The practice of the High Court in its criminal jurisdiction is assimilated, as nearly as the circumstances admit, to the practice in England

- All trials before the High Court are held before a Judge sitting alone with the aid of assessors, but Judges are not bound by the opinion of assessors.

### **8.1 Arraignment**

- The accused to be tried before the High Court is placed at the bar unfettered and the Information read over to him by the Registrar or other officer of the Court and explained or interpreted to him. and required to plead instantly thereto
- The Court may order the information to be amended if found to be defective
- An information may be quashed before plea if it discloses no offence or on a motion made in arrest of judgment

### **8.2 Pleas**

- The accused may plead 'guilty' and may be convicted thereon; or

- He may plead ‘autre fois acquit’ and ‘autre fois convict’ – that he has been previously acquitted or convicted, as the case may be of the same offence, or that he has been granted a pardon for his offence
  - If either of such pleas are pleaded in any case and denied to be true in fact, the Court shall try whether such plea is true in fact or not.
  - If the Court finds the plea to be false, the accused shall be required to plea to the information
- If the accused refuses to plea and is mute of malice, the Court shall record a plea of “not guilty” and the trial will proceed on that plea
- After plea of “not guilty” the Court shall choose assessors, if need be, to sit with the Judge for the trial

### **8.3 The Trial**

#### **8.3.1 Case for the Prosecution**

- The prosecution opens its case against the accused and calls witnesses
- No witnesses who did not give evidence at the Preliminary Inquiry shall be called by the prosecution at any time unless the accused is notified in writing
  - Witness of the prosecution are cross-examined by the accused or his advocate
  - Depositions may be read in evidence in certain cases
  - Statements of the accused may be used in evidence
  - After close of the prosecution case, the Court after hearing arguments on behalf of the prosecution considers that there is no evidence that the accused committed the offence shall record a finding.
- If the Court considers that there is evidence that the accused committed the offence it shall inform the accused of his right to
  - a) address the Court personally
  - b) give evidence on his own behalf, or
  - c) to make an unsworn statement and
  - d) to call witnesses in his defence

#### **8.3.2 Case for the Defence**

- Defence opens its case stating the facts and law relied upon and making necessary comments on the evidence of the prosecution

- The accused person may give evidence on his own behalf and may examine his witnesses and after their cross-examination and re-examination may sum up his case
- The accused person shall be allowed to examine any witness not previously bound over to give evidence at the trial if such witnesses are in attendance, but he shall not be entitled as of right, to have any witnesses summoned other than witnesses whom he named in the Subordinate Court.
- If the accused introduces new evidence in his defence, the prosecution may sum up the case against the accused, and the Court may call the accused or his advocates to address the Court on his behalf

### **8.3.3 Close of hearing**

When the case for both parties is closed, the Judge may sum up the evidence for the prosecution and defence, and shall (if the trial is being held with the aid of assessors) require each to state orally his opinion whether the accused is guilty or not, and records such opinion.

The Judge then delivers his judgment, but in doing so, is not bound to conform to the opinions of the assessors.

If the accused is convicted, the Judge passes sentence on him according to law.

### **8.3.4 Passing of Sentence**

- Before a sentence is passed the accused may move a motion to arrest judgment on the ground that the information does not state any offence
- The Court may hear such motion at the same trial or adjourn to a later date
- If the Court agrees with the accused, he shall be discharged from that information
- If no motion to arrest judgment is made or if made, the Court disagrees with the accused, the Court sentences the accused

## **9. Sentences and their Execution**

### **9.1 Sentence of Death:**

When a sentence of death is passed the sentence shall direct that the accused shall be hanged by the neck till he is dead

### **9.2 Authority for Detention:**

The Registrar of the High Court or Clerk of Court issues a certificate for the detention of persons sentenced to death

**9.3** As soon as a sentence of death is passed, if no appeal is made. or if made, the appeal is dismissed, then the presiding Judge submits to the President ( of the Republic) a copy of the notes of the evidence on the trial with a report of the Judges recommendation on the case he may deem fit to make

**9.4** On receipt of advice of the Advisory Committee on the Prerogative of Mercy in accordance with the provision of the Constitution, the President communicates his decision to the Judge, and the Judge records such decision in the records of the Court

**9.5** The President, depending on his decision issues

- A death warrant, or
- An Order for the sentence of death to be commuted, or
- A pardon under his hand and seal of the Republic

In the case of a death warrant, the warrant states the place where and the time when execution is to be had, and gives directions as to the place of burial of the body of the person executed

**9.6** Women convicted of offences punishable by death may before sentence is passed, if pregnant, prove the fact, and if proved, the death sentence is commuted to life imprisonment

## **10. Other Sentences**

- The Court may pass sentences for varying length of imprisonment or community service order. Community service orders will specify the nature, duration and places for the community service. Other sentences involve fines.
- In the case of imprisonment sentences, the Judge or Magistrate issues a warrant authorising the imprisonment of the prisoner in any prison in Zambia
- In the case of sentences involving fines the Court issues a warrant for the levy of the fine on the movable or immovable property of the accused.

## **11. Appeals**

**11.1** Appeals from the Subordinate Court lie in the High Court and appeals from the High Court lie in the Supreme Court

**11.2** Appeals are subject to time limits

## **PRISON RULES**

Life in prisons is regulated by the Prison Rules made in accordance with the Prisons Act, Cap 97

## **1. Management**

Management of prisons falls under the Commissioner of Prisons assisted by Officers in Charge, Chief Officers, Prison Officers and Medical Officer. The Officer in Charge (OIC) is responsible for the day to day management for prisoners and the Chief Officer is responsible for disciplinary matters and reports to the OIC. Medical Officers are responsible for the provision of medical treatment to prisoners. The OIC is the link between the prisoner and the outside world.

## **2. Admission**

On admission to prison under an appropriate detention warrant prisoners are received by the Reception Board consisting of the OIC and other officers. The Reception Board interviews and classifies prisoners and provides them with a copy of the Prison Rules. The Medical Officers examines the general health of the prisoner and records it.

## **3. Classification of Prisoners**

Prisoners are classified and separated. Convicted and unconvicted prisoners of each sex are divided into any of the following classes:

- a) Young prisoners
- b) Adults
- c) First offenders
- d) Prisoners with previous convictions
- e) Prisoners certified as being of unsound mind
- f) Any other class authorised by the Commissioner

## **4. Grading of Prisoners**

Prisoners are graded as follows:

- a) First stage prisoners and inmates (persons sentenced to corrective training in a corrective centre)
- b) Grade C prisoners – long sentence prisoners
- c) Grade B prisoners – long sentence prisoner of good conduct, skilled or semi – skilled in their trade
- d) Grade A – long sentence prisoners of exemplary conduct and skilled in their trade
- e) Special grade prisoners – “honour” prisoners

These gradings determine to what extent certain prison privileges may be allowed to each grade during imprisonment (e.g. participate in the “earning scheme”)

## **5. Discipline**

The chief officer is responsible for all disciplinary matters. Misconduct affects the prisoners privileges which may be deferred during periods of punishment

**6. Punishment**

There are different types of punishment in prison including separate confinement and corporal punishment by caning which is inflicted upon being certified by the Medical Officer on the fitness to undergo it

**7. Privileges**

These are not claimed as of right and depend on the discretion of the Officer in Charge. Prison privileges include use of library, send and receive mail, receive visitors (for 20 minutes) every four weeks, attend handicraft classes, recreation sports and extra bedding and furniture

**8. Letters and Visits**

Letters may be read before they are sent out for discipline and security reasons. A prisoner's visitor has to be authorised by the OIC who issues permits for such visits. Special letters and visits in cases of bereavement may be authorised in addition to the normal one to keep the prisoner informed of his family affairs.

**9. Legal Adviser/Consular Representative**

Prisoners are entitled to visits by their legal adviser, and if they are foreign, their Consular representative

**10. Employment**

The Commissioner may establish an "earnings scheme" for a prison to which prisoners may be entitled depending on their grading and are paid for it at prescribed rates. The officer in charge is responsible for assigning work to prisoners. Prisoners are not normally allowed to be hired out, but the Commissioner may do so to public organisations who must pay for such services at prescribed prison rates. Prisoners under a sentence of death are not required to work

**11. General Prisoner Welfare**

On admission and during incarceration the prison authorities provide the prisoners with prison clothing, bedding and adequate rations of food. Complaints regarding these matters are directed to the Officer in Charge and to visiting Justices or the Commissioner

**12. Petitions**

Prisoners are allowed to petition the President regarding their conviction or sentence after having served at least one year's sentence. Prisoners under a death sentence may petition the President on any matter

**13. Medical Attention**

Prisoners are provided with medical services by the Medical Officer at a prison clinic and where need be are removed to a hospital outside the prison

**14. Temporary Absence from Prison**

Prisoners may be allowed a temporary absence from prison by the Commissioner to attend to personal family matters or other acceptable reasons

**15. Remission of Sentence**

- Where a term of imprisonment is consecutive to another term, such terms shall be treated as one term for the purpose of remission of sentence

- Where one sentence is partly concurrent with, but overlaps another sentence, the latter sentence shall be added to the period of the former sentence actually served when the latter commenced and remission of sentence shall be calculated on the total period
- The operation of remission is normally explained to prisoners on admission to prison
- All doubts or difficulty in calculation of sentences and remission are referred to the Commissioner

## **16. Discharge and Parole**

Prisoners are entitled to temporary absence from prison on parole as permitted by the Commissioner. Permits for temporary absence are issued subject to conditions as the Commissioner may deem fit.

## **17. Compulsory after Care Orders**

In the interest of rehabilitation of prisoners discharged from prison, the Commissioner may make a “Compulsory after Care Order with such conditions he may deem fit. After Care Orders run for one year and if contravened, the prisoner shall be guilty of an offence liable to conviction and sentence to prison.

## **TRANSFER OF PRISONERS**

The transfer of prisoners from a prison in Zambia to a prison outside Zambia is regulated by the Mutual Legal Assistance on Criminal Matters, Act, Cap 98

### **The Procedure**

1. On receipt, by the Attorney General, of a request from a foreign country whose citizen is detained in a prison in Zambia, and if he approves of the reasons for such transfer, he shall apply for a Transfer Order to a Magistrate in the province in which the person is detained.

The application must state:

- a) The name of the detained person;
- b) Designate a person or class of persons into whose custody the detained person is sought to be delivered;
- c) State the place of confinement of the detained person
- d) State the place to which the detained person is sought to be transferred, and
- e) State the reasons why the detained person is sought to be transferred
- f) Specify a period of time at or before the expiration of which the detained person is to be returned

2. The Magistrate considers the application and if the detained person consents to the transfer and that the foreign state has requested the transfer for a fixed period, he may make a transfer order
3. The Magistrate calls for the detained person and examines him with respect to the transfer
4. The transfer Order must specify:
  - a) The detainee's name and his place of confinement
  - b) Order the person who has custody of the detained person to deliver him to the into the custody of the person who is designated in the order or who is a class of persons so designated
  - c) Order the person designated in paragraph (b) to take the person to the foreign state and on return of the detained person in Zambia to return him to the place of confinement where he was when the order was made.
  - d) State the reasons for the transfer
  - e) Fix the period of time at or before the expiration of which the detained person shall be returned
5. The period of absence from Zambia pursuant to a Transfer Order shall count as part of his imprisonment for purposes of the Prisons Act.

Note: The above mentioned Act envisages the return of prisoners and appears not to provide for their permanent removal to their country of origin.

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