THE EVOLUTION OF THE ZAMBIAN COURTS SYSTEM

Earl L. Hoover, John C. Piper and Francis O. Spalding

An understanding of the Zambian courts system as it exists today is dependent, in large measure, upon an understanding of its history. For perhaps even more than most institutions, Zambia's courts are a product of their history. Almost every feature of the system today can either be traced back to an historical origin a generation or more ago; or can be accounted for as a latter-day attempt to be rid of some offensive aspect of the colonial administration of the courts.

The full history may never be written, for all too little is known of the pre-colonial period whose unrecorded history becomes more obscure with every adjustment to western ways and every move toward a developed industrialized society. This brief account begins, with history recorded, however sketchily, at the coming of the British South Africa Company in the late nineteenth century.

The courts system under the BSA Company

From its inception, the system of judicial administration introduced by the British in Northern Rhodesia differentiated between Europeans and native Africans. Section 14 of the Royal Charter of October 29, 1889,[1] entrusting the administration of Rhodesia[2] to the British South African Company (BSA Company), authorized this differentiation, but did not suggest its true dimensions:

> In the administration of justice to the said peoples or inhabitants, careful regard shall always be had to the customs and laws of the class or tribe or nation to which the parties respectively belong, especially with regard to the holding, possession, transfer and disposition of lands and goods, and testate or intestate succession thereto, and marriages, divorces, legitimacy, and other rights of property and personal rights, but subject to any British laws which may be in force in any of the territories aforesaid and applicable to the peoples or inhabitants thereof.[3]

In actual practice, the BSA Company left the judicial administration of Africans[4] to Africans. The British courts, composed of BSA Company officers, were undermanned and ill-equipped from the outset. Only those serious crimes brought to the attention of the administrators were likely to find their way into a British court docket.

It is doubtful that more than a very few cases were heard by these early British courts.[5] The size of the territory and the small number of administrators permitted visits to each tribe once, or, at most, twice a year. It may be supposed that so long as tribal bonds remained strong, the decisions of the tribal courts would not often be challenged by appeal to the administrators. Nor were the administrators, preoccupied with other duties, likely to have been particularly interested in hearing African cases.

This simple judicial structure sufficed for the next ten years. The European population in the territory remained small,[6] and there was little need for further development of

courts capable of administering British justice. Tribal chiefs continued to administer customary law, with only occasional interference from the BSA Company officials. The British were primarily occupied in suppressing the Portuguese and Arab slave trade and in bringing warring tribes under control.[7] Thanks to British technological superiority in the art of warfare, *Pax Britanica* had been substantially imposed by the end of the century.

The Barotziland—North-Western Rhodesia Order in Council of 1899 established a more elaborate judicial system in the territory in which it pertained.[8] Provision was made for the appointment of judges and magistrates,[9] English law was to apply except where otherwise stated in the Order,[10] and the high commissioner was empowered to issue such proclamations as he found necessary to maintain order in the territory.[11] Article 9 of the Order retained a limited degree of protection for customary laws

> The high commissioner in issuing such proclamations shall respect any native laws or customs by which the civil relations of any native chiefs, tribes, or populations under Her Majesty's protection are now regulated, except so far as the same may be incompatible with the exercise of Her Majesty's power and jurisdiction.

No official recognition was extended to tribal courts.

The North-Eastern Rhodesia Order in Council of 1900, pertaining to the Northern Rhodesian territory not covered by the Order in Council of 1899,[12] established a more elaborate judicial structure than had the North-Western Order. A High Court was created[13] with civil and criminal jurisdiction over all cases in the territory. Appeal to Her Majesty in Council could be taken in civil cases involving amounts over £500.[14] In criminal cases, the high commissioner was given the power to ". . . remit or commute, in whole or in part, any sentence of the High Court, and may signify remission or commutation by telegraph".[15] Magistrates' courts were created,[16] the High Court having appellate jurisdiction.[17] Customary law was given approximately the same limited degree of protection as had been provided in the Order in Council of 1899.[18] But specific provision was made in the Order for retention of customary law in civil cases between African litigants even in British courts:

> In civil cases between natives the High court and the magistrates' courts shall be guided by native law so far as that law is not repugnant to natural justice or morality, or to any order made by Her Majesty in Council, or to any Regulation made under this order. In any such case the court may obtain the assistance of one or two native assessors, to advise the court upon native law and customs, but the decision of the court shall be given by the judge or magistrate alone. In all other respects the court shall follow, as far as possible, the procedure in similar cases in England.[19]

The British courts were also to recognize such native marriages as were valid at customary law.

Under the order the BSA Company was to appoint an administrator for the territory,[20] the high commissioner retaining the power to reject any regulations made by the administrator.[21] The administrator, with the approval of the high commissioner, was empowered to appoint a secretary of native affairs, commissioners and such lesser officials as he found necessary.[22] The high commissioner retained the general power to inquire into any question relating to Africans and take such action as he deemed necessary to correct problems he encountered.[23]

Like the Barotziland—North-Western Rhodesia Order in Council, the North-Eastern Rhodesia Order in Council did not extend official recognition to tribal courts—a situation which was to continue until 1929.[24] Nor was any system of appeal provided from tribal courts to the magistrates' courts or the High Court. Thus, two distinctly different systems of judicial administration developed—the officially recognized courts administering English law (and, infrequently, customary law "in civil cases between natives"); and the *de facto* tribal courts administering customary law. So long as African litigants were willing to accept the decisions of tribal courts, contacts and conflicts between the two judicial systems would remain at a minimum.

In the years from 1900 to 1911 a colonial infrastructure was developed in the two territories. Magisterial districts were established in North-Eastern Rhodesia in 1900, for example,[25] a Barotse Native Police Force was created in 1901;[26] justices of the peace,[27] magistrates,[28] and district commissioners[29] were increased in number in 1902; the second of a series of hut taxes was imposed in 1904,[30] the Barotziland—North-Western Rhodesia Territory acquired a High Court and two judges appointed by the high commissioner, in 1906.[31]

In the remaining years to 1911 it became increasingly apparent that the two territories—both under BSA Company control, both following a quite similar pattern of development—could be more efficiently administered as a single territory. On May 4, 1911, the Northern Rhodesia Order in Council of 1911, revoking the North-Eastern and Barotziland—North-Western Orders in Council and merging the two territories into one jurisdiction, was promulgated; its provisions were brought into operation by Northern Rhodesia Proclamation Number 1 of 1911, on August 17, 1911. With respect to the courts system, the Northern Rhodesia Order followed closely the pattern of the North-Eastern Rhodesia Order in Council of 1900. The manner of appointment of High Court judges[32] was the only material variation.

By 1913[33] the merged judicial system had been in operation long enough to identify other needed changes. The resulting proclamations and orders introduced several principles of structure and function of the judicial system which were to be followed to independence and even thereafter. In the High Court, two substantial changes were made: first, the court was given the discretion to hear all criminal matters either as the court of first instance or as a court of review;[34] second, in cases between Europeans and Africans, the court was empowered to apply customary law whenever "... it may appear to the court that substantial injustice would be done to either party by a strict adherence to the rules of English law".[35] Jurisdiction of the magistrates' courts was expanded to include criminal punishments as severe as a £25 fine, imprisonment for 12 months, or 24 lashes.[36] In criminal cases warranting harsher punishments, magistrates were empowered to convict the accused, but to commit him to the High Court for sentencing.[37] Magistrates' jurisdiction in civil cases was increased to £100.[38] Native commissioners were given the power of magistrates in African criminal cases, jurisdiction being limited to a £5 fine, 6 months' imprisonment, or 10 lashes.[39] Assistant native commissioners were limited to a £2 fine, 3 months' imprisonment, or 5 lashes.[40]

While these statutory changes were being made in the officially recognized courts, the tribal courts continued to administer justice with relatively little interference from the British.[41] The *de facto* courts were a convenient, economical method by which the

BSA Company could control the native populations without having to support a large administrative staff.

The economic development of Northern Rhodesia during this period was modest. In 1906 lead mining began at Broken Hill, in 1908 copper was being produced from Kansanshi Mine,[42] and by 1909 a 506-mile railroad had been completed to the Congo.[43] The European population remained small—1,500 in 1912, 2,900 in 1919.[44] By 1921, only 3,000 Europeans lived in Northern Rhodesia, 86% of them in Livingstone, Broken Hill and Lusaka; approximately 36,000 African males were working for wages, 7% of them in mines.[45] The most substantial contacts between Africans and Europeans grew out of World War I, when as many as one third of the adult native males were drawn into the war effort.[46]

Economic conditions, however, were not yet such that natives generally could live independent of their tribes. The inter-dependence of members of a kin group and the authority of the chief and his tribal courts remained relatively undiminished. Native litigants were not disposed to undermine the authority of the tribal courts by appealing to the officially recognized courts. As a result, the dual court structure appears to have functioned without major difficulty.

Crown

By the early 1920's, the BSA Company officials had become satisfied that Northern Rhodesia was too costly a territory to administer, and the crown in turn was satisfied that the BSA Company administration could be improved upon. On February 20, 1924,[47] the crown assumed the responsibility for the administration of the territory. The 1911 Order in Council was revoked, and a governor was appointed for the territory.[48] The High Court,[49] magistrates' courts,[50] and native commissioners' courts[51] were retained. The laws of England were to be applied so far as circumstances permitted:

> ... provided that no Act passed by the parliament of the United Kingdom after the commencement of the Northern Rhodesia Order in Council, 1911, shall be deemed to apply to the said territory, unless it shall have been applied thereto since the commencement of said order, or shall hereafter be applied thereto, by any law or ordinance for the time being in force in the said territory.[52]

Recognition was not extended to tribal courts, but customary law was to be applied in civil cases between natives "... so far as that law is applicable and is not repugnant to natural justice or morality, or to any order made by His Majesty in Council, or to any law or ordinance for the time being in force".[53] Thus, initially, under crown administration, there was no more of a link than there had been under the BSA company between tribal courts and the official judicial structure. The system left to the crown by the BSA Company was being actively reconsidered, however.

The question how best to manage native affairs in light of the limited administrative staff available was the subject of a conference of administrative officials held in 1928. The decision was to adopt the policy of indirect rule, using existing native institutions, and the Native Authorities and Native Courts Ordinances of 1929 were drawn accordingly.[54]

The Native Courts' Ordinance of 1929, for the first time extending official recognition to native courts, provided that these courts ". . . shall consist of such chief, headman, elder or council of elders in the area assigned to it as the governor may direct".[55] The ordinance did not elaborate on the jurisdiction of these courts, nor did it establish a system of appeals from the native courts. The subordinate courts were entrusted, however, with the power to see to the proper administration of justice in these courts through the exercise of a review and revisory jurisdiction over native court decisions.[56] The designation of native courts proved to be a problem. In areas where tribal allegiances were weak and no African was considered to be the chief of the entire tribe, the governor "appointed" a chief. Africans, however, were reluctant to recognize authority established in this way. Where tribes were numerous and tribal ties strong, it was necessary to permit the chief of each tribe to establish a native court, thereby creating a superabundance of courts in some areas, to the dismay of administrative officials.[57] Despite these problems, the system apparently got off to a good start:

> There seems to be no doubt that the native authorities have made a good beginning and that ultimately they will be a complete success. Chiefs who had little power prior to the introduction of the system are proving themselves capable of dealing with natives of independence and experience and are controlling them in accordance with native public opinion.[58]

At the same time that the native courts were being established, the magistrates' courts were being expanded[59] and a penal code [60] was being developed for the territory. The High Court Ordinance of 1933[61] clarified the High Court's position *vis-a-vis* the magistrates' courts,[62] extended its powers and jurisdiction to those of the High Court of Justice of England,[63] and elaborated on the rules and procedure to be followed by the court in cases involving customary law.[64]

Copper and urbanization

During the late 1920's and early 1930's, new pressures, with which the existing judicial structure was not prepared to cope, were discovered in the area of the present day Copperbelt. The first mine shafts were sunk in 1927. Labour migrations began immediately—10,946 Africans were employed in the mines by the end of 1927 and 22,341 by 1929.[65] Men from different tribes were, for the first time, concentrated in one area. Established in accordance with local tribal affiliations and dependent upon the authority of the chiefs native to the area for their effectiveness, the native courts adjoining these rapidly expanding populations were faced with insurmountable difficulties. Litigants were not keen about bringing their cases before native courts on which their own chiefs did not sit and which applied customary laws different from their own.[66] Nor were the native courts, unfamiliar with the customs of other tribes and inexperienced in dealing with conflict of laws problems, anxious to hear such cases.[67] Statutory machinery for enforcement of native court decisions was practically nonexistent. The traditional sanctions of customary law—pressure from one's kinsmen, the necessity of living within the tribal structure for protection from the outside world, withholding of lands and gifts by the chief[68]—were unavailing against a litigant who came from another tribe and looked to the mines for protection and sustenance.[69] And "outside" litigants were more

prone to challenge the decisions of the native courts and hence the authority of the chiefs.[70]

The main burden of hearing these cases was thus thrust effectively upon the district officers. With a limited administrative staff, other duties to attend to, and a mounting volume of cases, the district officers were soon forced to cast about for other means of disposing of the litigation.[71] In some mine centres, an unofficial system of adjudication by tribal elders was attempted. The normal procedure would be for the tribal elders to hear a case, reach a decision, and then present the decision to the district officer. If the district officer was satisfied with the decision, and if the parties assented, the decision became final. If the parties disagreed, the district officer would hear the case himself. This system proved unsatisfactory for several reasons: the district officer remained overburdened with problems of litigation; the tribal elders were without power to enforce their jurisdiction and decisions; and it was sometimes even necessary to bring reluctant litigants before the tribal elders by force.[72]

Another attempted solution to the problem was the use of assessors. These men, selected by chiefs in rural areas and sent to the mine centres as representatives of the chiefs, acted as arbitrators in the district officers' courts.[73] Consent of the parties and approval by the district officer were required before decisions of the assessors became final.[74] Although this system initially required much time and effort of the district officers, the assessors eventually:

> ... began to function almost independently of the *Boma* and operated as a court *de facto* if not *de jure*. The proper establishment of urban courts was thereafter only a matter of time, and the Conference of District Commissioners of the Western Province agreed in 1938 that immediate steps should be taken to constitute a court at Mufulira. By the end of the following year fully constituted courts were functioning at all the other mine centres and at Ndola. In the following few years the system was extended to such other urban centres as Livingstone, Lusaka and Broken Hill....[75]

Carrying out the decision to create the urban native courts was facilitated by the promulgation of a new Native Courts Ordinance[76] in 1936. Although the ordinance had been drafted for the purpose of providing a more adequate structure for the rural native courts, its language was sufficiently broad to make it unnecessary to enact special legislation pertaining to urban native courts.[77] The basic patterns for dealing with such matters as jurisdiction, the handling of death penalty and witchcraft cases, and revision—patterns some of which are still clearly discernible in the current Local Courts Act—were first laid down in this ordinance. The jurisdiction and powers of native courts were to be specified in warrants issued by the governor;[78] certain cases, involving the death penalty, witchcraft, or non-native witnesses, were excluded from native court jurisdiction;[79] provincial and district commissioners were empowered to revise all native court decisions, with appeal from any revision lying to the provincial commissioner or High Court:[80] appeal from a native court decision could be taken first to a native court of appeal, or, if none existed, to the district commissioner's court, from there to the provincial commissioner's court, and finally to the High Court.[81] Native courts were empowered to try cases involving customary law "... so far as it is not repugnant to justice or morality or inconsistent with the provisions of any order of the King in Council or with any other law in force in the territory,[82] rules of provincial and district

commissioners and native authorities,[83] and such laws as the governor might direct.[84] The ordinance did not apply to the Barotse Province".[85]

The court warrants were normally of three types, as follows:[86]

Class of court	*Civil claim jurisdiction*	*Criminal sentencing jurisdiction*
A	up to £25	1 month's imprisonment, £5 fine, or 6 strokes
B	up to £50	3 months' imprisonment, £10 fine, or 10 strokes
C	up to £100	6 months' imprisonment, £20 fine, or 10 strokes

The urban courts were most commonly Class C or B courts, while the rural native courts were generally given Class A warrants. Two principal reasons have been suggested for granting more extensive jurisdiction to the urban native courts: the greater volume and importance of litigation in urban areas, and the relative ease with which district officers could review decisions of the urban courts.[87]

The urban native courts were usually composed of three or four justices who were members of the tribes most numerous in their areas. Tribal chiefs selected the justices, subject to approval by the district officers. Justices were drawn from the rural areas only, on the theory that they would be more likely to be familiar than urban dwellers with the customary laws of their respective tribes. A justice was appointed for a term of three years, with a two term maximum permitted before his replacement by a new man from the rural area.[88]

Implicit in the decision to have justices selected from rural areas and to limit their term of service to six years was the assumption that the customary laws of the various tribes should continue to be applied in the urban as well as in the rural sector. The stated reason for this policy was that ". . . a stay in the urban areas was only a transitory experience in the life of the individual African. After working for a short time there he would return to his village and resume tribal life".[89]

The policy adopted was open to several criticisms which were in large measure unanswerable. First, it was unrealistic. Once an African moved from the rural area to town, he did not often return to rural life.[90] One observer reported, "As each year passes, an increasing number of Africans working in the towns come to regard themselves as more or less permanent urban dwellers; and their contact with their tribes becomes ever more tenuous".[91]

Second, the customary law system could not simply be transplanted from a rural, tribal setting to an urban society undergoing rapid industrialization.[92] A customary law tribunal was not necessarily limited by the facts of the dispute before it in resolving a particular case. All matters causing friction between the parties could be considered, whether or not such matters constituted a "cause of action". Acquaintance with the parties, and knowledge of their kinship ties and status within the tribe—all were crucial to the process of reconciliation. The goal of a tribal court was to reach a decision which would satisfy not only the parties, but also the kinship group to which each party belonged.[93] Some disputes, especially matters pertaining to marriage, were not typically brought before the tribal court, but rather were reconciled by the kinship groups concerned, which were often considered to have a stronger interest in the outcome of the case than had the individual litigants.[94] Urban native courts could not avail themselves with any frequency or regularity of these methods which were so characteristic of—and important to—customary law in its original setting.

Third, urban native courts soon found it necessary to adopt rules which had no counterpart in—or even contradicted—customary law.[95] A body of law was being created which was neither customary nor British.[96] Members of the urban courts, however, newly selected from rural areas, were unfamiliar with urban problems and the laws developed to cope with them.[97] In partial response to this situation, the administrative officers permitted some urban native court justices to remain on the bench beyond the normal six year period.[98]

Finally, a policy of adhering to customary law rules inhibited the development of rules and procedures better suited to meet the needs of urban African populations.[99]

From an administrative point of view, however, the urban native courts rapidly demonstrated their effectiveness in meeting the difficulties which had plagued earlier attempts to create a viable urban system of justice. Litigants were more willing to accept decisions made by representatives of their chiefs than they had been under the system of tribal elders. Officially recognized jurisdiction and statutory authority to enforce judgments removed many of the problems previously associated with the tribal elder and assessor systems. Appeals from these courts were rarely taken, releasing district officers from the demands which native litigation had made on their time. And only the clerks who kept the court records required any extensive training.[100]

The later colonial period

From the establishment of the urban native courts in 1936 to 1960, statutory changes in the judicial structure of Northern Rhodesia were relatively minor.[101] The appointment of native courts adviser in 1948[102] to supervise and review native court decisions, was the most important administrative change made during the period. Such dissatisfaction with the native courts as existed centred on the constitution of the urban native courts, and the laws applied by them. Inasmuch as it was impossible to place a representative of every tribe represented in an urban area on a given native court, chiefs and litigants not represented complained of tribal favouritism in the courts.[103] And as the number of educated urban Africans increased, they were reported to complain more frequently about being subject to customary laws no longer accepted by them.[104]

The High Court Ordinance of 1960,[105] concerned mainly with modernizing court rules and procedures, and the Native Courts Ordinance of 1960[106] extending the limits of native court jurisdiction, [107] were the final major statutory enactments prior to independence.[108]

The increasing volume of litigation dealt with by the native courts from 1947 to independence and the relative rarity of appeals from native court decisions were indicative of the importance of these courts in the judicial administration of Northern Rhodesia.[109] The low incidence of appeals may suggest as well that litigants were reasonably content with the decisions of these courts.[110]

Little had been done, however, to conform the rules and procedures followed in native courts with those of the magistrates' courts and High Court.[111] And nothing had been done toward codification and unification of the various customary laws. From an administrative standpoint, such changes could only have led to added expense for training and supervising personnel capable of following set procedures and administering codified

rules.[112] It may also be true that such changes were not wanted by a majority of the community served by the native courts. In any event, at indepencence, the native courts remained essentially a separate system, unintegrated with the other elements of the judicial system.[113] The native courts of 1964 were little different from the native courts of 1936.[114]

The magistrates' courts and High Court during the period to independence continued to administer the laws and procedures imported from England. The volume of cases in these courts showed an increase roughly parallel to that in the native courts.[115] Such difficulties as these courts encountered were primarily centred on personnel. Magistrates with long experience in Northern Rhodesia were often posted to other colonies, while High Court judges were selected from other colonies, where they had often had little or no experience in deciding civil cases. Moreover, the demanding duties placed upon High Court judges coupled with the advanced age of many High Court appointees resulted in a rapid turnover of High Court judges.[116]

Independence

With the coming of independence on October 24, 1964, there came as well a spate of changes in what was now the Zambian judicial system.[117] The 1964 Annual Report of the Judiciary and the Magistracy, the first to appear under Zambian imprimatur, echoed these events:

1. The year 1964 saw many and far-reaching changes in the judicial system of the country. With the introduction of the new constitution in January, there was established for the first time a Court of Appeal, solely for the territory . . . . Provision was made in the Constitution for the appointment of a justice of appeal and the puisne judges of the High Court also became judges of the Court of Appeal; the number of puisne judges was subsequently increased from four to five.[118]

2 The new Constitution also provided for the establishment of a judicial service commission under the chairmanship of the chief justice with important advisory and executive powers over judicial appointments and designed to ensure that such appointments were made free from political influence. . . .

3 During 1964 the process of integrating the native courts within the judicial system was begun and considerable progress made.[119]

The chief justice, indeed, was said to have attached "the greatest importance to the speedy and effective integration of the native court system within the judiciary" and to have regarded the achievement of the objective as "the greatest single step in the advancement of law and order in the history of the country".[120]

There were, in fact, far-reaching changes made in the native courts system. With the abolition of the old ministry of native affairs, the native courts commissioner became an officer of the ministry of justice; supervision of the native courts was transferred from the provincial administration to "a new cadre of local courts officers and magistrates of the judiciary",[121] the native courts themselves became for the first time a part of the judiciary and were brought under the control of the chief justice; new

native court appointments began to be made by the judicial service commission, created under the new Constitution[122] and a commission to study unification of customary law was established.[123] All this was done without the benefit of legislative enactment beyond the new Constitution, although drafting of a new statute to replace the Native Courts, Ordinance was begun.[124]

But there were changes of equal significance in the magistracy. As the 1965 Annual Report said:

> During 1964 the judiciary became responsible for the whole of the judicial work performed in previous years by officers of the provincial administration exercising magisterial powers and in order to cope with the very considerable increase in the volume of work performed by magistrates of the judiciary a new cadre of senior resident magistrates class II was created.... In addition a cadre of 18 magistrates class II-I was also created....[125]

1965 was a year of further progress and change. The 1965 Annual Report noted that:

> [The] administrative and establishment problems involved in the integration of the native court system within the judiciary were largely resolved and substantial progress was made in the creation of a unified system of justice for the whole country.[126]

And it announced as well as further policy development:

> ... that the existing native courts, presided over by a bench consisting of a president and one or two court members should gradually be replaced by subordinate courts of the third class presided over by trained, but not professionally qualified magistrates. ...[127]

A step toward this aim—but a step as well to make way for the still-awaited Local Courts Act which would abolish tribal courts altogether[128]—was that the chiefs, who had been *ex officio* presidents of the native courts, and obliged by the colonial warrants to sit on these courts, were "persuaded ... to withdraw from their judicial functions. ..."[129]

Although the 1965 Annual Report referred to the customary law courts as "local courts",[130] they were still technically "native courts" until the Local Courts' Act was at last put before parliament, adopted and brought into force in 1966.[131]

It is possible to suggest, as the 1966 Annual Report did,[132] that the Local Courts' Act embodied sweeping changes—for, as the Report noted, the Act repealed both the Native Courts Ordinance and the Barotse Native Courts Ordinance;[133] it constituted local courts[134] and substituted them for the old native courts,[135] it abolished native appeal courts[136] and provided for basic appellate jurisdiction in subordinate courts of the first or second class;[137] it permitted a local court to exercise the criminal jurisdiction assigned to it regardless whether the parties were Africans;[138] it substituted the term "local court justice" for the term "native court member";[139] and it substituted a Local Courts Adviser for the former Native Courts Commissioner.[140]

There were, in fact, some other changes in the Local Courts Act, at least as fundamental as any of these, which were not mentioned in the 1966 Annual Report. There was no trace, for example, of section 13(1)(b) of the Native Courts Ordinance which had denied the native courts jurisdiction of "any case in which a non-African is required" by any party as a material witness.[141] Nor was jurisdiction limited, as it had been under the Native Courts Ordinance both in civil[142] and in criminal matters,[143] on racial lines. And the appointment power was lodged in the judicial service commission rather than the governor (or latterly the minister of justice).[144]

But for all the change embodied in the Local Courts Act, a very large part of that enactment is drawn verbatim, or nearly so, from the Native Courts Ordinance. Every local court was made subject to a scheme of limitation on jurisdiction which is, with respect to caning, identical to the comparable provision of the Native Courts Ordinance[145] and with respect to other matters—civil, matrimonial and inheritance claims,[146] fines,[147] and probation or imprisonment[148]—identical in terms except that jurisdictional limits of the local courts are in each case half those formerly imposed on the native courts. The provision excluding death cases—those in which an offence is charged "in consequence of which death is alleged to have occurred or which is punishable with death"[149]—is identical in both ordinances. Both allow the prosecution under non-repugnant customary law of offences which are similar to offences under positive law.[150] And both place in executive hands the power to confer upon "all or any" of the courts jurisdiction to enforce other specified laws.[151]

The basic scheme of supervisory jurisdiction was relatively little changed by the Local Courts Act. Provision is made both for appeal on the motion of a party[152] and for review at the instance of a higher official.[153] But there were some important changes in detail. As noted,[154] the old native appeal courts were abolished, and appeal from the local courts lodged exclusively in subordinate courts of the first or second class standing "within whose area of jurisdiction such local court is situate".[155] Revisory jurisdiction was lodged, as before, in "authorized officers".[156] But whereas under the former ordinance an authorized officer acted by way of revision "in his capacity as the holder of a subordinate court"[157]—reflecting the fact that all authorized officers were by that ordinance's definition holders of subordinate courts[158]—under the Local Courts Act authorized officers are defined to include the newly-created local courts officers[159] as well as the Local Courts Adviser[160] and certain magistrates.[161] The scope of the powers of a revising officer were also altered somewhat largely to take account of the fact that some revising officers would not be magistrates.[162]

These changes were, of course, consistent with the enlarged responsibility obviously intended to be carried by the Local Courts Adviser and his staff of local courts officers.[163] These responsibilities were, in turn, a necessary corollary of the aim of effecting a complete separation of executive and judicial function; for the shift from part-time to full-time magistrates, whatever its advantages, obviously reduced the number and accessibility of reviewing officers. But the changes embodied in the Local Courts Act are probably inconsistent with a literal aim of integration of the courts system. For the Act in effect introduces another class of officers—the local courts staff—not a part of the magistracy, into the supervisory structure of the local courts; and it draws a sharper distinction than before between the magistrate's power as an "authorized officer" and his ordinary judicial powers. Fortunately, these concerns may have a significance more theoretical than practical.[164]

In any event, it is possible to see, in the Local Courts Act and in the courts structure which it creates, some of the stresses imposed in the attempt to achieve several specific and not always wholly consistent objectives. It is no less possible to see in the Act the essentially evolutionary character of change even when radical alteration of some goals is sought. General evolution is probably inevitable in these circumstances, both to permit resources to be focused in the relatively few areas where important change is to be made,

and to avoid unnecessary disruption of a large and important social institution during the process of change.

Far less in a statutory way was it necessary, in post-independence, to equip the magistracy for its new roles and responsibilities. Indeed, not only the Subordinate Courts Ordinance but also its important companion in regulating the work of the subordinate courts, the Criminal Procedure Code,[165] both date back in very substantial measure to ordinances first enacted in 1933.[166] The 1965 Subordinate Courts Ordinance (Amendment) Act[167] did alter the structure of the magistracy to rid it of courts designated by the name of administrative office-holders (for example "Court of the District Commissioner"), substituting names such as "Subordinate Court of the Second Class".[168] And it made substantial change—and some confusion—in the territorial jurisdiction of the magistrates' courts,[169] for reasons not entirely apparent. But the statutory conception of the magistracy, as of the High Court, is otherwise unchanged from the colonial period.

Notes

1. Royal Charter of Incorporation of the British South Africa Company, October 29, 1889.
2. As originally drawn, the charter granted administrative powers to the BSA Company south of the Zambezi River. On March 5, 1891, the charter was amended to include the territory north of the Zambezi.
3. Royal Charter of Incorporation of the British South Africa Company, October 29, 1889, 5 14.
4. Statutes defining "African" varied widely throughout the British colonies. See A. Allott, *Essays in African Law*, Butterworths, London, 1960, pp 173-178; A Epstein, *The Administration of Justice and the Urban African*, London, H.M.S.O., 1953, pp 20-21.
5. Brooke, *The Changing Character of Customary Courts*, 6 J. AFR. AD. 68 (1954). For the types of criminal cases involving Africans which these early British courts heard, see H. Gann, *The Birth of a Plural Society*, Manchester UP; *The Development of Nothern Rhodesia under The British South Africa Company* 1894-1914, 1958, pp 95-100.
6. It has been estimated that the European population of Northern Rhodesia was under 1,000 in 1900; the African population at that period has been estimated at 770,000. A. Wills, *An Introduction to The History of Central Africa*, Appendix IV, Oxford U.P., London, 1967.
7. See R. Hall, *Zambia* **88**, London, Pall Mall, (1965)
8. Section 3 of the Barotziland—North-Western Rhodesia Order in Council, 1899, defined the territory to which the order pertained.
9. Barotziland—North-Western Order, art. 6. The BSA Company nominated candidates for the positions, and the high commissioner made the actual appointments.
10. *Id.* art. 16.
11. *Id.* art. 8.

12. The North-Eastern Rhodesia Order in Council, 1900, art. 4 (hereinafter cited as North-Eastern Order), delineated the territory.
13. *Id.* art. 21.
14. *Id.* art. 28.
15. *Id.* art. 26.
16. *Id.* art. 29.
17. *Id.* art. 30.
18. The wording of this article differed somewhat from the comparable provision of the Barotziland—North-Western Order quoted, *supra:* "The (high) commissioners, in issuing Queen's Regulations made by the administrator under this order, shall respect any native laws or customs by which the civil relations of any native chiefs, tribes or populations under Her Majesty's protection are now regulated, except so far as the same may be incompatible with the due exercise of Her Majesty's power and jurisdiction". North-Eastern Order art. 17.
19. *Id.* art. 35. There is no comparable provision in the Barotziland—North-Western Order. The so-called "repugnancy clause," limiting the application of customary law to instances where it was not "repugnant to natural justice or morality," was common to British colonies. See generally A. Allott, *Essays in African Law*, 1960, pp 197-201 A. Allott, *New Essays in, African Law*, 1970, 158-75, Butterworths, London, 1970, pp 158-75.
20. North-Eastern Order art. 7.
21. *Id.* art 8.
22. *Id.* art. 38.
23. *Id.* art. 45, which also provided: The (high) commissioner may, if he thinks fit, refer any quesion relating to natives for report to any judge of the High Court, and the judge shall thereupon make such inquiry as he thinks fit, and shall report to the (high) commissioner the result of such inquiry. The (high) commissioner may act with reference to any such report as he thinks fit.
24. See p. 83. F. Spalding, E. Hoover and J. Piper, "One Zambia, One Judiciary: The Lower Courts of Zambia", (I970) 1 & 2 *Zambia Law Journal*, p. 12.
25. Government Notice No. 1, 1900.
26. High Commissioner Proclamation No. 19, 1901.
27. High Commissioner Notice No. 16, 1902.
28. High Commissioner Notice No, 69, 1902.
29. High Commissioner Notice No. 81, 1902.
30. High Commissioner Proclamation No. 7, 1904.
31. High Commissioner Proclamation No. 6, 1906.
32. High Court judges, previously appointed by the high commissioner, were now appointed by the secretary of state. Northern Rhodesia Order in Council, 1911 art. 21. The BSA Company continued to nominate candidates for the High Court.
33. The changes of consequence to the judicial system made in 1912 were the raising and constitution of a police force and the establishment of prisons. N. Rhodesia Proc. Nos. 14 & 17, 1912.
34. N. Rhodesia Proc. No. 1, 1913. One change in the system of appeal to His Majesty in Council from the High Court was also made. To appeal as of right in civil cases

exceeding £500 in amount was added High Court discretion to allow appeals in other civil cases. Order in Council, 1913, art. 2(b).

35. N. Rhodesia Proc. No. 1 of 1913, S5, also reaffirmed the commitment to apply customary law in cases between Africans.
36. N. Rhodesia Proc. No. 2, 1913, S17(1).
37. N. Rhodesia Proc. No. 2, 1913, S18.
38. N. Rhodesia Proc. No. 2, 1913, S121.
39. N. Rhodesia Proc. No. 3, 1913, S3.
40. N. Rhodesia Proc. No. 3, 1913, S3.
41. Neither tribal courts nor African litigants apparently desired to see the situation change. See 1913 N. Rhodesia Native Affairs Ann. Rep. 8; 1935 N. Rhodesia Native Affaris Ann. Rep. 29.
42. Mitchell, "The Tribes in the Towns", in *The Tribes of Northern Rhodesia* 109 W. Brelsford (ed.), Government Printer, Lusaka, 1956.
43. R. Baldwin, *Economic Growth and Export Development: A Study of Northern Rhodesia, 1920-1960*, University of California Press, Berkeley, 18 (1966).
44. J. Davidson, *The Northern Rhodesian Legislative Council* 18 (1947), *supra.* 18 (1966).
45. R. Baldwin, *supra*, note 43, at pp. 16-19.
46. R. Hall, Zambia 102 (1965), *supra.*
47. Northern Rhodesia Order in Council, 1924 (hereinafter cited as N. Rhodesia Order, 1924).
48. N. Rhodesia Order, 1924, art. 6.
49. *Id.* art. 27(1).
50. *Id.* art. 32.
51. *Id.* art. 35.
52. *Id.* art. 27(2). This proviso was a substantial re-enactment of article 21(2) of the Northern Rhodesia Order in Council of 1911. For some of the difficulties which this proviso created in later years, see, A. Mitchley, "The Responsibilities of the Judiciary and of the Bar for the Protection of the Rights of the Individual in Society" 6–7 in (*Six Papers on*) *the Rule of Law* (*in Northern Rhodesia*) (Lusaka, 1963).
53. N. Rhodesia Order, 1924, S 36. See generally Brown, *British Statutes in the Emergent Nations of Africa:* 1844–1962, 24 U. Pitt L. Rev. 503, 556–61 (1963).
54. 2 Lorld Hailey, *Native Administration in the British African Territories* 83 (1950). H.M.S.O., London. For another interpretation of these events, see: G. Rusbridger *The Civics of Northern Rhodesia*, 103–4 (1953), a book "mainly intended for use in African schools. . . . " *Id.* at viii. Oxford University Press, Cape Town.
55. Native Courts Ordinance, No. 33 of 1929 S 3 (2) (N. Rhodesia).
56. Native Courts Ordinance, No. 33 of 1929 S 6 (N. Rhodesia). A subordinate court was defined as any court, not a native court, subordinate to the High Court.
57. 1934 N. Rhodesia Native Affairs Annual Rep. 2. See pp. 37–38, *infra.*
58. 1931 N Rhodesia African Affairs Annual Report 5.
59. The Police Magistrates Ordinance, No. 40 of 1930, extended to police magistrates the powers of magistrates courts. The Subordinate Courts Ordinance, No. 36

of 1933, created courts of the provincial commissioner, resident magistrate, district commissioner, and district officer. The latter enactment, with amendment, is still the basic law constituting the subordinate courts. Laws of Zambia chapter 45.

60. Penal Code Ordinance, No. 42 of 1930, now Laws of Zambia Cap. 146.
61. High Court Ordinance, No. 18 of 1933.
62. *Id.* S 141: No jurisdiction conferred on Subordinate Courts by any ordinance shall in any way restrict or affect the jurisdiction of the (High) Court, but the judges of the court shall have, in all causes and matters, civil and criminal, an original jurisdiction concurrent with the jurisdiction of the subordinate courts.
63. *Id.* s 10.
64. *Id.* s 17, empowering the court to enforce customary law, also provided that, when no rule of customary law was applicable, ". . . the court shall be guided by the principles of justice, equity and good conscience." Section 63 provided for native assessors to aid the court in interpretating customary law.
65. Mitchell, "The Tribes in the Towns", in *The Tribes of Northern Rhodesia* 109, W. Brelsford (ed), 1956, *supra.*
66. Epstein, *Urban Courts Study 6; supra.*
67. On conflict of laws see generally, *supra,* pp. 92–97.
68. Epstein, *Urban Courts Study 4; supra.*
69. See Moffat, *African Courts and Native Customary Law in the Urban Areas of Northern Rhodesia,* 9J. Afr. Ad. 71 (1957).
70. See 1935 N. Rhodesia Native Affairs Annual Report 13.
71. Epstein, *Urban Courts Study* 5, Government Printer, Lusaka.
72. *Id.* at 6.
73. For more on the assessor system, see generally 1935–1938 N. Rhodesia Native Affairs Annual Report: Epstein, *Urban Native Courts on the Northern Rhodesian Copperbelt,* 3J. AFR. AD. 117, (1951); Moffat, *supra,* note 69.
74. Epsten, *Urban Courts Study 8.*
75. *Id.* at 9; see also 1937 N. Rhodesia Native Affairs Ann. Rep. 26: 1938 N. Rhodesia Native Affairs Annual Report 19:
76. Native Courts Ordinance, No. 10 of 1936.
77. *Cf.* Epstein, *Urban Courts Study* No. 10, pp. 55–56 *infra.*
78. Native Courts Ordinance, No. 10 of 1936, s 8. Compare Local Courts Act, s 4.
79. Native Courts Ordinance, No. 10 of 1936, s 11. Compare Local Courts Act, s 11;
80. Native Courts Ordiance, No. 10 of 1936, s 31.
81. Native Courts Ordinance, No. 10 of 1936, s 33. Compare authorities cited in note 80 *supra.*
82. Native Courts Ordinance, No. 10 of 1936 S 12 (a). See note 19 *supra.*
83. Native Courts Ordinance, No. 10 of 1936 S 12 (b).
84. *Id.* S 13.
85. *Id.* S 41. The Barotse Native Courts Ordinance, No. 26 of 1936, restricted review in the Barotse Province to criminal cases. The court structure in the Barotse Province, owing to the special treaties entered into by the Litunga and the British Government, was unique. The judicial system, unlike that in the rest of Northern

Rhodesia, was composed of the Paramount's Court, a special court at Senanga, five "first class" courts, and sixty-two "second class" courts. The Paramount's Court, having unlimited civil jurisdiction and criminal jurisdiction up to a £50 fine, 6 months imprisonment and 12 strokes, usually sat as a court of appeal. 2 Lord Hailey, 1950, 101. 4 J. AFR. AD. 9 (1952).

86. 2 Lord Hailey, 1950, 86.
87. Interview with James C. Chinjavata, Local Courts' Adviser, in Lusaka, March 2, 1970.
88. Epstein, *Urban Courts Study* 15–19.
89. *Id.* at 11.
90. It is difficult to believe that the British thought otherwise. 1929 N. Rhodesia Native Affairs Ann. Rep. 6. At least one writer has suggested that it was more convenient to take the view that natives would return to the villages, for this would not place responsibility for unemployment, education, or permanent housing on the government or mine owners. A. Hanna, *The Story of the Rhodesias and Nyasaland*, Faber & Faber, London. 1965, p 226.
91. J. Davidson, *3 Studies in Colonial Legislatures* 31 (1947). London, Faber & Faber.
92. *Cf.* A. Wills, *An Introduction to the History of Central Africa* 226–32 1967., *supra*
93. See, e.g. M. Gluckman, *The Ideas in Barotse Jurisprudence* 6–18 1965. *Cf.* A. Yale U.P., New Haven Epstein, *Juridical Techniques and Judicial the Process* 20–23 No. 23, 1954 (The Rhodes-Livingstone Papers).
94. See African Conference on Local Courts and Customary Law, Record of the proceedings 16–17 (1963).
95. Epstein, *Urban Courts Study* 81–93 & 97; 1958 N. Rhodesia Native Affairs Ann. Rep. 46; Moffat, *supra*, note 69.
96. Clay, African Advisory Councils in The Northern Rhodesia Copperbelt, 1 J. Afr. Ad. 33, 37–38 (1949).
97. Epstein, *Urban Courts Study* 99, *supra.*
98. *Id.* at 18.
99. *Id.* at 96.
100. F. Spalding, E. Hoover, J. Piper, "One Nation One Judiciary: The Lower Courts of Zambia", *supra*, p. 181–182.
101. E.g. These were embodied in the High Court (Amendment) Ordinance, No. 15 of 1937; Subordinate Courts (Amendment) Ordinance, No. 16 of 1937 and various subsequent amendments to such Ordinances.
102. Epstein, *Urban Courts Study* 100. The creation of the post was recommended in 1946 by the secretary of state for the colonies. Dispatch from the Secretary of State for the Colonies, 10th April 1946, set forth in Judicial Advisers' Conference, *Record* 5 J. Afr. Ad. (Supp.) 38–40 (Oct. 1953).
103. Epstein, *Urban Courts Study* 12–13., *supra.*
104. 1949 N. Rhodesia Native Affairs Ann. Rep. 28; 1958, N. Rhodesia Native Affairs Annual Report 9.
105. High Court Ordinance, No. 41 of 1960, now Laws of Zambia c. 50 (1963) (hereinafter cited as High Court HCE).

106. Native Courts Ordinance, No. 14 of 1961, later Laws of Zambia c. 158 (1964) and still later repealed by the Local Courts Act s 71.
107. *Id.* at s 6 extended civil jurisdiction to cases involving amounts up to £200, criminal jurisdiction to a £100 fine 2 years' imprisonment and 12 strokes. The ordinance did not automatically give native courts these powers, but only authorised the issuance of warrants to individual native courts up to these limits.
108. Relatively minor amendments included High Court (Amendment) Ordinance, No. 43 of 1961; High Court (Amendment) Ordinance, No. 71 of 1963; High Court (Number of Puisne Judges) Ordinance, No. 13 of 1964; High Court (Amendment) Ordinance, No. 25 of 1964; and Native Courts (Amendment) Ordinance, No. 34 of 1964.
109. See Appendix A. in F. Spalding, E. Hoover & J. Piper, "One Nation, One Judiciary: The Lower Courts of Zambia," *supra*, p. 289. These facts indicate that native courts, established to decide customary law cases, were hearing an increasing volume of quasi-criminal cases—statutory offences having nothing to do with customary law. For a discussion of the point, see White, *The Changing Scope of Urban Native Courts in Northern Rhodesia*; 8 J. Afr. Law 29 (1964); Robinson, *The Administration of African Customary Law*, 1 J. Afr. Ad. 158, 160–61 (1949).
110. The statistics alone, of course, may not accurately reflect African attitudes toward native court decisions. See 1935 N. Rhodesia Native Affairs Ann. Rep. 29; 1937 N. Rhodesa Native Affairs Annual Report. 57; 1949 N. Rhodesia Native Affairs Ann. Rep. 28.
111. Some attempt had been made by the urban native courts to draw rules to meet the needs of urban native litigants, but no attempt was made to conform these rules to magistrates' courts' rules. See 2 Lord Hailey 1950 152. *Cf.* p. 74.
112. See F. Spalding, E. Hoover, & J. Piper "One Nation, One Judiciary: The Lower Courts of Zambia", *supra*, pp. 36–52.
113. Indeed, such planning as was being done concerning the native courts seemed to point to an even more pronounced division between the native courts and the magistrates' courts. In 1963, the Ministry of Native Affairs stated that its aim was eventually to "withdraw all criminal jurisdiction from Native Courts". 1963 Conference, see generally pp. 70-79.
114. See Moffat, *supra*, note 69, at 79; 1963 Conference 84.
115. See Appendix A. Cited in note 109.
116. A. Mitchley, *supra*, note 52, at 14.
117. See The Legal Organization of a New State: Zambia, Rev. of Contemp. Law No. 1/1965 at 155.
118. Prior to independence, appeal from the High Court had been to extra-territorial appellate courts—from the late 1930s until the mid 1950s to the Rhodesia and Nyasaland Court of Appeal and during the period of the federation to the Federal Supreme Court.

    The Independence Constitution of Zambia s 102 allowed the president to declare the judicial committee of the privy council a court of appeal for Zambia—a power which the president never exercised. This provision has twice been repealed.

119. 1964 Rep. of Zambia Annual Report of the Judiciary and the Magistracy 1.
120. *Id.* at 4.
121. *Id.*
122. The judicial service commission is composed of the chief justice as chairman, the chairman of the public service commission, the attorney-general, the secretary to the cabinet, and a member appointed by the president. Constitution of Zambia (Amendment) of 1974 s 104.
123. 1964 Republic of Zambia Annual Report of Judiciary and the Magistracy 4.
124. 1964 Republic of Zambia Annual Report of Judiciary and Magistracy 4.
125. *Id.* On separation of powers, See F. Spalding, E. Hoover, J. Piper, "One Nation, One Judiciary: The Lower Courts of Zambia," pp. 59–69; 1964 Annual Report p. 2.
126. 1965 Republic of Zambia Annual Report of the Judiciary and the Magistracy 1.
127. *Id.* The first training course for such magistrates was completed in December of that year, at National Institute for Public Administration. *Id.*
128. The language of the report is more politic: "(T)ribal Courts ... will fall away...." 1965 Annual Report at 4.
129. *Id.*
130. *Id.* at 4–5.
131. See note 1, *supra.*
132. 1966 Rep. of Zambia Annual Report of the Judiciary and the Magistracy 4-5.
133. Local Courts Act s 71. The repealed ordinances had been Laws of Zambia c 158 (1964) (see note 106 *supra*) and Laws of Zambia c 160 (1965) respectively.
134. Local Courts Act s 4.
135. *Id.* S 72 (1)(a). Section 72(1)(b) also substituted the term "African customary law" for the several other terms which had been used in other written laws to refer to indigenous customary law.
136. Permitted by the Native Courts Ordinance s 39(1). In the absence of such appeal courts, appeal lay to the subordinate courts. It was also provided that provincial commissioners might direct that particular cases or classes of cases be appealed direct to a subordinate court.
137. Local Courts Act, S. 56.
138. Compare Local Courts Act, s. 9 with Native Courts Ordinance s 11.
139. Compare Local Courts Act, s. 6(1) with Native Courts Ordinance s 7(4)–(5).
140. Compare Local Courts Act, s. 3 & 55 with Native Courts Ordinance s & 38.
141. The basic grant of jurisdiction under these provisions includes authority to administrate some 27 ordinances in their entirety and to administrate parts of four others e.g. the Penal Code.
142. Native Courts Ordinance s 10.
143. *Id.* s 11.
144. Compare Local Courts Act s 6(2) with Native Courts Ordinance S 7(1).
145. Compare Local Courts Act s 5(d) with Native Courts Ordinance S 6(d). *See also* Local Courts Act S 43(7)(b) and Native Courts Ordinance S 28(10), both requiring confirmation of sentences of corporal punishment.
146. Compare Local Courts Act s 5(a) (£100) with Native Courts Ordinance s 6(a) (£200).

147. Compare Local Courts Act s 5(b) (£50) with Native Courts Ordinance s 6(b) (£100).
148. Compare Local Courts Act s 5(c) (one year) with Native Courts Ordinance s 6(c) (two years). *See also* Local Courts Rules s 12(2), Stat, Inst. No. 293 of 1966 and Native Court Rules c. 158 (Subsidiary) s 9(2) (1965), both requiring confirmation of sentences of imprisonment.
149. Compare Local Courts Act s 11 with Native Courts Ordinance S 13(1)(a).
150. Compare Local Courts Act s 12(2) with Native Courts Ordinance S 14(2). The Local Courts Act refer to "African customary law" rather than "native customary law". *Cf.* Local Courts Act S 72(1)(b). It also speaks of offences constituted "by the Penal Code or by any other written law" while the Native Courts Ordinances uses the phrase "by the Penal Code or by any other law". See also note 19 *supra.*
151. Compare Local Courts Act s 13 with Native Courts Ordinance s 15. The former uses the phrase "jurisdiction to administer all or any of the provisions of any written law so specified", while the latter speaks of "jurisdiction to enforce all or any of the provisions of any law specified". The Local Courts Act also makes the power of the minister expressly subject to the limitations of its section 5(1).
    See also Local Courts (Jurisdiction) Order, Stat. Inst. No. 353 of 1966, the basic grant of jurisdiction under the Local Courts Act.
152. Compare Local Courts Act s 56 with Native Courts Ordinance s 39. *See also* Local Courts Act s 56A and note 85, *supra.*
153. Compare Local Courts Act s 54 with Native Courts Ordinance s 38.
154. See p. 23, *supra.*
155. Local Courts Act s 56(1).
156. Compare Local Courts Act Ss 2(1), 3 & 54 with Native Courts Ordinance Ss 35 & 38.
157. Native Courts Ordinance s 38(3).
158. *Id.* s 35. Under section 38(1), the commissioner and his deputy (see *id.* s 4) had free access to inspect the records, but they were not "authorised officers" in the terms of section 35. Section 38(3) Limited revisory powers to "authorised officers". See also *id.* S 38(7).
159. Local Courts Act s 2(1).
160. *Id.* S 55.
161. *Id.* S 2(1), which, designates senior resident magistrates, and resident magistrates as authorised officers and allows the chief justice to designate other magistrates as authorized officers. 2 Rep. of Zambia Gov't Gazette 602 (1966) (Notice No. 1632 of 1966).
162. Compare Local Courts Act s 54(3) with Native Courts Ordinance s 38(3).
163. See also Local Courts Act s 15(2) which allows a local courts officer, under the direction of the adviser, to sit as an adviser in the limited classes of criminal prosecutions set out in section 15(1) wherein legal practitioners are permitted to appear before the local courts.
164. See F. Spalding, E. Hoover & J. Piper, "One Zambia, One Judiciary: The Lower Courts of Zambia", *supra,* pp. 72–73.

165. Laws of Zambia *c.* 7 (1965) (hereinafter cited as Criminal Procedure Code).
166. See note 59, *supra.*
167. No. 28 of 1965.
168. Subordinate Courts Ordinance s 3, as amended.
169. *Id.* Ss 3–4 & 6, as amended.