

# INTERNATIONAL LAW STANDARDS AND THE ZAMBIAN LAWS ON CITIZENSHIP, IMMIGRATION AND DEPORTATION

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## Introduction

Traditional international law vests in each state exclusive jurisdiction within its territory, empowering a state to exercise supreme authority over all persons and things falling within its territorial limitations to maintain peace, order and tranquility within the realm. Endowed with this right a state is the sole arbitrator in the determination of the quantity, composition and rate of growth of its population depending upon its social, economic and political interests. Admittedly, under the concept of sovereignty each state can adopt any policy towards its population as it likes unobstructed by an external power as it is generally considered as a matter falling within the internal domain of the state concerned to the exclusion of other states. However, as a state's internal policy in relation to these matters may bring it into serious conflicts with other states which also have legitimate interests in the protection of the interests of their own nationals or subjects when they are abroad, the population policy of a state becomes a matter of profound importance both for a state and for the international community. Moreover, it is well recognized that the sovereigns of today are no more sovereigns of the original type: they can no longer stand alone. Interdependence and intervention are the keywords in international relations of today. This has been explicitly said by Judge Alvarez when he observed that: "The general interest, the interests of international society must constitute the limits of the rights of states and make it possible to determine whether there has been an abuse of these rights".<sup>1</sup>

Consequently, in recent years a body of international law has developed which is designed to resolve international discord in relation to the matters which fall within the scope of this article. But it must be emphasized at the outset that at the present time, in spite of high spirited international declarations and conventions<sup>2</sup> regarding the legal position of an individual, it has long been conceded that it is the prerogative of each state to determine for itself and according to its own constitution and laws, who is and who is not to be considered its national. Ties of allegiance, citizenship and nationality generally provide a broad basis for legal and political relationship between the sovereign state on the one hand and the citizen on the other. This legal relationship involves rights and corresponding duties on both<sup>3</sup> and creates a necessary foundation for responsibility and protection.<sup>4</sup> Nationality or citizenship has normally been described as the principal link between individuals and the benefits of the laws of nations<sup>5</sup> which, in the opinion of the International Court of Justice, is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments together with the existence of reciprocal rights and duties.<sup>6</sup> Thus nationality is a legal and political tie which binds the individuals to a state and renders them subject to

its personal jurisdiction. Naturally, all questions relating to nationality, (including the acquisition of its nationality through naturalization) are within the *domain 'reserve'* of a state which has absolute discretion to admit to its territory the nationals of another state.<sup>7</sup> However, the rapid growth of industrialization and the transformation of the ways of communication along with the migration of labour to achieve better opportunities of security in life from one country to another, compelled the states to conclude treaties related to trade, commerce and friendship with other states, in order to encourage trade, commerce and intercourse amongst the people of different nations and thus allow foreigners to become integrated in the economic and social, if not political life, of their countries of residence. Because it is well recognised that apart from treaty stipulations an alien has no enforceable legal right to enter into or reside on the territory of a foreign state and every independent state by reason of its territorial supremacy as seen earlier, has absolute right to permit or to prohibit the residence of foreigners within its dominions as it deems fit.<sup>8</sup> Hence, as a corollary to this rule, a state is competent either not to receive aliens at all or admit them subject to certain conditions.<sup>9</sup> Vested with this power a state is entitled either to grant or to refuse admission to foreigners who come to seek it. The state immigration laws usually make admission of foreigners subject to the conditions prescribed therein as the reception and expulsion of aliens is recognized as a fundamental act of sovereignty.<sup>10</sup> This view is universally supported by states, by arbitral and judicial decisions and the opinion of the text writers. The English approach, which is also the approach of all the British Commonwealth countries, is elaborately discussed in the *Musgrave v Chun Teeong Toy*<sup>11</sup> case where it was unhesitatingly and candidly observed that: "there is no absolute and unqualified right of action on behalf of an alien refused admission to British territory". The Supreme Court of the United States has also endorsed this idea when it held that: "it is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty and essential to self-preservation, to forbid the entrance of foreigners within its dominion or to admit them only in such cases and on such conditions as it may see fit to prescribe".<sup>12</sup>

It is now settled that not only the admission of foreigners but also their rights are subject to the constitutional guarantees provided in the municipal laws of states where they presently reside. Thus all matters concerning nationality (including the acquisition of nationality through any mode of naturalization), the rights of aliens or non-nationals after their admission to the territory, to hold any property or carry on for gain any trade, business, profession, employment or other occupation are controlled completely and exclusively by the internal laws of each sovereign state. Hence, it is for municipal law and not for international law, to determine all the questions and unless a state fails to measure up to minimum standards of civilized conduct in its treatment of aliens, it does not commit an international *delict*.

### **Citizenship or nationality**

In spite of the International Covenant on Civil and Political Rights<sup>13</sup> adopted by the General Assembly of the United Nations, which provides in Article 24 that "every child has the right to acquire a nationality", this does not mean as Professor Jessup, a former Judge of the International Court of Justice puts it, that the individual is entitled to a

particular nationality "regardless of reasonable qualifications such as his identification with a particular community through ties of birth, place, blood or residence".<sup>14</sup> It has further, been defined by Hyde as the relationship between a state and an individual which is such that the former may with reason regard the latter as owing allegiance to itself.<sup>15</sup> Because "allegiance is the mutual bond and obligation between the king and his subjects because they are bound to obey and serve him . . . ."<sup>16</sup>

As stated earlier that it is a universally accepted principle that each state has unqualified liberty to determine who is and who is not its national. The same view was adopted by the Hague Convention of 1930, on Conflict of Nationality Laws which provides in Article 2 that "any question as to whether a person possesses the nationality of a particular state shall be determined in accordance with the law of the state".<sup>17</sup> Consequently it is for every state to settle by its own legislation the rules relating to the acquisition of its nationality and confer that nationality by naturalization granted by its own organs in accordance with legislation. This rule, however, does not endow a state with a power to confer its nationality by means of a law or an administrative act on the subjects of other states or on all persons entering its territory without their requests. Thus we can hold that independence does not mean unlimited liberty for a state to do what it likes to do without any restriction whatsoever. In other words, it can be said that though questions relating to nationality are primarily a matter for the municipal law of each state, they are nevertheless governed to a large extent by the principles of international law.

## Acquisition

### (i) Acquisition of Zambian nationality by birth

The *jus soli* and *jus sanguinis* are two methods which the states generally apply for conferring a particular nationality upon an individual. The *jus soli* is the rule under which nationality is acquired by the mere fact of birth, within the territory of the state irrespective of the nationality of the parents. On the other hand, under the system of *jus sanguinis* the children acquire the nationality of their parents irrespective of their place of birth. While Zambia, like many of other Commonwealth countries has accepted the *jus soli* as a principal method for conferring nationality upon children born in Zambia after the commencement of this constitution, whose father is an established resident at the time of his birth.<sup>18</sup> The term "established resident" has been defined in Article 12(3) of the Constitution (that for the purpose of this part "‘established resident’ means in relation to any date, a person who is not a citizen of Zambia or a prohibited immigrant, under any law and who has been ordinarily and lawfully resident in Zambia for the period of four years, immediately preceding that date".

Provided that no period during which a person: (i) has been confined in a prison consequent on a sentence of imprisonment imposed by a court which sentence has not on appeal or review been quashed or varied to a fine, (ii) has been an inmate of a mental institution or, (iii) has remained in Zambia as a visitor or in terms of statutory permit allowing such person for a limited period only so to remain; shall be counted for the purpose of this definition.

A person born in Zambia after the commencement of this Constitution whose father is an established resident becomes a citizen of Zambia at the time of his birth, ceases to be a Zambian upon attaining the age of twenty-two years, unless (a) after attaining the age of twenty-one years, he makes an application to the Citizenship Board,<sup>19</sup> in such manner as may be prescribed by or under an Act of Parliament, for the confirmation of his citizenship and such application is granted; and (b) he renounces his citizenship, if any, of a country other than Zambia within three months of his being notified that his application for the confirmation of his citizenship has been granted. It must be noted, that the aforesaid provisions do not apply to any person who under the law of any other country other than Zambia, is, on attaining the age of twenty-one years, not a citizen, and is not or was not at any time before that age entitled to be registered as a citizen of that country.<sup>20</sup>

#### **By descent**

In addition, provisions have been made to confer the nationality of Zambia upon a person born in or outside Zambia after the commencement of the Constitution at the date of his birth if on that date at least one of his parents is a citizen of Zambia.<sup>21</sup>

Thus we can summarize that the original citizens of Zambia (leaving aside nationals by registration or otherwise, which we shall discuss later on) are those persons, firstly, who immediately before the commencement of the Constitution were the citizens of Zambia and continue to be the citizens of Zambia;<sup>22</sup> secondly, persons born in or outside Zambia after the commencement of the Constitution if at the date of their birth at least one of their parents is a citizen of Zambia and, finally, those persons who are born in Zambia after the commencement of the Constitution and whose fathers are established residents, subject to the conditions discussed above.

In addition, to the aforesaid modes for the acquisition of nationality on the basis of birth, there are other methods, through which a born citizen in one state obtains the status of an adopted citizen of another state. The procedure by which such nationality is acquired is known as naturalization and stems from an express act of an individual combined with an express grant by the state concerned. It is a matter regulated by each state according to its own conception of the degree to which its national interest shall be promoted by extending its nationality to outsiders.<sup>23</sup> These methods may be described as the acquisition of a specific nationality either by adoption or by registration.

#### **By adoption**

It is universally recognized that under the legal systems of those countries which accept the institution of adoption, a child acquires the nationality of his adopter if he was not a national at the date of such adoption. Accordingly, the laws of Zambia have specific provisions incorporating non-Zambians amongst Zambians by way of adoption. Thus, the Citizenship Act 1975 explicitly states that a child adopted under the provisions of the Adoption Act<sup>24</sup> shall, if he was not a citizen at the date of such adoption, become a citizen by adoption on the date of such adoption if the adopter or in the case of a joint adoption, one of the adopters was at the date of adoption a citizen.<sup>25</sup>

**By registration**

Besides this, provisos have been included in the Constitution as well as in the Citizenship Act enumerating the persons who are entitled to apply to the Citizenship Board to be registered as citizens of Zambia or for the confirmation of citizenship as the case may be. Consequently, Part IV of the Citizenship Act read with Articles 8 and 9 of the Constitution makes it evidently clear that the Citizenship Board may cause any person not of full age who is the child of a citizen of Zambia to be registered as a citizen if the application has been made in the prescribed manner by a parent or guardian of such person.<sup>26</sup> Moreover, when the board is satisfied that any person not of full age has associations by way of descent, residence or otherwise with Zambia which would justify his registration as a citizen, it may cause such person to be registered as a citizen.<sup>27</sup> Again, a child of an established resident under Article 7(1) of the Constitution has to apply to the board under the provisions of Article 7(2)(a) of the Constitution and section 14(1) of the Citizenship Act in such manner as prescribed by law, producing such evidence in his application before the board with regard to the renunciation of his citizenship of a country other than Zambia as is required under the law. Similarly any woman who is or has been married to a citizen of Zambia and had been ordinarily resident in Zambia for a continuous period of not less than three years after such marriage may also apply for registration as a citizen in a prescribed manner, with evidence to the satisfaction of the board that she has renounced her original citizenship of a country other than Zambia.<sup>28</sup>

In addition to these specified persons, any person who has attained the age of twenty one years or is a woman who is or has been married; and has been ordinarily resident in Zambia for a continuous period of not less than ten years is entitled to apply to the board for registration as a citizen in such a manner as the law prescribes. However, the board may grant the application for registration of such person provided it is satisfied that the applicant is a person of good character; has an adequate knowledge of the English language or any language commonly used by the indigenous inhabitants of Zambia; intends after granting of his application to continue to reside in Zambia; enters or continues in service of the government; is willing to renounce his citizenship which he may possess and had not been refused registration as a citizen within the period of five years immediately preceding his application.<sup>29</sup> Besides, any person born in Zambia before the commencement of the Constitution whose father was not a citizen at the time of his birth and who ceased to be a citizen by reason of his failure to renounce his citizenship by descent—may make an application to the board for registration as a citizen; and the board may grant such application upon the condition that he should produce the certificate of renunciation of his original citizenship within three months or the extended period from the date on which he is notified that his application has been approved or granted.<sup>30</sup> But where an applicant, under the law of a country other than Zambia, cannot renounce his citizenship, in such cases the applicant need not renounce his nationality, he may only be asked to make such declaration concerning his citizenship in a manner as the law prescribes.<sup>31</sup> It should be noted, that the board would not entertain any application of registration as a citizen made by or on behalf of any person who is adjudged under any law of Zambia or otherwise declared to be of an unsound mind.<sup>32</sup>

### **By special provisions**

Furthermore, section 13 of the Citizenship Act 1975, authorises the president, the chief executive to cause any person to be registered, as a token of honour, as a citizen, who in his opinion, has done signal honour or rendered distinguished service to Zambia. The Act further provides that the president may also cause any person who is not otherwise entitled or eligible for citizenship, to be registered as a citizen of Zambia taking into consideration the special circumstances of the person concerned. Similarly, the Constitution includes in Articles 9(a) a stipulation which endows parliament with making provisions for the acquisition of citizenship of Zambia by persons who are not otherwise eligible to become citizens of Zambia.

Admittedly, the president representing the state as a whole is fully competent in conferring the citizenship of Zambia upon any person who is not otherwise eligible to be a citizen either alone—exercising his own residuary powers or in consultation with parliament, but where he alone causes any person to be registered as a citizen of Zambia who, in the opinion of the Citizenship Board, is not fit to be registered as a citizen, a dispute may arise between the executive and the board which has to determine the questions related to citizenship in accordance with the provisions of the Act, because the board's decision is final and is not subject to appeal or review in any court. It is therefore suggested that a new mechanism should be evolved in order to avoid any conflict and to the satisfaction of all the parties concerned.

### **Loss of citizenship**

#### **By acquisition of another nationality**

A Zambian citizen of full age and capacity who acquired the citizenship or nationality of a country other than Zambia by some voluntary or formal act other than marriage or who does any act indicating his intention to adopt or make use of such other nationality ceases to be a citizen of Zambia.<sup>33</sup> The provisions have been incorporated in the Citizenship Act to cover such cases where the persons holding dual nationality under Article 6 of the Constitution shall cease to be the citizens of Zambia upon attaining the age of 22 years unless after attaining the age of 21 years they renounce their citizenship of other countries or any claim thereto in a manner as prescribed by law.<sup>34</sup> Similarly, as stated earlier, a person who is a citizen by virtue of Article 7(1) read with Article 7(3) of the Constitution shall cease to be a citizen if at any time he acquires, otherwise than by voluntary act, the citizenship of a country other than Zambia and does not within one year of acquiring that citizenship renounce his citizenship of that country take the allegiance and make and register a declaration of his intention concerning residence as required by law. Again a person to whom the provisions of paragraph (a) and (b) of Article 11(3) of the Constitution apply shall cease to be a citizen at the expiration of three months (unless the period has been extended) after he becomes a citizen unless he renounces his citizenship of a country other than Zambia, takes the oath of allegiance and makes and registers a declaration of his intention concerning his residence in accordance with the law in force.

Notwithstanding, all these provisions which have detrimental effects on the citizenship or nationality of the persons concerned, provisions have been made to give relief

to such persons if they can satisfy the board that at the time of cesser of their citizenship of Zambia they were not aware of such cesser. In those circumstances the board may ask them to make application for the restoration of their Zambian nationality.<sup>35</sup>

### **By renunciation of citizenship**

The Citizenship Act very explicitly provides on the question of renunciation of citizenship by a national of Zambia by section 23(2)(a)(b) that a citizen of full age and capacity and who possesses dual citizenship is entitled to renounce his Zambian nationality or who satisfies the board that he will after renouncing his citizenship of Zambia, become a citizen of another country. In order to satisfy the board of his intentions, the applicant must make a declaration in a prescribed manner which may be registered with the board. The board was empowered, however, to decline the registration of such a declaration of renunciation of citizenship during the war in which Zambia was recently engaged.<sup>36</sup> Similarly, the Constitution of Zambia under Article 9(c) vests in parliament the power to make provision for the renunciation by any person of his citizenship of Zambia. Notwithstanding, that no provision has been made in the Act itself dealing with such cases where minors have become Zambian nationals by inclusion in the certificates or registration or naturalization granted to their responsible parents or guardians, it is supposed that the general principles of law will prevail and such persons shall be allowed to renounce the citizenship of Zambia after the attainment of full age and capacity subject to the conditions laid down in the law.

### **By deprivation**

Naturalization or confirmation of its nationality upon aliens is an attribute of sovereignty, and each state has to decide through its own legal procedure who could be made its national. Similarly deprivation of its nationality also belongs to the exclusive power of the state which alone is responsible to determine under what circumstances a person can be deprived of its nationality. Because the questions related to nationality are, in principle, within the domestic jurisdiction of each state which has to decide it according to its own laws. Under the Citizenship Act of Zambia, the board may deprive any citizen (other than a citizen to whom the provisions of Article 5, 6 or 7(1) read with 7(3) of the Constitution apply) of his citizenship of Zambia, if the board is satisfied that the citizen has shown himself by act or speech to be disloyal or disaffected towards Zambia or the citizen unlawfully traded or communicated with the enemy, in any war in which Zambia was engaged, or, been engaged in or associated with any business that was to his knowledge carried on in such manner as to assist an enemy in that war, or, if the citizen has been absent from Zambia for a continuous period of seven years without registering with a Zambian consulate in a prescribed form or making a declaration by notice in writing to the board with respect to his intentions for retaining his Zambian nationality or if the board found that the registration as a citizen was obtained by means of fraud, false representation and concealment of any material fact or through some other corrupt practice or where the citizen, to the satisfaction of the board, has been guilty of currency smuggling or of harbouring criminals or prohibited immigrants.<sup>37</sup>

In addition, the president may also deprive a person of his Zambian nationality on whom he had conferred it as a token of honour, if, at any time, the president decides

that his continued citizenship of Zambia is not conducive to the public good.<sup>38</sup> Besides, the Constitution also has provisions which empowers parliament to make laws for depriving any person of his citizenship of Zambia provided that a person who is a citizen by virtue of Article 5 and was a citizen of Zambia before the commencement of this Constitution otherwise than by registration or naturalization and any person to whom the provisions of Article 6 or Article 7(1) read with Article 7(3) apply, shall not be deprived of his Zambian citizenship except upon the ground that he is a citizen of a country other than Zambia.<sup>39</sup> Finally parliament may deprive Zambian nationality of a person who has renounced it voluntarily.<sup>40</sup>

It must be noted, that while the Citizenship Board has been given wide powers to deprive a person of his Zambian nationality, it shall not act unless it is satisfied that it is not conducive to the public good that such person should continue to be a citizen. Again before making such order the board shall give notice in writing to the person concerned furnishing him with the grounds on which such order is going to be made against him and of his right to have his case referred for inquiry. If the person concerned so decides to apply for an inquiry within the specified period and in such manner as prescribed, the board shall refer the case for inquiry and report to a commissioner appointed by the board for the purpose. The commissioner so appointed shall enjoy all the powers, rights and privileges of a commissioner appointed under the Inquiries Act and shall summon people to give evidence at the inquiry. The Act is very specific about the qualifications of a person to be appointed as a commissioner when it says that no person shall be qualified for appointment as a commissioner "unless he is or has been a judge of the Supreme Court or the High Court".<sup>41</sup>

#### **Zambian naturalization and international law**

In the present state of international law, it has been well recognized that all questions relating to nationality are, in principle, within the domain of exclusive domestic jurisdiction. But since the nationality law adopted by one state affects the interests of the citizens of other states as well, it cannot claim that the rules it has laid down are entitled to recognition by other states unless it has acted in conformity with the general principles of international law.<sup>42</sup>

The Zambian laws of nationality or citizenship are fully consistent with the principles of law generally recognized with regard to nationality. As stated earlier, two methods *jus soli* and *jus sanguinis* are normally applied by states for conferring a particular nationality upon an individual. The Zambian laws are well aware of them and have applied them in practice. They do not impose compulsory naturalization upon adults and the qualifications which they require are reasonable. Even in the case of those persons who hold dual nationality and who cannot renounce their original nationality, the approach is very liberal. They are not supposed to renounce it but merely to make a declaration regarding that citizenship.<sup>43</sup> Even in case of deprivation the individual concerned is informed of the grounds on which the order is based. He is entitled to apply for inquiry within the specified period and the board is bound to refer his case to a commissioner appointed by it, who will hold the inquiry in the same way as a commissioner appointed under the Inquiries Act does. He can summon the witnesses to appear before him to give evidence on the matter.

## Immigration

Immigration generally includes admission, expulsion, detention, deportation and exclusion of aliens and is controlled by the immigration and deportation law. Therefore, the term immigrant is defined as a person who removes himself from one place and enters into another country with the intention of settling there either permanently or for a short period<sup>44</sup> unless he can bring himself within one of the exceptions. In other words, in ordinary parlance, immigration connotes entrance into a country of a foreigner for the purpose of residing in it more or less permanently. Besides it is uncontroversial that every sovereign nation has the power as inherent in sovereignty and essential to self-preservation for forbidding the entrance of foreigners within its dominions.<sup>45</sup> This stems from its authority as a sovereign nation and its authority over commerce with foreign nations. Consequently under the accepted principle of international law and domestic law, a sovereign power has wide discretion in determining how long and under what conditions an alien may be allowed to remain within the country, a discretion with the exercise of which the courts will not interfere since an alien has no legal right to enter into another country without leave and, having entered, he has no right to have his stay extended.

### Admission to Zambia

In Zambia, it has always been held that an alien has no enforceable legal right to enter the country without previous permission granted by the minister of home affairs who is the minister responsible for the immigration and deportation law in Zambia. The Immigration and Deportation Act, 1967, chapter 122 of the Laws of Zambia, administers the entry of non-Zambians into the country allowing them to stay for a specified period. The main object of this Act is to regulate the entry into and the remaining within Zambia of immigrants and visitors, and to provide for the removal from Zambia of criminals and other undesirable persons whose presence may endanger the security of the country.

Accordingly, every non-Zambian, entering into Zambia, by aircraft, train, vehicle or vessel has to present himself before the nearest immigration officer who may examine anybody whom he reasonably suspects to be a prohibited immigrant as described in the second schedule and ask for his passport for the purpose of ascertaining his identity, the object of his entry and nature of his claim to remain in Zambia.<sup>46</sup> In certain circumstances when a person either does not have bona fide permit to remain in Zambia or is a holder of a visiting permit only, an immigration officer may by notice in writing require such person to appear before him at such place, time and date as specified in the notice.<sup>47</sup> Furthermore, special precaution is taken with regard to certain groups of people who are either not allowed in the country or are allowed subject to deposit of caution money as a condition of their remaining in Zambia or furnish such guarantee which the chief immigration officer may think proper in lieu of such deposit.<sup>48</sup> Thus the treatment of aliens in respect of entry is of lower standard than that accorded to nationals, while nationals enjoy an inherent right of entry, the rights of aliens are subject to varying degrees of limitations in regard to entry.

### Who may be allowed to enter

It is known that states in modern times do not live in isolation and conclude international agreements, pacts and treaties with other members of the international community in order to promote trade, commerce and understanding among the people of different nations. As these transactions deeply affect individuals, so states normally allow the nationals or subjects of other states to settle down in their territories subject to the conditions prescribed in the national laws and statutes. Accordingly under the provisions of the Immigration and Deportation Act, the chief immigration officer may issue an entry permit to any person who has applied in accordance with the law and who in his opinion, is not a prohibited immigrant; has an adequate knowledge of English language or of any language commonly used by the indigenous inhabitants of Zambia, intends to stay in Zambia for more than three months and belongs to a class set out in the first schedule. The Act further states that the chief immigration officer may also issue an entry permit in favour of an alien in respect of whom the minister so directs.<sup>49</sup> In addition, an immigration officer may on receiving an application in writing, issue a visiting visa or study permit in favour of an applicant or a temporary permit to a prohibited immigrant or where the minister directs him for issuance of a temporary permit in favour of a prohibited person.<sup>50</sup>

It can be concluded that in contrast to the cases of nationals who can remain in Zambia for as long as they please, aliens may only be allowed to do so for the duration of their permit to stay and subject to conditions that may be prescribed in the permit. Thus entry permits are quite distinguishable from permits to stay. Evidently, while entry permit holders acquire the right of entry, the length of their stay in Zambia is an entirely separate matter, depending upon the discretion of the minister. Besides it ceases to be valid if the applicant fails to enter into Zambia within six months from the date of issuance of the permit or such other date as the chief immigration officer may endorse thereupon or if the holder remains away from Zambia more than six months without notifying the chief immigration officer in writing that he proposes to return to Zambia or where an immigrant remains away from Zambia for a period exceeding twelve months.<sup>51</sup>

Consequently, an immigrant even after obtaining an entry permit has no right to stay in Zambia and in reality he merely has a licence which can be revoked or withdrawn at the pleasure of the home affairs minister if in his opinion a specific immigrants' standard or habits of life are undesirable in relation to the security of the country.

### Who may not be permitted to enter

Aliens, who shall be denied to enter Zambia, include, *inter alia*, those who are infected with a contagious disease or likely to become capable of transmitting to any other person such disease; prostitutes or persons who live upon the earnings of prostitutes; persons previously deported or barred from Zambia; vagrants without sufficient funds; those who have violated any provisions of the Act or regulations made thereunder or have failed to comply with any lawful requirement made under this Act or regulation framed thereunder; those who have been convicted of a violation of any law under the law of any other country; persons whose permits to stay in Zambia have been revoked; persons who do not have proper travel documents; persons whose permits to remain in

Zambia have become invalid and finally persons who are not in the opinion of the chief immigration officer, of good character.<sup>52</sup>

### **Rights and duties of aliens**

It has long been settled that as soon as an alien enters into a new state he comes immediately under the territorial supremacy of the state he enters and tacitly submits himself to the laws of the country in the same way as the citizens of that state unless he belongs to the class of those persons who enjoy extra-territorial rights. Consequently he enjoys protection for his own person, his family and effects, as long as he remains there<sup>53</sup>. Admittedly, in the former days, aliens were deprived of certain rights including taking up trades occupations and professions but with the rise of constitutionalism and the growth of liberal ideas, modern states generally do not discriminate between aliens and nationals on the basis of race, religion, colour, or sex and extend constitutional guarantees to aliens in the same way as they do in the case of nationals. Thus, as under the laws of England and the constitution of the United States, aliens are entitled to various benefits and constitutional guarantees. The constitution of Zambia also entitles the aliens to the fundamental rights and freedoms of the individual without making distinction between an alien and a national. We shall now examine briefly the ways in which national laws affect the property rights of aliens, their civil, cultural, religious and political rights and finally their right to engage in occupations of their own choice.

### **Property right**

Admittedly, under the common law system rights of ownership in the real property are determined by the law of the state where it is located because an interest in the soil requires a permanent allegiance. Thus under the common law there could be no inheritance by, from or through an alien for the reason that he had no inheritable blood, yet an alien was allowed to acquire property in goods, money and other personal estate which includes the right to bequeath or convey it to another<sup>54</sup> and to receive it as a next of kin<sup>55</sup> or as a legatee.<sup>56</sup> He was also entitled under the common law to take lands by purchase,<sup>57</sup> grant conveyance<sup>58</sup> or device<sup>59</sup> though not by the operation of law or descent unless a government grant was made to an alien and his heir. In order to remove discrimination between citizens and foreigners based upon alienage and for the growth of international commercial intercourse between nationals of different states, laws have been modified. Consequently, under the present laws of the United Kingdom an alien can acquire, hold and dispose of real property in the United Kingdom and personal property of every description in the same manner as a British subject<sup>60</sup> and a title to real property in the United Kingdom and personal property of every description can likewise be derived through, form or in succession to, an alien.<sup>61</sup> Though chapter III of the Constitution of Zambia which deals with the fundamental rights and freedom of the individual does not explicitly provide for the acquisition and possession of property, yet it entitles an individual not to be deprived of his property<sup>62</sup> which includes the right of an alien to acquire and hold the property of any description in the same manner as the nationals of Zambia do.

### **Religious and cultural rights**

Acknowledging the prosecution and punishment of people in the past for their different ways of worship which forced them to leave their homelands to escape from

tyranny and oppression and to seek shelter in those states where they had no fear of being prosecuted or discriminated for their beliefs, the modern society has accepted the notions like freedom of religion and culture as basic rights of each and every individual. Consequently, the constitutions of the various countries have enshrined these liberal ideas in the Articles and made them justiciable.<sup>63</sup> The Constitution of Zambia has also accordingly incorporated the right to freedom of conscience which provides that no individual shall be hindered in the enjoyment of his freedom of conscience which includes freedom of thought and of religion; freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.<sup>64</sup> Thus every individual in Zambia is free to profess, practice and propagate his religion without being hindered by any other person or state. In addition the Constitution grants each and every religious community or denomination a right to establish and maintain religious institutions for instructions of persons of that community or denomination in the course of any education provided by that community or denomination.<sup>65</sup>

As corollary to this freedom of conscience, the Constitution further protects freedom of expression which specifically says in Article 22(1) that: "except with his own consent no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence".

#### **Right to form associations or unions and freedom of movement**

These rights have been granted and protected under the Constitution without discriminating between nationals and other inhabitants.<sup>66</sup> The right to form associations or unions includes only such associations that are formed for lawful purposes.<sup>67</sup> Besides the word "form" includes not only the right to start an association but also to continue it<sup>68</sup> or to refuse to be a member of an association if he so desires.<sup>69</sup> The Constitution is very clear so far as the second part is concerned which states that no person shall be deprived of his freedom of movement which means the right to move freely throughout Zambia, the right to reside in any part of Zambia, the right to enter Zambia and immunity from expulsion from Zambia.<sup>70</sup> It is necessary to mention that this freedom of movement granted by Article 24(1) is quite different and does not refer to "personal liberty" protected under Article 15. In addition, it should be noted that all these rights guaranteed by the Constitution are not absolute. Like other constitutional guarantees they are limited and restricted to certain conditions for the maintenance of public safety, order, morality<sup>71</sup> and health. Besides, if the interests of defence demand that these rights should be curtailed, the state, as the supreme power, has the right to intervene and curb these rights in order to maintain peace, order and tranquillity within its frontiers.

#### **Judicial rights**

It is the general rule that an alien, who is *sui juris* and is not specifically disqualified by law of the state where he permanently or temporarily resides, has the right to appear as a litigant to vindicate his right and seek redress against the wrong done to him.<sup>72</sup>

This right is not a creation of municipal law (though most municipal systems endorse it) but of international law as it stems from the theory of exhaustion of local remedies. Apparently, therefore, an alien has a right to bring actions to protect his interests in real as well as personal properties. He may further be allowed to maintain action *ex contractu*.<sup>73</sup> *ex delicto*<sup>74</sup> or an action granted by statute<sup>75</sup> unless the statute specifically excludes aliens or provides that it applies to citizens only.<sup>76</sup>

### **Right to engage in trade, occupation or profession**

Aliens who are not prohibited immigrants and entered Zambia with valid documents, are entitled to engage in any trade, occupation or profession. No learned profession is closed to aliens provided they have the requisite qualifications prescribed for admission to the profession or calling. However, while aliens cannot be denied from engaging in a trade, occupation or profession as a class, the state is competent to regulate in such cases where the calling or occupation is one which, though lawful, is subject to abuse and likely to become injurious to the community.<sup>77</sup> Similarly, if the work, though private, is such that the exclusion of aliens is in fact necessary for the protection of public welfare, such exclusion is within the police powers of the state.<sup>78</sup> Thus an alien or a class of aliens may be subjected to certain restrictions which the executive may impose in the public interest but the statutory rights of the lawful aliens to the equal protection of their rights cannot be denied.

### **Political rights**

It is a well-established fact that although aliens have acquired numerous rights in recent years on the strength of conventions, treaties and national laws guaranteeing them equal protection of the laws, they still suffer from inherent disabilities and disqualifications which are closely associated with the notion of alienage. Consequently aliens are not entitled to exercise franchise as an elector at national<sup>79</sup> or local government elections.<sup>80</sup> They are also ineligible for election as members of parliament or as members of local councils.

### **Duties**

It is generally recognized that mere entry into a state subjects an alien to the territorial supremacy of the receiving state unless he is a member of the diplomatic community which enjoys certain privileges over others under international law. He, therefore, falls immediately within the jurisdiction of the territorial state along with other citizens although he remains at the same time under the personal supremacy of his home state. This means that he comes under its own laws and is supposed to obey and honour them. He is also liable to pay all the local rates, fines and taxes<sup>81</sup> and can be asked to serve in the local police and in the fire brigades, under the same conditions as citizens, for the purpose of maintaining public order and safety, similarly, in the case of an outbreak of an infectious disease the administration can remove aliens in the same manner as it does its own citizens from affected areas without taking into consideration their alienage. In consequence of the protection afforded to an alien for his person, property and effects by the local state, he is expected to owe allegiance, for the duration of his residence, to the state within the territory of which he resides and refrain from

committing or perpetrating any act which may be considered as an offence under the laws of that state.<sup>82</sup>

### **The treatment of aliens and international law**

It is evident from the aforesaid discussion that the Zambian legislation, in relation to the treatment by a state of aliens who have been admitted to its territory, is clearly consistent with the requirements of international law. The constitution—the supreme law of the land without discriminating between aliens and nationals—confers upon each and every individual the fundamental rights and freedoms irrespective of his race, place of origin, political opinions, colour, creed or sex. It gives every person liberty and security of the person, his family and effects so long as he lives in Zambia. It further assures him about his freedom of conscience, of expression and his right to assemble and move freely throughout the territory of Zambia subject to certain conditions. Finally it endows him with a right to acquire, possess and dispose of the property of any description in the same manner as Zambians do.

The exclusion of aliens from the enjoyment and exercise of purely political rights is not contrary to the principles of international law as it is an almost universal practice for states to deny foreigners participation in the government of the state or election as members of parliament or as officers of local governments. Moreover, a state as sovereign entity is fully competent to impose restrictions on the right of aliens to participate in certain occupations or professions without violating any rule of international law. Admittedly it may constitute a breach of international comity and give justification for diplomatic remonstrances but there is no violation of international law because all matters relating to the treatment of aliens are within the domain of exclusive domestic jurisdiction of the state concerned.

## **Deportation**

### **General**

The right of a state by virtue of its territorial supremacy, to deport an alien whose presence in the country is or is deemed to be detrimental to its peace, order or good government or to its social or material interests, is as absolute and unqualified as the right to admit or receive an alien in the country. It matters not whether the alien is only on a temporary visit or has settled down permanently pursuing his profession or calling peacefully on its territory. In addition, the receiving state is fully competent to circumscribe his activities or liberties so long as he remains there. The executive is further vested with absolute and unfettered discretion to deport, at pleasure, even a friendly alien when the security of the state is involved, since the foreigners are not the part of the nationals and their reception into the territory is a matter of grace or tolerance which does not create any obligation on the state to permit them to continue to reside on its territory. Moreover, the *droit de conservation* or law of preservation makes the deportation of aliens legitimate when the very existence of the state is in danger. Thus, while every state, unquestionably, has a fundamental right to its existence and development, and also to the integrity of its territory and the exclusive and peaceful possession of its dominions, a question generally arises whether the expelling state has acted in good faith in deporting an alien on the grounds of self-protection or public interest and welfare?

Admittedly, the very vagueness of the notion of public order or welfare of the state gives the executive absolute and uncontrollable power to deport obnoxious aliens whose continued presence in the territory is found to be injurious to the public interest. It is, however, expected that a state which expels an alien will not abuse its inherent and inalienable right by proceeding in an arbitrary manner.<sup>83</sup> Hence the distinction between discretion and arbitrariness must be kept alive while dealing with such problems. While a state can deport justiciable all alien enemies residing or staying temporarily within its territory during the time of war, it cannot make such an order deporting an alien in time of peace unless it is based on reasonable grounds and executed reasonably because such right is "of a very high nature" and the justification of its exercise must be "great and convincing".<sup>84</sup>

Additionally, with the disappearance of despotic rule from various countries and the advancement of constitutionalism guaranteeing individual liberty and freedom of opinion and speech, deporting of aliens has become less frequent. As a consequence of it, the national laws of various countries have incorporated in their provisions the grounds for which an alien can be deported.<sup>85</sup> These curtail the absolute discretion of the executive in this matter and protects the aliens against arbitrary expulsion. In addition, states, in their treaties relating to trade, commerce and friendship, generally insert a "most favoured nation clause" specifying therein that the treatment towards their nationals will not be less favourable than that which is or might be accorded to the nationals of any third state. It is generally conceded that violation of treaty stipulations creates an international responsibility which entitles the injured party to damages.

#### **Zambian law of deportation**

Any alien, who does not possess a valid passport or any other document which may be required for his entry into Zambia or has entered in violation of the regulations on landing may be deported. In addition, the reasons, which have been mentioned earlier for denial of landing, are also listed as the justiciable reasons for the deportation of aliens. Thus any person who is suffering from a contagious disease and who is capable or likely to become capable of infecting any other person with such disease can be deported. Furthermore, an alien who in Zambia has knowingly lived wholly or partly on prostitution or has procured any person for immoral purposes; who has insufficient means to maintain himself and his dependents while in Zambia is subject to deportation. Besides, an alien who, in the opinion of the chief immigration officer, is a person of bad character and who enters into Zambia with a previous conviction is also likely to be deported or one with respect to whom a permit to remain in Zambia is revoked or has expired or who has procured his entry permit to stay in Zambia through false representation or concealing some material and relevant fact which might have not entitled him to enter into Zambia can be deported.<sup>86</sup> Finally, any person whose continued presence in the territory is found to be injurious or inimical to the public interest, may also be deported from Zambia.<sup>87</sup>

In addition to the aforesaid persons who are liable to be deported as prohibited immigrants from Zambia, there are others who may also be deported for committing criminal offences under section 26 of the Penal Code of Zambia.

Thus, left largely free from restraint both by the legislature and by the judiciary except as to procedure and save as it is expected that the minister concerned shall exercise his power only in the public interest, the deportation power is absolute and unlimited. This has been nicely said in the case of *Fong yue Ting v U.S.* where the Supreme Court of the United States observed that "once the political department of the government or the official clothed with authority to deport has made the determination that an alien should be excluded, such determination is necessarily exclusive upon all its departments and officers".<sup>88</sup>

The procedure to be adopted in the deportation of an alien is comprehensively described in section 23 of the Act which states that any immigration officer may either independently or under the directions of the minister concerned, serve a notice on a person to whom sub-section 2 of section twenty-two of the Act relates stating therein that the person concerned is a prohibited immigrant and hence he must leave Zambia. In this notice the specific period within which he must leave Zambia and the route which he shall have to follow will also be mentioned.

Consequently, the deportation power of the minister is implied in his office and acting in his political and executive capacity can deport any obnoxious alien whose continued presence in Zambia is, in his opinion, injurious or inimical to the interests of the public at large. The Act is thus very specific in relation to the procedure and the minister is bound to follow it. The respondent is entitled to know the charges against him and prepare to put up his defence either by himself or through counsel. Thus in the case of *Paton v The Attorney-General for Zambia and Mainza Chona in his capacity as Minister of Home Affairs*,<sup>89</sup> where in the deportation notice served on the plaintiff no period or route was specified and thus procedural requirements were not satisfied the court rightly observed that "the section does not enable officers of the immigration department merely to bundle a person into a motor car and deliver him to the border."

The prohibited immigrant must be given an opportunity to depart from Zambia of his own volition within the period and by the route specified.<sup>90</sup>

It is necessary to mention that the minister's judgment, that the deportation of an alien is in the public interest cannot be challenged before the courts. Because the right of a state to self-preservation and the integrity of its dominion and its sovereignty is said to be superior to personal liberty and international agreements to which the state may be a party. Hence every government has the inherent inalienable and uncontrollable power to expel from its border aliens whose continued presence in the territory has been found detrimental to the public interest and the courts would not, in the absence of express legislative authority, intervene for the purpose of controlling such power or otherwise inquire into the action of the minister because of the doctrine of separation of powers.

#### **International law standards and the Zambian law of deportation**

After discussing the Zambian law on deportation we come to the crux of the problem whether Zambian deportation practices generally satisfy international law standards. Initially there is no dispute between the municipal law as well as international law over the expulsive power of a state which is an attribute or incident of sovereignty justifiable on the grounds of self-protection or public interest and welfare.

Difficulty, however, is encountered in attempting to clarify the broad categories of self-preservation or public interest and welfare. Failing to supply a detailed definition or enumeration of just causes, international law leaves inquiry on a case-to-case basis<sup>91</sup> and it is supposed that the expelling state would not abuse its inherent and inalienable right by proceeding in an arbitrary manner, because "such a right is of a very high nature and that the justification must be great and convincing".<sup>92</sup> Therefore, it is necessary that the distinction between discretion and arbitrariness must be kept alive in such cases and the aliens should be given proper opportunity to represent their cases within the framework of law.

The grounds for deportation from Zambia upon notice in writing served in person on any undesirable person by any immigration officer or, if so directed by the minister in case of a person to whom subsection (2) of section twenty-two relates, are identical with the grounds of deportation in a number of countries.<sup>93</sup>

In addition, it is immaterial if the power of deportation is exercised by the head of state or by a subordinate officer provided it is being used within the limits and not arbitrarily because the location of the deportation power and the scope of the discretion of the deporting authority do not concern international law as long as the minimum requirements of just cause, fair hearing and consideration for the personal convenience and dignity of the deportees are met.

Consequently, international law places greater emphasis upon compliance with the essentials of a fair hearing than upon the sufficiency of the cause or ground for deportation. This is so, because of the acceptance of the power of a state to deport aliens as a means of self-defence or self-preservation or as a means of promoting its interest or welfare and also because of the absence of consensus on what constitutes just or sufficient causes or grounds for deportation. However, the Human Rights Covenant of 1966 has made it imperative that an alien lawfully in the territory of a state party to the present covenant may be expelled therefrom only in pursuance of a decision reached by the court in accordance with law and such person has right to have his case reviewed and be represented for the purpose before the competent authority or a person or persons especially designated by the competent authority.<sup>94</sup>

In the light of the current minimum international law standards, it is fair to say that Zambian deportation practices do satisfy the standards both as to sufficiency of grounds and fairness of hearing, while the ministerial power to deport an alien, whose stay in the territory is considered to be injurious to the public interest, may seem to be absolute and unqualified, it is not really so, if it is assumed, as it should be assumed, that the minister shall exercise this power only in the interest of the country, i.e. as a means of self-defence or self-preservation and as a means of promoting the welfare of the country.

Nonetheless, the possibility of abuse, however remote, cannot and should not be dismissed. In a free society like Zambia, the liberty of an individual whether a citizen or an alien, cannot be overprotected from official abuse and overzealousness. Thus while the persons, described as prohibited immigrants in the second schedule of the Immigration and Deportation Act, 1967, along with the persons whose deportation is recommended, under section 26(1) of the said Act, by a court of law, in accordance with the provisions of section thirty-three of the Penal Code, may be deported from Zambia

by serving notice on such person or persons, it is however, submitted that the final authority to deport a person should not be left in the hands of the minister alone. There should be a board consisting of at least five persons with legal background, which must examine each case on a case-to-case basis. Similarly in the absence of a detailed definition of public interest, it is necessary that the minister should not be given absolute and exclusive power to declare the presence of any person in Zambia as inimical to the public interest under section 22(2) unless he can substantiate his allegations supported by the facts either before a court (in camera if it is necessary) or the board so constituted which will deliver its decision according to law. It becomes imperative that Zambia, which has incorporated various articles of the International Covenant on Civil and Political Rights of 1966, adopted by the General Assembly of the United Nations, in chapter III of the Constitution protecting the numerous rights of individuals, should not deport aliens who have entered lawfully in its territory unless the decision regarding the deportations is reached in accordance with the law against them by the appropriate court of justice. Besides it is a fundamental principle of law that "no man is punishable or can lawfully be made to suffer in body or goods, except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of law"<sup>95</sup> since "the liberty of an individual is not something which can be disposed of indiscriminately in the absence of a positive law".<sup>96</sup>

It can be appraised, that in spite of absolute and uncontrollable power of the minister to deport obnoxious aliens whose presence in Zambia is inimical to the public interest, Zambian legislation, judicial decisions and administrative practices relating to deportation of aliens do conform to the international minimum standard as discussed above. The deportees are generally served in person with notices declaring them prohibited immigrants and so asking them to leave Zambia within the specified period and taking the specific routes by which they shall travel in leaving Zambia. They are also allowed to make representation to the minister who may review their cases accordingly taking relevant facts into consideration. However, as the security of a state is unquestionably superior to personal liberty this arbitrariness of the minister does not violate any international law standard.

## Notes

1. Competence of the General Assembly for the admission to the United Nations (Dissenting opinion of Judge Alvarez, *International Court of Justice Reports*, 1950, p. 14).
2. See for example: The Universal Declaration of Human Rights U.N. Doc A/811; International Covenants on Human Rights of 16 December 1966, Brownlie, I, *Basic Documents in International Law*, Oxford, Clarendon Press, 1967, p. 138; the references to Human Rights are also made in the Charter of the United Nations (see Preamble, Articles 1, 55, 56, 62, 68 and 76 specifically)
3. *In re Robert John Lynch*, Annual Digest of Public International Law Cases, 1929-1930, p. 221 at p. 223.

4. Ligeance is the mutual bond and obligation between the king and his subjects because they are bound to obey and serve him . . . Therefore it is truly said “*protectio trahit subjectionem et subjectio protectionem*”<sup>7</sup> *Calvin's case* (1608) 7 Co Rep 1a at 5a; see also *R v Burke, Casey and Mullady* (1868) 32 JP 601; *Joyce v Director of Public Prosecutions* [1946] A.C. 347; *Public Prosecutor v Oie Hee Koi* [1968] A.C. 829.
5. Oppenheim L., *A Treatise on International Law*, Longman, London, 1970, Vol. I, p. 645.
6. *Nottebohm* case (second phase), I.C.J. Reports 1955, p. 4 at p. 23.
7. Two Advisory Opinions of The Permanent Court of International Justice in (Nationality Decrees in Tunis and Morocco), Series B, No. 4 and (Acquisition of Polish Nationality) No. 7. For Commonwealth practices see *A British Digest of International Law*, Vol. 5 edited by Parry C. (Sir), London, Stephens, 1965. See also Ralston J. H., *Law and Procedure of International Tribunals*, California, California University Press, 1936, pp. 61–64.
8. Vattel, E., *The Law of Nations or the Principles of Natural Law*, Book II chapter VIII paragraph 100 p. 144), edited by J. B. Scott, Oceana, New York, 1966, p. 289; Brownlie, I., *The Principles of Public International Law*, Oxford, Clarendon Press, 1966, p. 420; Starke, J. G., *Introduction to International Law*, Butterworths, London, 1977, pp. 376–377.
9. See, *United States Foreign Relations Reports*, 1908, pp. 775ff; *ibid*, 1928, p. 929; US. Gort Washington; Whiteman M., *A Digest of International Law* Vol. 8, 1967, chapter XXIII; As for England, see, *Halsbury's Laws of England*, 4th Edition, Vol. 4, 1973, para. 951. Butterworths, London.
10. This was recognized by the P.C.I.J. in the case Tunis and Morocco Nationality Decrees. However, the court laid down that this freedom may be limited by obligations which a state may have undertaken with others. For the text of the decision, see, Hudson, M.O., *World Court Reports*, Washington D.C., 1934, Vol. I, p. 143. The national courts of various countries have upheld and supported the same view that the reception and expulsion of aliens is a fundamental act of sovereignty. See for example *R v Liveris and Another; ex parte Da Costa* (Australia) *International Law Reports* Vol. 38 1969, p. 149; *Hitai v Immigration and Naturalization Service* (United States), *ibid* Vol. 42, 1971 p. 205 ff; *Moore v the Minister of Manpower and Immigration* (Canada), *ibid* Vol. 43, 1971 p. 213 ff.; *Reg v Governor or Brixton Prison, ex parte Soblen* (England), 1962, *ibid*, Vol. 33 p. 255; *Sita Ram v Superintendent, Rangoon Central Jail* (Burma), *ibid*, Vol. 28, 1957 p. 313; *Hans Muller of Nuremberg v Superintendent of Calcutta Jail* (India), *ibid*, Vol. 22, 1955, p. 497.
11. [1891] A. C. 272 P. C. at p. 283.
12. Per Gray, J. in *Nishimura v U.S.* (1892) 142 U.S. 651; 35 L ed p. 1146 at pp. 1149. This view was affirmed authoritatively in *Fong yue Ting v U.S.*; *Wong Quan v U.S.* and *Lee Joe v U.S.* 149 U.S. 698; 37 L. ed p. 905 ff.
13. See, for the text, Brownlie, I., *supra*, p. 150.
14. Jessup P. C., *A Modern Law of Nations*, Hamsten Conn, Anchor Books, 1956, p. 72.

15. Hyde C. C., *International Law Chiefly as Interpreted and Applied by the United States*, Boston, Little Brown Co., 1922, Vol. 1, p. 610.
16. See note 4, *supra*.
17. *American Journal of International Law* Vol. 24 (Supplement) 1930, p. 192.
18. The Constitution of Zambia 1973, Art. 7(1).
19. The Citizenship Board is established, pursuant to Article 10 of the Constitution, and under section 3 of the Citizenship Act of 1975. This will consist of one minister (without specifying) as chairman and four other members appointed by the president. The board under section 8 of the Act shall have power to consider and decide upon—(a) any application for the confirmation of citizenship under the provisions of Article 7(2) of the Constitution; (b) any application for registration as a citizen under the provisions of Article 8(1)(b) of the Constitution; (c) any other matter relating to citizenship in accordance with the provisions of this Act. The president may give to the board, subject to the provisions of Part II of the Constitution, such general directions which may be needed for the performance of its functions. The decisions made by the board under and in accordance with the provisions of this Act are final and are not subject to appeal or review in any court.
20. The Constitution, Article 7(2); see also to the same effect The Citizenship Act, 1975, Section 19(3).
21. The Constitution, Article 6.
22. *Ibid*, Article 5.
23. See note 6, *supra*, p. 23.
24. The Adoption Act of 1956, chapter 218, the Laws of Zambia
25. The Citizenship Act of 1975, section 11.
26. *Ibid*, section 12(1).
27. *Ibid*, section 12(2).
28. *Ibid*, section 15.
29. *Ibid*, section 16(1) & (2).
30. *Ibid*, section 16(3).
31. The Constitution, Article 11(4); The Citizenship Act, 1975 section 16(5).
32. The Constitution, Article 8(2); The Citizenship Act, 1975 section 17.
33. The Constitution, Article 11(1); The Citizenship Act, 1975 section 19(2).
34. The Citizenship Act, 1975 section 19(1).
35. *Ibid*, section 21.
36. *Ibid*, section 23(3).
37. *Ibid*, section 22(3) (a, b, c, d and e).
38. *Ibid*, section 22(1).
39. The Constitution, Article 9,
40. *Ibid*, Article 9(c).
41. The Citizenship Act, 1975, sections 22 (5, 6, 7, 8 and 9).
42. See note 6, *supra*, p. 23.
43. See note 31, *supra*.
44. *Moffitt v U.S.* Cal 128F. 375, 380; C.C.A. 117; *U.S. v Burke*, C.C. Ala, 99 F. 895-896.
45. See note 8, *supra*.

46. Immigration and Deportation Act of 1967; section 10.
47. *Ibid*, section 11.
48. *Ibid*, section 12.
49. *Ibid*, section 14.
50. *Ibid*, sections 15, 16 & 17.
51. *Ibid*, section 14(5)(a)(b) & (c).
52. *Ibid*, section 22 (second schedule)
53. See *Markwald v A.G.* [1920] 1 Ch 348 C.A., *Joyce v Director of Public Prosecutions* [1946] A.C. 347 at 366, 367 [1946] 1 All E.R. 186 at 189, H. L., *Hugh Charlisle v United States* (US) 16 Wall 147; 21 L. ed 426; while aliens are permitted by the nation to retain a residence and domicile, they are subject to its laws and may invoke its protection against other nationals *Fong yue Ting v United States* 149 U.S. 698; 37 L. ed 905.
54. *Jackson ex dem Fitz Simmons v Fitz Simmons*, 10 Wend (NY) 9.
55. *M'Learn v Wallace*, 10 Pet (US) 625; 9 L. ed 559; *Craig v Leslie*, 3 Wheat (US) 563; 4 L. ed 460; *Fergus v Tomlinson*, 126 Kan 427, 268 L p 849; *Duke of Richmond v Milne*, 17 La 312.
56. *Craig v Leslie*, *supra*, *Cosgrove v Cosgrove*, 69 Conn 416; 38 A 219, *Duke of Richmond v Milne*, *supra*.
57. *Fehn v Shaw* 201 Ga 517; 40 SE 2d 547; *Caparell v Goodbody* 132 N.J. Eq 559, 29 A2d 563.
58. *Webb v O'Brien* 263 US 313; 68L. ed 318; 44 S. Ct. 112; *Hauenstein v Lynham* 100 US 483; 25 L. ed 628; *Cross v DeValle* 1 Wall (US) 5; 17 L. ed 515; *Fitz Simmons v Simmons*, *supra*.
59. An alien may take land by device under a statutory authorization for acquisition by purchase: *Bennett v Hibbert*, 88 Iowa 154, 55 NW 93, see also *Repley v Sutherland*, 59 App DC 273; 40 F 2d 785; *Easton v Huott*, 95 Iowa 473, 64 NW 408; *Techt v Hughes*, 229 NY 222, 128 NE 185.
60. Status of Aliens Act 1914, section 17; British Nationality Act 1948, section 34(3), Schedule 4 Part 11 (repealed).
61. *Ibid*, section 17, *supra*. But any estate or interest in real or personal property to which any person had or may become entitled either immediately or not so immediately, in possession or expectancy, by reason of a disposition made or death occurring before 12th May, 1870 is not affected; Status of Aliens Act, 1914, section 17 proviso (5).
62. The Constitution of Zambia 1973, Article 18.
63. See for example the following constitutions: Belgium Article 14, Burma Art. 20; Ecuador Art. 25; Guatemala Art. 66; India Srt. 25; Japan Art. 20; Kenya Art. 14; The Netherlands Art. 18; Nicaragua Art. 110; Peru Art. 232; Poland Art. 70; Philipines Art. 1 (7); Turkey Art. 19. Peaslee, Amost J., *Constitutions of Nations*, 4 Vols. (Revised Third edition), The Hague, 1966.
64. The Constitution of Zambia Article 21(1).
65. *Ibid*, Art. 21(3).
66. *Ibid*, Articles 23 and 24.

67. *All India Bank Employees Association v The National Industrial Tribunal*, All India Reporter, 1962, S.C. 171 at p. 179.
68. *Kulkarni v State of Bombay*, A.I.R. 1954, S.C. 73; *U.P. Shramik Mehasangh v State of U.P.*, *ibid*, 1960, Allahabad p. 45 at p. 49; *Eastern Railway Employees Congress v General Manager, Eastern Railway and Others*, *ibid*, 1965, Calcutta, p. 389.
69. *Sitharamachary v Senior Deputy Inspector*, *ibid*, 1958, A.P. 78;
70. The Constitution of Zambia, Article 24. There is no Zambian case on this negative right. However at least once in *Radebe v the People*, [1972] Z.R. p. 298, the High Court had held that the section in the Constitution which guarantees freedom of movement cannot be relied on by the non-citizens of Zambia.
71. e.g. *Kachasu v The Attorney-General*, *ibid*, [1967] Z.R. p. 145; *Patel v The Attorney-General*, *ibid*, 1968, p. 99.
72. *Porter v Freudenberg*; *Kreglinger v S. Samuel and Rosenfelt*, *Re Merten's Patents* [1915] 1 K.B. 857 C.A.
73. *Roberto v Hartford Fire Insurance Co.* 177 F 2d 811; *Roberts v Knights* 7 Allen 449.
74. *Crashley v Press Publishing Co.* 179 N.Y. 27; 71 N.E. 258.
75. *Lewicki v John C. Wisrdi and Co.* D.C. ,N.Y. 213 F 647; *Romano v Capital City Brick etc. Co.*, 101 N.W. 437; 125 Iowa 591.
76. *Rose v Governor* 24 Tex 496.
77. *Wright v May* 127 Minn 150; 149 NW 9.
78. *People v Crane* 214 NY 154; 108 N.E. 427 affirmed 239 US 195; 60 L. ed 218; 36 S. Ct. 85.
79. The Electoral Act 1969; s 7 chapter 19 of the Laws of Zambia.
80. The Local Government Election Act 1970 s. 16, chapter 482 of the Laws of Zambia.
81. Albrecht, A.R. *The Taxation of Aliens under International Law*, 29 B.Y.I.L. (1952) p. 145 ff.
82. *De Jagor v A.G. of Natal*, [1907] A.C. 326. *Joyce v Director of Public Prosecutions* [1946], *supra*; see to same effect, *Public Prosecutor v Drechsler* (1946), Annual Digest Vol. 13 case No. 29; *Re Penati* (1946), *ibid*, Case No. 30; *In re Friedman* (1947), *ibid*, case No. 59.
83. Oppenheim L., *International Law, op. cit.*, p 692, note 2.
84. Hackworth G. H., *Digest of International Law*, Vol. III, Washington, Government Printers, Washington D.C., 1942, p 690.
85. See, various National Acts and cases cited by O'Connell D.P., *International Law*, Vol. II, London, Stevens, 1970, p 709.
86. Immigration and Deportation Act 1967, s 22 (second schedule).
87. *Ibid* s 22 (2).
88. See, note 12, *supra*.
89. *The Zambian Law Reports* 1968 p 185.
90. *Ibid*, at p 191.
91. Oppenheim L., *International Law, op. cit.*, 6th edition, 1947, p. 690.
92. See note 84, *supra*.
93. See for example Article 10 of the Rules on the Entry, Exit and Residence of Foreigners in the Republic of China; German Municipal legislation governing expulsion is contained in the Police Order concerning Aliens of 22 August 1933; Japan Im-

migration Control Order 1951 (as amended) Article 24, Philippine, Immigration Act of 1940, section 37; Revised Administrative Code 1951, s. 69; 8 U.S.C.A. section 155. As to the procedure of expulsion in the British Commonwealth Countries, see Fraser: "*Control of Aliens in the British Commonwealth of Nations*"; See also *Freedom from Arbitrary Arrest, Detention and Exile, Year Book on Human Rights*, First supplementary volume, United Nations, New York, 1959, for a discussion of the deportation laws of other countries.

94. See note 13, *supra*, p. 150 ff.
95. Dicey A.V. *Law of the Constitution*, 10th edition, London, Macmillan, p. 188.
96. *United States ex rel Karodzole v Artukovic*, (1959) 28 *International Law Reports*, p. 326.

