

LAW IN ZAMBIA

Muna Ndulo (ed)



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DEDICATION

This book is dedicated to the late Kwamena Bentsi-Enchil, the late James Craig, Robert Kent and Benjamin Nwabueze, past deans of the University of Zambia Law School for their contribution to legal education in Zambia.

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FOREWORD

That there is in this country a yearning for home-grown legal literature seems hardly open to doubt. Law students and law teachers would be the first to acknowledge that they have long felt the need for such literature. The appearance of this book must, therefore, at once precipitate a sign of relief to, and give cause for jubilation among, law students and law teachers in particular and all those engaged in the practice of the law in general.

The book comprises a collection of learned articles which take the reader into the heart of some of the important aspects of Zambian law.

The diversity of the subject-matter so well articulated in the articles brings a singular but profound richness to the book and readily places at the reader's doorstep an illuminating, penetrating and perceptive analysis of the topics herein discussed. By partially filling the yawning void that has existed hitherto, the distinguished and learned contributors of the articles have done the legal fraternity a great service by developing the diverse aspects of the Zambian law. The book will no doubt fit significantly into the mainstream of legal literature in this land. Now that the publication of this book has broken the ice, one would hope that there would no longer be room for fence-sitting on the part of those scholars and legal practitioners who are endowed with literary inclinations.

The appearance of this book is in large measure due to foresight and drive on the part of Professor Ndulo. Tribute must be paid to him as well as to the learned contributors.

I trust that the book would readily command wide readership among law students, law teachers, practitioners of the law and also persons belonging to other disciplines, particularly the social sciences.

I have much pleasure in recommending this book as a worthy addition to the library of every lawyer.

ANNEL M. SILUNGWE
CHIEF JUSTICE, ZAMBIA

INTRODUCTION

The primary purpose of this book is to provide a useful survey and analysis of some aspects of law in Zambia. To this end, it covers a variety of topics ranging from the history of the common law in Zambia, to the question of the rule of law. Hitherto there have been several books on various economic, historical and sociological aspects of Zambia but there is however a dearth of legal literature. This has meant that for the most part the study material that is used in legal education has been almost exclusively foreign, some of which has relevance to law in Zambia and some which does not have, except to instruct in a general way on particular legal principles. As a result most lawyers in Zambia think of the Zambian legal system as primarily an English common law system. Certainly much statutory law as well has been borrowed from England and legislative bodies and the courts continue to look first at what has been done in England and seldom embark on their own legislative experiments in law. Nowadays, however, there is a growing realisation that the country will have to develop a much greater capacity to deal with its own legal problems. This means adapting the law to meet Zambian needs.

This is really a desire that the law should do three things. It must reflect the values of society it serves; it must be firmly planted in the soil if it is not to be largely irrelevant to the lives of the people and thus ignored. It must take account of change, that is, that it must take account of the fact of change. A second function of law therefore must be to help in the creation of conditions, so far as this is possible, in which desirable social developments can the more readily take place. And lastly, in the circumstances of accelerated development in which we find ourselves, the law must assume a more positive role in some spheres, must seek to influence the direction of development even if with only marginal effect.

In order for our law to achieve the above three objectives our system of legal education must produce a lawyer best suited to contribute to the realisation of these objectives. This means the production of a lawyer whose perspectives and skills run far beyond the relatively narrow bounds of traditional legal practice in the Western world. The role is so much broader than client representation, encompasses far more than the adversary process of the judicial system. Lawyering in developing countries must be concerned with devising and maintaining arrangements for carrying on the public business, mining, industry, agriculture and finance. It seems self-evident that the future of the legal profession, and the role of law itself, is bound up with the type of legal education the country offers. Legal education in any society is a matter directly linked to legal literature. Our lawyers' perspectives and ability to teach or develop the law to Zambian needs will be enhanced by their increased knowledge of Zambian law and this can only arise when and if Zambian law is much written about.

This book, a collection of articles each of which is written by a person having considerable knowledge of the subject on which he writes, is intended to be a contribution to the development of indigenous legal literature. Many people have helped to stimulate me concerning the idea of this book. Colleagues at the law school and elsewhere in the

university are among them. In particular I would like to single out Professor R. Kent who has proved to be a constant friend and adviser and whose interest in the role of law in the Zambian society has always inspired me. I would also like to thank Miss N. Martin who typed the manuscript.

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