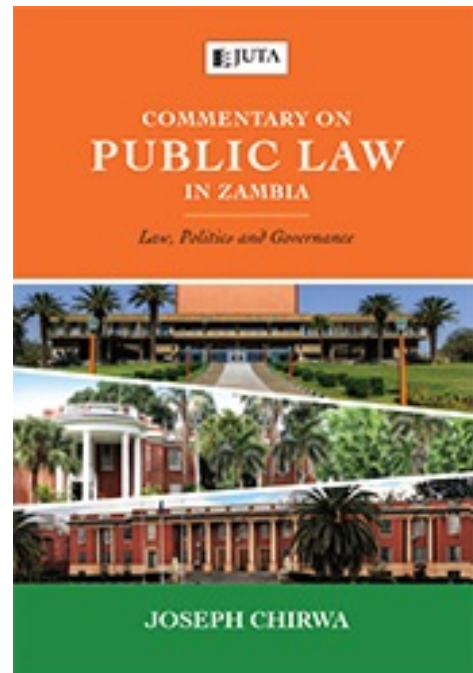


Commentary on Public Law in Zambia

Edition:	1st Edition
Publication date:	2020
Author/Editors:	Chirwa, J
ISBN:	9781485136958
Format:	Soft Cover
Number of Pages:	198
Retail price:	R585.00 (incl. VAT, excl. delivery.)
Website Link:	juta.co.za/pdf/28366/



About this Publication:

This is a no-holds-barred commentary on public law in Zambia that considers good governance, politics and human rights. Evoking the spirit and style of eminent law writers such as Sir Blackstone and Lord Denning, the author presents a commentary on cardinal issues in public administration and law in a provocative yet informative way.

Commentary on Public Law in Zambia: Law, Politics and Governance covers a wide range of subjects from constitutionalism to human rights, democracy to good governance, executive authority to judicial independence, parliamentary practice and procedure to the office of the Public Protector, and more, in the course of its sixteen chapters.

Joseph Chirwa shows himself to be the future of legal scholarship and writing in Zambia, learning from the best Zambia has produced, among others Professor Muna Ndulo, Supreme Court Justice Mumba Malila, SC and retired Justice Patrick Matibini, SC.

The book deals with the following topics:

- constitutional theory and practice
- judicial independence
- parliamentary procedure and practice
- the Public Protector
- proceedings against the state
- the politics of state-owned enterprises
- the executive authority
- judicial review
- the electoral process
- institutions of good governance
- constitutional protection of human rights
- environmental law and policy
- contempt of court
- public interest litigation
- the tribunal system

Contents Include:

DEDICATION

ABOUT THE AUTHOR

FOREWORD

PREFACE

ACKNOWLEDGEMENTS

TABLE OF CASES

TABLE OF LEGISLATION

CHAPTER 1: CONSTITUTIONAL THEORY AND PRACTICE

1.1 Constitutionalism and supremacy of the Constitution

1.2 Rule of law

1.2.1 Government under law

1.2.2 Equality before the law

1.2.3 Discretion and the rule of law

1.3 Separation of powers and checks and balances

1.3.1 Separation of powers: reality or myth?

1.3.2 Of checks and balances

1.4 Good governance and democracy

CHAPTER 2: JUDICIAL INDEPENDENCE

2.1 Conceptualising judicial independence

2.2 From whom should the judiciary be independent?

2.3 Facets of judicial independence

2.4 Accountability of the judiciary

2.5 The Judicial Code of Conduct

2.6 The judiciary and human rights

2.7 The judiciary and politics

CHAPTER 3: PARLIAMENTARY PROCEDURE AND PRACTICE

3.1 National Assembly or Parliament?

3.2 The Speakership

3.2.1 Administrative functions

3.2.2 Institutional functions

3.3 Leader of Government Business

3.4 Leader of the Opposition

3.5 The Government Chief Whip, Deputy Chief Whip and Party Whips

3.6 Clerk of the National Assembly

3.7 Committee system

3.7.1 House-keeping committees

3.7.2 General purpose committees

3.7.3 Portfolio committees

3.8 Powers and privileges

3.8.1 Parliamentary immunity

3.8.2 Parliamentary privilege

3.8.3 Parliamentary power

3.9 Controls on administrative actions

3.10 The law-making process

3.10.1 First reading

3.10.2 Second reading

3.10.3 Committee stage

3.10.4 Report stage

3.10.5 Third reading

3.10.6 Presidential assent

CHAPTER 4: THE PUBLIC PROTECTOR

4.1 History

4.2 Rationale

4.3 Functions

4.4 Remedies

CHAPTER 5: PROCEEDINGS AGAINST THE STATE

5.1 Should proceedings be entered against the 'state' or the 'government'?

- 5.2 Liability of the state in tort
- 5.3 Liability of the state in contract
- 5.4 Criminal liability against the state?
- 5.5 Immunities of the state

CHAPTER 6: THE POLITICS OF STATE-OWNED ENTERPRISES

- 6.1 Legal basis for state-owned enterprises
- 6.2 Rationale and objectives of public enterprises
- 6.3 Types of public enterprises
 - 6.3.1 Departmental undertaking
 - 6.3.2 Joint stock company
 - 6.3.3 Public corporation
 - 6.3.4 Holding company
- 6.4 Corporate governance
 - 6.4.1 Minister-in-Charge of Portfolio
 - 6.4.2 Industrial Development Corporation
 - 6.4.3 Board of Directors
 - 6.4.4 Executive management
- 6.5 Accountability and control
 - 6.5.1 Parliamentary control
 - 6.5.2 Judicial control
 - 6.5.3 Ministerial control
 - 6.5.4 Control through audit
 - 6.5.5 Internal controls

CHAPTER 7: THE EXECUTIVE AUTHORITY

- 7.1 The foundation of the executive authority
 - 7.1.1 What is the executive?
 - 7.1.2 Authority
 - 7.1.3 Power
 - 7.2 Theories of executive power
 - 7.2.1 The residual power theory
 - 7.2.2 The inherent power theory
 - 7.2.3 The specific grant theory
 - 7.3 The Presidency
 - 7.4 The Vice-President
 - 7.5 The Cabinet
 - 7.5.1 Cabinet meetings
 - 7.5.2 Cabinet committees and their functions
 - 7.5.3 Principles of Cabinet
 - 7.6 Ministers
 - 7.7 Provincial Ministers
 - 7.8 The civil service
 - 7.8.1 Principles governing the civil service
 - 7.8.2 Code of Ethics
 - 7.9 Defence and security
 - 7.9.1 Defence force and functions
 - 7.9.2 National security services and functions
 - 7.10 Local government
 - 7.11 Regulatory agencies and advisory bodies
- #### CHAPTER 8: JUDICIAL REVIEW
- 8.1 Nature
 - 8.2 Scope
 - 8.3 Public bodies for the purpose of judicial review
 - 8.4 Requirement of locus standi
 - 8.5 Grounds for judicial review
 - 8.5.1 Illegality
 - 8.5.2 Procedural impropriety
 - 8.5.3 Unreasonableness
 - 8.5.4 Proportionality
 - 8.6 Legitimate expectation and the future of judicial review
 - 8.7 Remedies under judicial review

8.7.1 Certiorari

8.7.2 Prohibition

8.7.3 Mandamus

8.7.4 Declaration

8.7.5 Injunction

8.7.6 Damages

CHAPTER 9: THE ELECTORAL PROCESS

9.1 Elections and public participation

9.1.1 Who is eligible to vote?

9.2 Electoral institutions

9.2.1 Electoral Commission of Zambia

9.2.2 High Court and Constitutional Court

9.2.3 Local Government Elections Tribunal

9.2.4 Civil society organisations

9.2.5 The international community

9.2.6 The media

9.3 Electoral systems

9.3.1 Understanding the 50 percent plus 1 vote threshold

9.3.2 First-past-the-post

9.3.3 One-member constituency and ward

9.4 Electoral offences, malpractice and tribalism

9.4.1 Article 45 principles

9.4.2 Section 3 principles

9.4.3 Electoral offences and malpractices

9.4.4 Is tribalism the new norm and future of Zambia's electoral system and process?

CHAPTER 10: INSTITUTIONS OF GOOD GOVERNANCE

10.1 The free press

10.2 Pressure groups

10.3 Political parties

10.4 Trade unions and the labour movement

10.5 The church

10.6 Traditional authorities

10.6.2 Chiefs as councillors

10.6.3 The House of Chiefs

10.7 Students and the intelligentsia

CHAPTER 11: CONSTITUTIONAL PROTECTION OF HUMAN RIGHTS

11.1 Conceptualisation of human rights

11.1.1 Human rights are universal and inalienable

11.1.2 Human rights are interdependent and indivisible

11.1.3 Human rights are to be applied equally and without discrimination

11.1.4 Human rights entail both rights and obligations

11.1.5 Human rights are distinguishable from other rights

11.2 Source of human rights

11.2.1 Natural law theory

11.2.2 Positivist theory

11.2.3 Social contract theory

11.3 The Zambian Bill of Rights

11.3.1 What is the Bill of Rights?

11.3.2 What are the advantages of having rights enshrined in the Constitution?

11.3.3 Contents of the Bill of Rights

11.4 National protection of human rights

11.4.1 Courts of law

11.4.2 Human Rights Commission

11.4.3 Public Protector

11.4.4 Police Public Complaints Commission

11.5 International protection of human rights

11.5.1 The African Commission on Human and Peoples' Rights

11.5.2 United Nations Commission on Human Rights

CHAPTER 12: ENVIRONMENTAL LAW AND POLICY

12.1 Conceptualisation of environmental law

- 12.2 Scope of environmental law and policy
- 12.3 Values, principles and environmental law
- 12.4 The administrative machinery of environmental law and policy
 - 12.4.1 The Ministry responsible for Lands, Environment and Natural Resources
 - 12.4.2 The Zambia Environmental Management Agency
 - 12.4.3 Local authorities
 - 12.4.4 Courts of law
 - 12.4.5 Other departments and agencies

CHAPTER 13: CONTEMPT OF COURT

- 13.1 When is one in contempt of court?
 - 13.1.1 Purposes and rationale for contempt laws
 - 13.1.2 Are courts immune to criticism?
- 13.2 Civil or criminal contempt?
- 13.3 Facets of contempt
 - 13.3.1 Contempt in the face of the court
 - 13.3.2 Publications interfering with the due course of justice
 - 13.3.3 Acts which interfere with the course of justice
- 13.4 Procedure and practice
- 13.5 Jurisdiction and powers of the courts

CHAPTER 14: PUBLIC INTEREST LITIGATION

- 14.1 Origins of public interest litigation
- 14.2 Subject matter of public interest litigation
 - 14.2.1 What is public interest?
 - 14.2.2 What is public interest law?
 - 14.2.3 What is public interest litigation?
- 14.3 Judicial activism
- 14.4 Social action litigation and social justice

CHAPTER 15: THE TRIBUNAL SYSTEM

- 15.1 The concept and idea
- 15.2 The case for tribunals
- 15.3 Examples of tribunals
- 15.4 The new norm?

CHAPTER 16: COMMISSIONS

- 16.1 Commissions under the Service Commissions Act
 - 16.1.1 Rationale
 - 16.1.2 Principles governing commissions
 - 16.1.3 Financial independence
 - 16.1.4 General powers of commissions
 - 16.1.5 List of commissions
- 16.2 Commissions under the Inquiries Act

INDEX