



UNIVERSITY *of* LUSAKA

Passion for Quality Education: Our Driving Force

SCHOOL OF LAW

**AN ANALYSIS OF HUMAN RIGHTS IMPLICATIONS OF DISCIPLINARY
PROCEDURES IN THE ZAMBIAN DEFENCE FORCE: LESSONS FROM KENYA**

By:

CHANDA MUTALE

LLB211482923

**AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN
PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE
BACHELOR OF LAWS (LLB) DEGREE.**

2025

DECLARATION

I, CHANDA MUTALE, do hereby declare that this dissertation titled “**AN ANALYSIS OF HUMAN RIGHTS IMPLICATIONS OF DISCIPLINARY PROCEDURES IN THE ZAMBIAN DEFENCE FORCE: LESSONS FROM KENYA**” which is hereby submitted to the School of Law at the University of Lusaka as part of the requirements for the award of the Bachelor of Laws (LLB) degree, is solely of my own and that it has, to the best of my knowledge, not yet been presented for any academic purposes in Zambia or elsewhere. Other people’s work and sources used in the study have been acknowledged. I hereby declare that I have read and understood the regulations governing the submission of the Bachelor of Laws Degree (LLB) dissertation including those relating to length and plagiarism, as contained in the rules of the University and that this dissertation conforms to those regulations.

Signature:C. Mutale

Date:20/11/2025

SUPERVISOR'S RECOMMENDATION

I, **KETIWE MUTALE** do recommend that the dissertation titled '**AN ANALYSIS OF HUMAN RIGHTS IMPLICATIONS OF DISCIPLINARY PROCEDURES IN THE ZAMBIAN DEFENCE FORCE: LESSONS FROM KENYA**' authored by **CHANDA MUTALE, STUDENT NUMBER LLB211482923** was done under my supervision, be admitted by the University. I have checked it carefully and I am satisfied that it meets the requirements related to format as laid down by the University Regulations governing directed research.



.....
MRS KETIWE MUTALE

(Supervisor)



.....
(Date)

DEDICATION

This dissertation is dedicated to my late guardian Mr John B Nkhoswe.

ACKNOWLEDGEMENTS

Firstly, I would like to thank God, the Almighty, who has granted countless blessings, knowledge and opportunity to me so that I have been finally able to accomplish the dissertation and make it this far.

My sincerest gratitude goes to my supervisor Mrs Ketiwe Mutale who assisted in the process of completing the dissertation. Her expertise, patience and art of paying attention to detail cannot go without being noticed, I can never thank you enough.

I would also like to express my gratitude to my late guardian Mr John B Nkhoswe and Mrs Rabecca Jere Nkhoswe for supporting and believing in me.

I am also grateful to Ms N Mwanamwambwa, Ms M Chizinga, Ms L Mwanza, Mrs C Pupwe, Ms Simbotwe, Mr C Chilufya and all the lectures from the University of Lusaka for the knowledge I acquired all through this amazing journey.

I would further like to acknowledge my friends Jani Anusa, Kasao Chinyanta, Chanda Mutale and Victor Sikutwa for always being there and giving me their unconditional support during this period.

Lastly but not the least, my gratitude is extended to those whose names are not mentioned but still helped me to realize that I can do all things through hard work and God's grace.

Table of Contents

DECLARATION	ii
SUPERVISOR’S RECOMMENDATION	iii
DEDICATION	iv
ACKNOWLEDGEMENTS	v
STATUTES/INTERNATIONAL CONVENTIONS.....	viii
ABSTRACT	ix
CHAPTER ONE	1
1.0 Introduction	1
1.1 Background of the problem	2
1.2 Statement of the Problem.....	3
1.3 Research Objectives:	5
1.3.1 Main Objective	5
1.3.2 Specific Objectives	5
1.4 Research Questions	5
1.5 Significance of the Study	6
1.6 Scope of Study	6
1.7 Identified Legislation.....	6
1.8 Literature review	7
1.9 Methodology	12
1.9.1 Research Approach	12
1.9.2 Research Design	12
1.9.3 Research Type.....	12
1.9.4 Study Population.....	12
1.9.5 Study Size.....	12
1.9.6 Sample Technique	13
1.9.7 Data Collection	13

1.9.8 Data Analysis	13
1.9.9 Work plan.....	13
1.10 Ethical Consideration	14
CHAPTER TWO.....	14
2.0 Introduction	14
2.1 Active Service Declarations Under the Zambia Defence Act.....	16
2.2 Human Rights Implications of Prolonged Active Service Declarations	20
2.3 Conclusion	24
CHAPTER THREE	25
3.0 Introduction	25
3.1 Section 29 of the Zambia Defence Act	26
3.2 Sections 102 of the Zambia Defence Act	29
3.3 Section 104 of the Zambia Defence Act	32
3.4 Conclusion	35
CHAPTER FOUR.....	36
4.0 Introduction	36
4.1 Disciplinary Procedures in The Kenyan Defence Act 2012	37
4.1.1 Aiding an Enemy.....	37
4.1.2 The Kenya Defence Forces (Court Martial) (Procedure) Rules, 2024	41
4.1.3 Appeal to the High Court.....	44
4.2 Conclusion	47
CHAPTER FIVE	48
5.0 Introduction	48
5.1 Summary of the Research Findings	48
5.3 Recommendations	53
BIBLIOGRAPHY	55

STATUTES/INTERNATIONAL CONVENTIONS

African Charter on Human and Peoples' Rights 1981

Constitution of Spain

Constitution of Zambia Chapter One of the Laws of Zambia

Defence (Amendment) Act No. 12 of 2023

International Covenant on Civil and Political Rights 1966

Kenya Defence Forces (Court Martial) (Procedure) Rules, 2024

Penal Code Act, Chapter 87 of the Laws of Zambia

Universal Declaration of Human Rights (UDHR)

Zambia Defence Act, Chapter 106 of the Laws of Zambia

ABSTRACT

This paper examines the human rights implications associated with the operations, governance and institutional culture of the Zambian Defense Force. As a key instrument of National security, the Zambia Defense Force plays a critical role in maintaining peace, safeguarding territorial integrity and supporting civil authorities. However, its mandate also intersects with a range of human rights considerations including the protection of civilian populations, the treatment of military personnel and adherence to the international humanitarian and human rights law.

The study explores challenges such as limited oversight mechanisms, risks of excessive use of force during internal deployments, gaps in training on human rights standards and issues related to gender equality, disciplinary practices and the rights of military personnel within the institution.

The study further evaluates positive developments including Zambia's commitment to regional and international treaties, ongoing professionalization efforts and integration of human rights modules in military training. The analysis highlights the need for strengthened accountability structures, enhanced transparency and continued capacity building to ensure the Zambia Defense Force effectively balances national security imperatives with the protection and promotion of human rights.

This paper concludes that sustained reforms and robust civil -military cooperation are essential to aligning defense operations with Zambia's constitutional and international

CHAPTER ONE

1.0 Introduction

The maintenance of discipline is paramount in military organizations, ensuring the effectiveness and cohesion of the force. However, the pursuit of discipline must be balanced with the protection of human rights. The Zambia Defence Force (ZDF), like many military institutions, operates under a strict legal framework designed to maintain order and discipline. Yet, certain provisions within this framework raise significant human rights concerns.

The ZDF's disciplinary procedures, as outlined in the Defence Act¹, have been criticized for potentially infringing upon the rights of military personnel. Prolonged active service declarations, severe penalties for perceived misconduct and limited avenues for appeal have sparked debates about fairness, transparency and accountability.

In recent years, international human rights organizations have emphasized the need for military institutions to align their disciplinary procedures with international human rights standards. The African Charter on Human and Peoples' Rights², the International Covenant on Civil and Political Rights³, and the Geneva Conventions all underscore the importance of protecting human rights, even in military contexts.

Kenya's approach to military discipline, which prioritizes fairness, transparency and respect for human rights, offers valuable lessons for Zambia. By examining the ZDF's disciplinary framework through a human rights lens and drawing comparisons with Kenya's approach, this study aims to identify areas for reform and improvement.

¹ Chapter 106 of the Laws of Zambia

² The African Charter on Human and Peoples' Rights 1981

³ International Covenant on Civil and Political Rights 1966

1.1 Background of the problem

Justice is one of the most important legal and moral concepts. Justice is a moral ideal that the law seeks to uphold in the protection of rights and punishment of wrongs.⁴ Military justice is a distinct legal system that applies to members of the armed forces and civilians subject to military law under certain circumstances. The primary goal of military justice is to maintain order and discipline in the armed forces.⁵ It differs with civilian justice system in structures, rules and procedures, but, both systems seek to punish crime. However, it's critical to recognize that enlisting in the military does not sign away a person's human rights and fundamental liberties. Notwithstanding the potential that some restrictions on the exercise of human rights and fundamental freedoms may be justified by the particular character of military commitments, these members should have their rights and freedoms respected and protected just like any other person.

In Zambia Army, military justice is enforced through: trial by Court Martial, summary dealing by Appropriate Superior Authority and Commanding Officer. However, most cases decided through summary dealing and challenged in civil courts, resulted in reversal of military decisions. For example, the case of **Muwana v Attorney General**,⁶ the court dismissed the military ruling and cited wrongful procedure in charging and prosecuting the accused. In **Ndili v Attorney General**,⁷ the appellate court stated “we agree with the applicant that the procedure under the Defence Act on disciplining or charging the applicant was not followed and therefore his dismissal or discharge was wrongful”. The aspects enumerated results from failure to uphold the right to a fair trial.

The above notwithstanding, the role that military courts play in the overall administration of justice in Zambia cannot be over- emphasised. Military courts play a vital and unique role in the administration of criminal justice with respect to people subject to military law. It is worth noting that the Zambia Defence Force's (ZDF)

⁴ Martin, E. A. (Ed.). (2003). *Oxford Dictionary of Law* (5th ed.). Oxford: Oxford University Press.

⁵ Vashakmadze, *Understanding Military Justice*. Geneva: Geneva Centre for the Democratic Control of Armed Forces (DCAF). 2010.

⁶ [2002] ZMSC 162

⁷ [2004] ZMSC 9

disciplinary framework is rooted in the country's legal and institutional structures, specifically the Constitution⁸ and the Defence Act.

However, implementation has raised concerns about human rights violations, including arbitrary deprivation of life, unlawful killings and mistreatment of military personnel. Criticisms surround the lack of fairness, transparency and accountability in disciplinary procedures, prolonged active service declarations and severe penalties for perceived misconduct.⁹

To address these issues, Zambia must align its military institutions with international human rights standards, such as the African Charter on Human and Peoples' Rights, the International Convention on Civil and Political Rights, and the Geneva Conventions. A comparative analysis with Kenya's approach to military discipline, prioritizing fairness, transparency and human rights, offers valuable lessons for Zambia, highlighting the need for reform and improvement in the ZDF's disciplinary framework.

1.2 Statement of the Problem Although the Zambia Defence Force is mandated to maintain discipline, order and national security, concerns continue to emerge regarding the extent to which disciplinary procedures align with national constitutional standards and international human rights obligations. Existing disciplinary mechanisms within the Zambia Defence Force are often characterized by limited transparency, restricted access to legal representation, limited avenues for appeal and the broad discretionary powers held by commanding officers. These conditions create a risk of procedural unfairness, arbitrary punishment and potential human rights violations.

As a result, there is urgent need to critically examine whether current disciplinary procedures within the Zambia Defence Force sufficiently protect human rights, identify gaps in policy and implementation and explore how reforms could enhance accountability and justice within the military system.

⁸ Chapter One of the Laws of Zambia

⁹ Fahey, J. „Peace Studies: Beginning and Development“, Nigel J. Young (editor in chief), *The Oxford International Encyclopedia of Peace*, Vol. 3, Oxford University Press, pp. 491-578. 2010

Section 3(2) of the Defence Act¹⁰ allows the President to declare units on active service for periods that can be extended up to three months at a time. This could result in soldiers serving prolonged periods without sufficient oversight, potentially leading to fatigue, stress, and other negative impacts on their well-being. An example of this could be soldiers being kept on extended deployments, far from their families and support systems, which might lead to physical and mental health issues. **Section 29 of the Defence Act** addresses the penalties for aiding the enemy, including severe punishments. The primary concern here is the fairness of the disciplinary process and the assurance of due process for the accused. Without a transparent and fair trial process, there is a risk of unjust convictions. For instance, a soldier accused of aiding the enemy might not receive a fair hearing if the court-martial lacks impartiality or if the evidence is not thoroughly examined, leading to wrongful punishment.

In addition, **Sections 102 and 104** outline the procedures for reviewing and confirming court-martial findings. These reviews are crucial for ensuring justice, but their effectiveness depends on the impartiality and expertise of the reviewing authorities. If these authorities are not independent or if their decisions are influenced by external factors, the rights of the accused may be compromised. For example, a soldier's conviction might be confirmed without a proper review of the evidence or consideration of mitigating circumstances, resulting in an unjust outcome.

Lastly, **Section 84** grants significant disciplinary powers to Commanding Officers, which can lead to potential abuses if not properly checked. Commanding Officers have the authority to arrest and discipline soldiers, which, if misused, can result in unfair treatment and human rights abuses. For example, a Commanding Officer might impose harsh punishments for minor infractions or use their power to settle personal grievances, undermining the principles of fairness and justice within the military.

The United States Government Accountability Office's 2024 March report¹¹ on sleep deprivation among service members resonates with the concerns surrounding the Zambia Defence Force (ZDF) disciplinary framework. The report highlights the

¹⁰ Ibid n 1

¹¹ Military Readiness: Comprehensive Approach Needed to Address Service Members Fatigue and Manage Related Efforts.

risks of prolonged active service declarations, harsh punishments, and limited rest periods on service members' physical and mental well-being. Specifically, it underscores the importance of adequate rest in maintaining optimal performance and readiness, echoing concerns about the ZDF's disciplinary procedures.

This research therefore aims to critically examine the human rights implication with respect to disciplinary procedures in the Zambia Defence Force. This shall be achieved by drawing lessons from South Africa and Kenya's approach to military discipline. By comparing the two frameworks, the research seeks to identify best practices that can help protect the rights of military personnel in Zambia while maintaining discipline and order within the ZDF.

1.3 Research Objectives:

1.3.1 Main Objective

To assess the alignment of the Zambia Defence Force disciplinary framework with international human rights standards and best practices.

1.3.2 Specific Objectives

1. To analyse the human rights implications of prolonged active service declarations under Section 3 of the Zambia Defence Force Act.
2. To evaluate the fairness and due process in the disciplinary procedures and penalties outlined in Sections 29, 102 and 104 of the Zambia Defence Force Act.
3. To compare the disciplinary frameworks of the Zambia Defence Force and the Kenyan National Defence Force, focusing on human rights protections.

1.4 Research Questions

1. What human rights implications arise from prolonged active service declarations under Section 3 of the Zambia Defence Force Act.

2. Are the disciplinary procedures under Sections 29, 102 and 104 consistent with fair trial standards?
3. What lessons can Zambia draw from Kenya regarding human rights in military discipline?

1.5 Significance of the Study

This study tackles critical issues at the intersection of military discipline and human rights. By analysing potential human rights violations, evaluating fairness and due process in disciplinary procedures, and comparing Zambia's framework with Kenya's approach. This research aims at advancing human rights protections, improving military discipline and justice and informs policy reforms and capacity-building initiatives. It is desired that the findings will have regional and international implications, contributing to the global discussion on human rights in military contexts and providing valuable lessons for other countries seeking to balance military discipline with human rights protections. Ultimately, this study aims to promote justice, transparency, and accountability within the Zambia Defence Force, shaping policy reforms, training programs, and institutional changes to protect the rights of military personnel and ensure a more equitable and just military disciplinary system. Further, the research will be helpful to the implementation of international human rights standards in the Zambia Defence Force. The research will also be a guide and be helpful in exposing any shortcomings in the Defence Act. This study will also offer assistance in understanding any potential strengths and weaknesses of the Defence Act.

1.6 Scope of Study

This study examines the human rights implications of disciplinary procedures by analyzing how military disciplinary mechanisms align with national, regional and international human rights standards by drawing lessons from Kenya.

1.7 Identified Legislation

During this study, we shall critically examine the Defence Act Chapter 106 of the Laws of Zambia and The Kenyan Defence Act No. 42 of 2002 as Amended by Act No.

22 of 2010, the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights and any other regulation enacted relevant to this study.

1.8 Literature review

The **Geneva Centre for Security Sector Governance**¹² emphasizes that military justice must align with internationally recognized human rights standards, integrating seamlessly into the broader rule of law framework. Military justice systems should operate as an integral part of the general judicial system, adhering to fundamental guarantees and principles governing criminal justice. This perspective underscores that military justice is not distinct from ordinary law but rather a component of the state's rule of law.

This research agrees with position taken by the **Geneva Centre for Security Sector Governance** especially in the context of the Zambia Defence Force (ZDF), which implies that disciplinary procedures and punishments, as outlined in Section 29 of the ZDF Act, must conform to international human rights standards and the principles of rule of law, upholding due process, fairness, and transparency.

However, this research departs from the one undertaken by the **Geneva Centre for Security Sector Governance** in that while the report is of a general nature, this paper will examine if the punishments align with international standards while comparing with those of Kenya.

Gwynn MacCarrick's¹³ seminal work underscores the imperative for a systematic judicial framework in international criminal law, emphasizing the need for clear standards and precedents to ensure fairness and regularity. He posits that any criminal jurisdiction, regardless of its national or international, common law or civil law orientation, must provide an accused with a quantifiable and externally measurable system of justice.

This research agrees with **MacCarrick's** concerns about the absence of fixed standards leading to trials becoming public demonstrations, susceptible to extraneous

¹² Geneva Centre for Security Sector Governance 'National Institute of Military Justice and DCAF'

¹³ MacCarrick's 'The Right to a Fair Trial in International Criminal Law (Rules of Procedure and Evidence in Transition From Nuremberg to East Timor)'

influences, resonate with the disciplinary procedures within military contexts. Specifically, this study adapts MacCarrick's arguments to highlight the vulnerability of defence personnel facing disciplinary actions, particularly those accused of aiding the enemy or other misconduct. Without clear standards, military trials risk compromising fairness and due process, potentially leading to unjust punishments. This research contends that MacCarrick's proposed systematic judicial framework is equally relevant to military disciplinary procedures, ensuring that defence personnel receive a fair trial and punishment, aligned with international human rights standards and principles of justice.

This research however goes further to examine if the provisions of the Zambia Defence Act align with international standards while comparing with those of Kenya.

Philip K. Russell and Samuel B. Guze's work¹⁴ highlights the importance of health protection measures throughout the deployment cycle. They categorize these measures into pre-, during-, and post-deployment activities, emphasizing continuous risk communication. Applying this framework to the Zambian military context, concerns arise regarding prolonged active service declarations under Section 3(2) of the Defence Act.

Russell and Guze's further posit that allowing the President to extend deployments up to three months at a time, potentially indefinitely, may lead to soldier fatigue, stress, and negative impacts on well-being. Extended deployments, isolating soldiers from families and support systems, increase the risk of physical and mental health issues. This study draws lessons from Russell and Guze's work, underscoring the need for robust health protection measures and sufficient oversight throughout the deployment cycle to safeguard Zambian military personnel's health and well-being.¹⁵

This study however goes further to examine if the provisions of the Zambia Defence Act align with international standards while comparing with those of Kenya.

A study by **Lindy Heineken, Michelle Nel, and Juan Janse van Vuuren**¹⁶ examined the military justice and corrective system within the South African National Defence

¹⁴ K.R Philip and S.B Guze 'Strategies to Protect the Health of Deployed U.S. Forces'

¹⁵ Ibid n 12

¹⁶ Lindy H, Michelle N, and Juan J, Military Discipline: Where are we going wrong available at https://upjournals.up.ac.za/index.php/strategic_review/index accessed on 02 November 2024.

Force (SANDF), highlighting challenges in balancing military discipline and constitutional rights. The research focused on the military justice system, disciplinary offenses, and corrective measures. Key strategies to reduce deviant behaviour, including retribution, deterrence, rehabilitation, and incarceration, were analysed. The study's findings offer valuable lessons for Zambia's military discipline and corrective system, particularly in balancing human rights and military discipline. By examining the South African experience, Zambia can develop more effective corrective measures and ensure transparency and accountability within its military justice system.

Raymond J. Toney and Shazia N. Anwar¹⁷ highlighted the often-overlooked issue of military personnel as victims of human rights abuses, which resonates with this study's focus on examining the legal framework and human rights implications of disciplinary procedures within the Zambia Defence Force. While their research emphasized the need for human rights advocates, governments, and multinational organizations to address injustices within a military context, this study shall focus solely on the Zambian perspective of how military personnel may sometimes be mistreated.

Ronald Naluwairo¹⁸ argues that right to an independent tribunal is perhaps the most important guarantee in ensuring a fair trial and possibly the most important canon in the administration of justice in any democratic society. It is a major prerequisite for access to justice, without which justice remains illusory. Only an independent tribunal is able to render justice impartially on the basis of law.

Further, **Naluwairo** submits that the right to an independent tribunal is critical for securing the rule of law. Without independent courts, there can hardly be any rule of law. The right to an independent tribunal is also indispensable in the protection of other human rights and fundamental freedoms.

¹⁷ Raymond J.T and Shazia N. "International Human Rights Law and Military Personnel: A Look Behind the BarrackWalls." *American University International Law Review* 14, no. 2 (1998): 519-543.

¹⁸ Ronald Naluwairo, *Military courts and human rights: A critical analysis of the compliance of Uganda's military justice with the right to an independent and impartial tribunal*. *African Human Rights Journal*, 448-469, 2019.

Naluwairo also contends that it is important to emphasise in this respect that the right to an independent tribunal is protected in international human rights law, not so much for the benefit of the persons who exercise judicial power. Rather, it is protected to ensure that the persons who hold judicial office uphold the rule of law and the rights and freedoms of accused persons without fear and interference. It is for these reasons, inter alia, that the right to an independent tribunal occupies a central place in international human rights law. Its centrality is reflected in the fact that, along with the right to a competent and impartial tribunal, it is an absolute right, meaning that it is not subject to any exceptions.

In the context of the Zambia Defence Force (ZDF), military personnel who are subjected to disciplinary procedures and punishments, as outlined in Section 29 of the ZDF Act, must be subjected to an impartial and independent tribunal in order to secure and uphold the rule of law.

This in turn ensure that just and fair procedures are employed in subjecting military personnel to disciplinary procedures.

Bush¹⁹ submits that closely related to the right to an independent tribunal is the right to a tribunal which is impartial. The right to an impartial tribunal is protected as part and parcel of the right to a fair trial by both the Universal Declaration of Human Rights 1948²⁰ and International Covenant for Civil and Political Rights. The requirement for impartiality of a tribunal has two aspects. First, the tribunal must be subjectively free of personal bias. Second, the tribunal must also appear to reasonable observers to be impartial.

Bush argues that the requirement that a tribunal must appear to reasonable observers to be impartial is the embodiment of the important principle in the administration of justice that ‘justice must not only be done, but should manifestly and undoubtedly be seen to be done’. This principle is very important for instilling public confidence in the ability of the tribunal to execute its functions in a neutral manner. With specific regard to military judges, the international community generally recognises that the concept

¹⁹ Bush, K. *Hands-on Peace and Conflict Impact Assessment (PCIA)*”, *Walking the Path of Peace: Practicing the Culture of Peace and Peace and Conflict Impact Assessment, Program P-CLGS* (ed.), Manila, Philippines: Philippines- Canada Local Government Support Program: 71–109. 2003.

²⁰ Universal Declaration of Human Rights 1948

of impartiality is a complex one. It is acknowledged that parties to proceedings before military tribunals have good reason to view the military judge as an officer who is capable of being 'a judge in his own cause' in any case involving the armed forces as an institution. That is why it is critical that everything should be done to minimise any doubts as to the impartiality of military judges and therefore of the tribunals over which they preside. It is submitted that guaranteeing the independence of military courts, as discussed above, is one strong factor that can help in this respect. The presence of civilian judges in the composition of military tribunals is also considered to be an important factor that can help reinforce the impartiality of military tribunals.

Kobusingye²¹ similarly posit that institutional independence as an aspect of the right to an independent tribunal requires, first of all, that courts should have adequate safeguards to protect them from political and other interferences, especially with respect to matters that relate to their judicial function.

In the context of military justice, institutional independence requires that military tribunals must be free from interference, especially from the executive and the military hierarchical command with respect to matters that relate to their judicial function. They must not only be self-governing as regards their administrative and operational matters, but must also be independent in their decision making. Decisions of military courts, like those of the ordinary civil courts, should also never be subjected to revision by a non-judicial establishment.²²

Kobusingye further submits that the basic principle upon which both the institutional and individual independence of military tribunals may be guaranteed is to ensure that members of military courts and other critical staff in the administration of military justice (like the judge advocates and prosecutors) have a status guaranteeing their independence in particular vis-à-vis the military hierarchy and command. One of the important prerequisites for ensuring the institutional independence of military tribunals is that the authority that appoints members of a tribunal must not be the same one that appoints prosecutor(s).

²¹ Kobusingye O (2010), *The Correct Line? Uganda under Museveni*, ArthourHouse, Central Milton Keynes.

²² Ibid n 10

1.9 Methodology

1.9.1 Research Approach

This study will be carried out using the qualitative method simply because the scope of the study may have multiple realities that are socially construed by different persons and institutions¹⁹ as such, the research will take in-depth data collection from both primary and secondary sources. It will cover an analysis of Acts of Parliament, Agreements, journals, documents and literal work.

1.9.2 Research Design

This study undertakes a comprehensive evaluative analysis of the legal framework governing disciplinary procedures in the Zambia Defence Force (ZDF), with a focus on human rights implications. Employing a comparative approach, this research evaluates the effectiveness, fairness, and transparency of the ZDF's disciplinary procedures, particularly Sections 3, 29, 102, and 104 of the Zambia Defence Force Act. The study assesses the alignment of these provisions with international human rights standards and best practices, drawing lessons from Kenya's military disciplinary framework. Through this evaluative research, the study aims to identify strengths, weaknesses, and areas for improvement in the ZDF's disciplinary procedures, providing actionable recommendations for policy reforms, capacity building, and institutional enhancements.

1.9.3 Research Type

The type of research that will be carried out will be a descriptive study of the Zambia Defence Force.

1.9.4 Study Population

The study will primarily be on Zambia and Kenya.

1.9.5 Study Size

This research will have a sample size of 10 people from relevant institutions such as the Zambia Defence Force, Ministry of Defence, Ministry of Homes Affairs and SADC among others. This denotes the number of institutions as research subjects who may take part in the research and provide first-hand information.

1.9.6 Sample Technique

The research will use a purposive technique which will carefully consider the best persons and institutions to respond to the questions that are needed for this research. It is anticipated that this technique may lead to a snowball sampling technique where the interviewee may lead the research to another person who may likely provide the much-needed information.

1.9.7 Data Collection

The collection of data during this study will consist mostly of secondary data that will be obtained by reviewing documents which will include, Acts of Parliament, International Agreements, Books, reports, journals, and various dissertations. Where need be, primary data will be collected from consultation with relevant officials who may be interviewed via telephone or physically.

1.9.8 Data Analysis

The study will have a content analysis study aimed at looking into the wording and the language used in the agreements under scrutiny.

1.9.9 Work plan

The expected duration of this research is 4 months. In which the interviews, literature review, typing and submissions will take place. The breakdown is as follows;

ACTIVITY	DATE	DURATION
Lecturer overview of research topics		9 weeks
Submission of proposal for marking		1 day
Submission of Chapter 1 to the		5 weeks
Submission of Chapter 2 to the		1 month
Submission of Chapter 3 to the		1 month
Submission of Chapter 4 to the		1 month
Submission of Chapter 5 to the supervisor		1 month

1.10 Ethical Consideration

During the collection of Data and analysis, the researcher will obtain permission from the relevant research ethical body at the University of Lusaka, to be presented in the quest to obtain information from international officials. The researcher will further obtain informed consent from individuals who will volunteer to take part in the study, and confidentiality will be paramount and guaranteed for their safety and that of the institutions they serve. Finally, the research indicates that the findings of this study are only for academic purposes.

CHAPTER TWO

THE HUMAN RIGHTS IMPLICATIONS OF PROLONGED ACTIVE SERVICE DECLARATIONS UNDER SECTION 3 OF THE DEFENCE ACT

2.0 Introduction

This chapter analyses the human rights implications arising from the discretionary powers granted under Section 3 of the Defence Act,²³ which allows the President to declare military units on active service for renewable periods of up to three months.

It is worth noting that while the provision is intended to ensure operational readiness and national security, its application particularly when repeatedly and extended raises significant human rights concerns.

Prolonged active service without adequate oversight or safeguards may adversely affect the rights and welfare of military personnel. In particular, extended deployments can interfere with soldiers' rights to family life, health, rest, and psychological well-being. When service members are kept on active duty for indefinite or lengthy periods,

²³ Chapter 106 of the Laws of Zambia

far from their support systems and with limited rest periods, the cumulative impact may lead to physical exhaustion, mental health disorders, and degradation of morale.²⁴

Studies of the United Kingdom and United States military personnel deployed to Iraq support the association between both longer deployment length and ‘mismatch,’ and a greater number of mental and physical health complaints among personnel. That is, extended lengthy deployment is one of the principal causes of self-reported operational stress by military personnel on deployment and the source for this stress appears to be service members’ concerns at being separated from their family.²⁵ The reviewed studies suggest that there is a greater likelihood of marital and family problems (including an increased likelihood of spousal aggression) on return home for those troops who were deployed.

These risks are compounded by the absence of transparent procedures for reviewing or challenging such declarations, potentially leading to violations of both national constitutional protections and Zambia’s international human rights obligations under instruments such as the African Charter on Human and Peoples’ Rights²⁶ and the International Covenant on Civil and Political Rights (ICCPR).²⁷ The constitutional protections threatened include the right to life, right to family life, right to health as well as the right to dignity.

This chapter therefore critically analyses the human rights implications arising from the discretionary powers granted under **Section 3 of the Defence Act** and evaluates whether the current legal framework provides adequate safeguards against the over-extension of active service periods and examines how such practices align with Zambia’s human rights commitments, particularly in relation to the rights of military personnel. This essentially will help understand the gaps in the law with the view of drawing lessons from Kenya.

²⁴ Rona R, Fear N, Hull L, et al. *Mental health consequences of overstretch in the UK armed forces: first phase of a cohort study*. BMJ 2007; 335:603e10.

²⁵ Ibid

²⁶ African Charter on Human and Peoples’ Rights 1981

²⁷ International Covenant on Civil and Political Rights 1966

2.1 Active Service Declarations Under the Defence Act

Section 3 of the Defence Act provides for provisions relating to active service. Section 3 (1) of the Act defines “on active service” to mean engaging in operations against an enemy and, in relation to a person, means that he is serving in or with such unit which is on active service.

Section 3 (2) of the Act states that:

*Where it appears to the President that, by reason of the imminence of active service or of the recent existence of active service, it is necessary in the public interest that a unit should be deemed to be on active service, he may declare that for such period, not exceeding three months, beginning with the coming into force of the declaration, as may be specified therein, that unit shall be deemed to be on active service.*²⁸

Essentially, section 3(2) of the Defence Act clearly empowers the President to declare military units as being on active service for periods of up to three months, with the option to renew such declarations indefinitely in similar increments. Notably, the provision lacks any transparent procedures for reviewing these declarations or mechanisms for challenging them, raising concerns about accountability and oversight. It is important to note that there exist no administrative or parliamentary procedures that indirectly offer checks and balances on the President with respect to declaring military units on active service.

The most significant implications are the potential prolonged deployments without adequate checks and balances. Without stringent procedural safeguards or parliamentary review, these extensions can accumulate thereby resulting in extended periods of active service for soldiers.

There is therefore need to provide checks and balances in order to regulate the President’s power to declare military personnel on active service. In Spain for example, the Spanish constitution stipulates that “It is incumbent on the King, after authorization by the Parliament, to declare war and make peace” (article 63, para. 3).²⁹

²⁸ Chapter 106 of the Laws of Zambia

²⁹ Article 63, paragraph 3 of the Spanish Constitution

After the hugely unpopular participation of Spanish forces in Iraq⁶⁷ and the election defeat of the conservative Partido Popular in March 2004, the new Spanish government of Jose Luis Rodriguez Zapatero agreed on a new deployment law. According to the new law, military missions require the prior approval of parliament.

In Zambia, to address these concerns, it may be necessary to review Section 3(2) of the Defence Act to introduce additional safeguards, such as mandatory reporting to Parliament on each extension, independent oversight mechanisms (e.g., via a Defence Ombudsman), clear criteria and time limits for successive extensions as well as mandatory rest and recovery periods for deployed personnel.

Additionally, **Section 3 (3) of the Act** further allows the President where he considers it necessary in the public interest to extend the period specified in a declaration made under **subsection (2)**, or to further extend a previously prolonged period, he may issue a declaration to that effect. Such an extension may not exceed three months and must be specified in the new declaration.³⁰

The implication of the above **section 3 (3)** is that the President has discretion, but it's not absolute. Therefore, the President must justify the extension as being in the public interest. However, the term "public interest" is broad and subjective, giving the President considerable leeway.

In addition, each extension can only last up to three months. This creates a built-in check to prevent indefinite or overly long extensions without periodic review or justification. It must be noted however that the provision has the potential to give rise to serial extensions. That is, although each extension is capped at three months, there is no express limit on the number of extensions that can be issued, which could lead to quasi-permanent declarations if renewed successively. It can therefore be suggested that the President be allowed to make a maximum number of six renewals so as to regulate this power and prevent abuse.

Section 3 (4) of the Act however allows the President to undeclare units or persons on active service. Thus, at any point while a military unit is considered to be on active service under the provisions of this section, the President may determine that the circumstances no longer justify the continuation of that status. If it appears to the

³⁰ Chapter 106 of the Laws of Zambia

President that the necessity for the unit to remain on active service has ceased, he is empowered to issue a declaration to that effect.³¹

It must be stated that upon the coming into operation of such a declaration, the unit in question shall no longer be regarded as being on active service. This provision places the authority for terminating active service status solely in the hands of the President, without requiring consultation, oversight, or formal criteria for making such a determination.³²

Clearly, **Section 3 (2)** of the Defence Act allows the President to declare units on active service for periods that can be extended up to three months at a time. This could result in soldiers serving prolonged periods without sufficient oversight, potentially leading to fatigue, stress, and other negative impacts on their well-being. An example of this could be soldiers being kept on extended deployments, far from their families and support systems, which might lead to physical and mental health issues.

The issue of concern is that a person who refuses to go on active service may be discharged from the military in accordance with Regulation 9 (3) of the Defence Force (Regular Force) (Enlistment and Service) Regulations of the Act which states -

9 (3) A soldier may be discharged from the Regular Force at any time during his service in such Force upon any of the grounds set out in column 1 of the Third Schedule, subject to the Special Instruction appearing opposite thereto in column 2 of the said Schedule...

One of the grounds set out in the Third Schedule is “His services being no longer required.” In addition, section 21 of the Defence Act empowers a competent military authority to discharge a soldier during the currency of any term of engagement. The Attorney General, through the Air force Commander, is empowered by law to discharge an officer if his/her services are no longer required.

Thus, in **Ernerst Katongo and Others v The Attorney General**³³ the Supreme Court reinforced the position that the Air Force Commander has authority to discharge the

³¹ Ibid

³² Ibid

³³ Appeal No. 129/2013

services of any military personnel on the ground that his or her services are no longer required pursuant to section 21 of the Defence Act.

In view of the above, the President has the power to dismiss any Military personnel or military units who refuse to go on active service on the basis that his or her services are no longer required.

It must be stated that the power to discharge any military personnel on the basis that their services are no longer required is discriminatory, an unfair practice and infringes on the right a person's fair trial and investigations. This is because the President through the Air Force Commander can simply discharge military personnel for refusing to go on active service without undertaking any investigations.

In **Major Isaac Masonga v The People**³⁴ the Supreme Court stated that it is cardinal that the Courts, which include the Court Martial: have a constitutional duty to administer justice and to be seen to guarantee all procedural protection to all persons and to ensure that all those persons who appear before them have no legitimate reasons to be intimidated.

In addition, the Court stated that the notion of "equality of arms" is an essential feature of a fair trial and is the expression of the balance that must exist between prosecution and defence and also respect for the principal of advisory proceedings.

Further, the Court held that it is trite law and a constitutional duty for the prosecution to guarantee a fair trial and a fair trial starts with investigations. Any shortcomings in the investigations may seriously jeopardize the right to a fair proceeding, and thereby also prejudice the accused person's rights to be presumed innocent going against the spirit of the Constitution.

It must be noted that the Defence forces who undertake peace keeping operations are also said to be on active service. The Kenyan Court in **Stephen Ouma Odede v Republic**³⁵ stated as follows:

I cannot labour to conclude that the definition of active service and enemy as set out in the Kenya Defence Forces Act are too stringent to accommodate

³⁴ S.C.Z. Judgment No. 24 of 2009

³⁵ (2019) KEHC 11654 (KLR)

actions undertaken by the Defence Forces when attached to a multinational peace keeping mission. According to the United Nations, the principles of peacekeeping which are inter-related and mutually reinforcing, are; (i) consent of the parties, (ii) impartiality and (iii) Non-use of force except in self-defence and defence of the mandate.

The above case demonstrates that definition of active service and enemy as set out in the Kenya Defence Forces Act which is similar to the definitions in the Zambia Defence Act includes actions undertaken by the Defence Forces when attached to a multinational peace keeping mission.

2.2 Human Rights Implications of Prolonged Active Service Declarations

It is worth noting from the onset that the Defence Force plays a critical role in preserving national security, enforcing peace and responding to both internal and external threats. To maintain operational readiness, national legislation often empowers heads of state or government to mobilize military personnel for active service.

As already noted, section 3 (2) of the Defence Act³⁶ provides the President with the authority to declare military units on active service for renewable periods of up to three months. While this provision serves a strategic and administrative function, it also raises important human rights concerns, particularly when declarations are extended over prolonged periods without robust oversight, adequate rest intervals, or procedural safeguards.

Section 3 (2) of the Defence Act raises a number of human rights implications, particularly its potential to infringe on the rights of military personnel to health, family life, and dignity.

Firstly, prolonged active service declaration invariably affects the right to health. That is, prolonged military deployment is physically and psychologically demanding. Soldiers deployed for long periods may face fatigue, burnout, and long-term psychological trauma, such as post-traumatic stress disorder (PTSD). Continuous

³⁶ Chapter 106 of the Laws of Zambia

exposure to high-risk or high-stress environments without sufficient rest and recovery violates the right to health, enshrined under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Zambia is a party.³⁷

Additionally, the right to family life, protected under Article 23 of the International Covenant on Economic, Social and Cultural Rights³⁸ is severely affected by long-term active service deployment or repeated deployments. Soldiers are often separated from their families for extended periods, which can result in emotional strain, marital breakdowns, and negative effects on children's development. The inability to participate in family life not only affects the soldier but also places undue psychological and financial stress on spouses and dependents.

It is important to note that military service is a profession that demands unwavering commitment, discipline, and sacrifice. While the focus is often placed on the experiences of soldiers in the field, the extended nature of their deployments has significant and often overlooked, consequences for their families. Prolonged active military service particularly when extended without adequate rest or clear timelines can strain family relationships, disrupt emotional bonds, and lead to long-term psychological and social challenges for both service members and their loved ones.³⁹

One of the most immediate impacts of prolonged deployment is the disruption of the family unit. Military personnel are frequently separated from their spouses, children, and extended families for months at a time, sometimes for years if deployments are repeatedly extended. This separation can weaken family cohesion, particularly where communication is limited or erratic due to the nature of the assignment.⁴⁰

In addition, children may grow up with minimal contact with one parent, leading to emotional distance, behavioural issues, or developmental challenges. For spouses, the absence of a partner often translates into increased domestic responsibilities,

³⁷ Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),

³⁸ Article 23 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),

³⁹ World Health Organisation. The ICD-10 Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines. Geneva, Switzerland: WHO, 2012.

⁴⁰ Iversen AC, van Staden L, Hughes JH et al. The stigma of mental health problems and other barriers to care in the UK Armed Forces. BMC Health Serv Res 2011;11:31.

financial stress, and emotional loneliness, sometimes resulting in anxiety, depression, or marital breakdown.⁴¹

Moreover, prolonged active service can lead to psychological consequences for both the deployed soldier and the family left behind. Service members may return home with post-traumatic stress disorder (PTSD), depression, or anxiety due to extended exposure to high-stress or combat environments.⁴²

Families often lack the training or resources to support a returning soldier who may be psychologically changed by their experiences. The readjustment phase known as reintegration can be fraught with difficulty, and in cases where deployments are frequent or ongoing, families may never fully experience a period of stability or normalcy.⁴³

In the context of Zambia and similar countries where the law section 3 of the Defence Act⁴⁴ allows the President to extend active service in renewable increments, there is a risk that soldiers may be kept on extended deployment without adequate oversight or safeguards. This raises not only human rights issues but also broader social concerns about the well-being of military families. Without proper support structures such as access to counselling, family reintegration programs, and adequate rest periods the cumulative toll on military families can be severe.

In summary, while military service is indispensable to national security, it is critical that policymakers recognize and address the hidden cost of prolonged deployments on families. Ensuring reasonable limits on active service duration, regular leave, and robust family support systems is essential. Protecting the well-being of military families is not only a matter of social justice but also contributes to the overall effectiveness and morale of the armed forces.

Additionally, prolonged or repeated active service declarations affect the right to dignity and fair labour practices. Military personnel, like all workers, are entitled to fair labour

⁴¹ World Health Organisation. *The ICD-10 Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines*. Geneva, Switzerland: WHO, 2012.

⁴² Iversen AC, van Staden L, Hughes JH *et al*. The stigma of mental health problems and other barriers to care in the UK Armed Forces. *BMC Health Serv Res* 2011;**11**:31.

⁴³ Jones N, Greenberg N, Fear NT *et al*. The operational mental health consequences of deployment to Iraq for UK Forces. *J R Army Med Corps* 2008; 154:102–106.

⁴⁴ Chapter 106 of the Laws of Zambia

conditions, including reasonable working hours, rest, and compensation. Prolonged deployments without adequate rest periods may be seen as contrary to the principle of fair working conditions, a cornerstone of Zambia's employment labour laws. Unlike civilians, soldiers often lack avenues for redress or protest due to the hierarchical and disciplinary nature of military service.⁴⁵

Further, the absence of a statutory limit on the number of times the three-month period can be renewed effectively allows for indefinite active service. This undermines the principles of accountability, transparency, and rule of law, which are essential in a democratic society. The unchecked extension of deployments can also erode trust in civilian oversight of the military, a key tenet of democratic governance.

It is clear from the above that Zambia's obligations under international human rights law, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the African Charter, require it to uphold the rights to health, family life, and humane treatment of all persons including members of the armed forces.⁴⁶

While states are permitted to place certain restrictions on the rights of military personnel for operational reasons, such limitations must be proportionate, necessary, and lawful.

It therefore follows that Failure to review or regulate the use of active service declarations under Section 3 could place Zambia at risk of violating these obligations. It is essential that any restriction on rights in the name of national security be time-bound, subject to periodic review, and accompanied by safeguards to protect affected individuals.⁴⁷

It is therefore submitted that to better align the Defence Force Act with human rights standards, it is essential to introduce a limit on the cumulative duration of active service without rest or home rotation. In addition, there is need to mandate regular

⁴⁵ Ronald Naluwairo, Military courts and human rights: A critical analysis of the compliance of Uganda's military justice with the right to an independent and impartial tribunal. *African Human Rights Journal*, 448-469, 2019.

⁴⁶ Nzala, P. E. (2010). *The role of the military justice system in preservation of the institution*. Lusaka: University of Zambia.

⁴⁷ Nzala, P. E. (2010). *The role of the military justice system in preservation of the institution*. Lusaka: University of Zambia.

parliamentary oversight of all active service declarations and establish an independent mechanism to monitor the mental and physical health of deployed personnel.

In addition, there is need to provide family support programs for military families during extended deployments and ensure transparency and reporting requirements for all decisions made under Section 3.

2.3 Conclusion

In summary, this essay has established that while the provision is intended to ensure operational readiness and national security, its application particularly when repeatedly extended raises significant human rights concerns.

The chapter established that prolonged active service without adequate oversight or safeguards may adversely affect the rights and welfare of military personnel. In particular, extended deployments can interfere with soldiers' rights to family life, health, rest and psychological well-being. When service members are kept on active duty for indefinite or lengthy periods, far from their support systems and with limited rest periods, the cumulative impact may lead to physical exhaustion, mental health disorders and degradation of morale.

Further, the chapter found that these risks are compounded by the absence of transparent procedures for reviewing or challenging such declarations, potentially leading to violations of both national constitutional protections and Zambia's international human rights obligations under instruments such as the African Charter on Human and Peoples' Rights⁴⁸ and the International Covenant on Civil and Political Rights (ICCPR).⁴⁹ The constitutional protections threatened include the right to life, right to family life, right to health as well as the right to dignity.

It is worth noting that while national security is a legitimate and critical concern, it must be balanced against the rights and well-being of those who serve to protect it. Section 3 of the Defence Act, in its current form, lacks sufficient safeguards to prevent the over-extension of military deployments. As a result, it poses serious human rights risks, particularly to the health, family life and dignity of military personnel. Legal reform and

⁴⁸ African Charter on Human and Peoples' Rights 1981

⁴⁹ International Covenant on Civil and Political Rights 1966

policy interventions are urgently needed to ensure that Zambia upholds its constitutional and international human rights obligations, even in the pursuit of national defence.

CHAPTER THREE

THE FAIRNESS AND DUE PROCESS IN THE DISCIPLINARY PROCEDURES AND PENALTIES OUTLINED IN SECTIONS 29, 102 AND 104 OF THE ZAMBIA DEFENCE FORCE ACT

3.0 Introduction

The previous chapter analysed the human rights implications arising from the discretionary powers granted under Section 3 of the Zambia Defence Force Act,⁵⁰ which allows the President to declare military units on active service for renewable periods of up to three months. The chapter established that while the provision is intended to ensure operational readiness and national security, its application particularly when repeatedly extended raises significant human rights concerns.

The chapter established that prolonged active service without adequate oversight or safeguards may adversely affect the rights and welfare of military personnel. In particular, extended deployments can interfere with soldiers' rights to family life, health, rest and psychological well-being. When service members are kept on active duty for indefinite or lengthy periods, far from their support systems and with limited rest periods, the cumulative impact may lead to physical exhaustion, mental health disorders, and degradation of morale.⁵¹

Further, the chapter found that these risks are compounded by the absence of transparent procedures for reviewing or challenging such declarations, potentially leading to violations of both national constitutional protections and Zambia's international human rights obligations under instruments such as the African Charter on Human and Peoples' Rights⁵² and the International Covenant on Civil and Political

⁵⁰ Chapter 106 of the Laws of Zambia

⁵¹ Rona R, Fear N, Hull L, et al. *Mental health consequences of overstretch in the UK armed forces: first phase of a cohort study*. BMJ 2007; 335:603e10.

⁵² African Charter on Human and Peoples' Rights 1981

Rights (ICCPR).⁵³ The constitutional protections threatened include the right to life, right to family life, right to health as well as the right to dignity.

This chapter therefore evaluates the fairness and due process in the disciplinary procedures and penalties outlined in sections 29, 102 and 104 of the Defence Act.

In the Zambian defence force context, the concept of fairness and due process in disciplinary procedures is not just an internal administrative matter. It is deeply interconnected with human rights such as dignity, health and family life. When procedures are fair and transparent, they help protect the individual's rights and wellbeing; when they are unfair or arbitrary, the consequences ripple out into serious human rights concerns.

3.1 Section 29 of the Defence Act

Section 29 of the Defence Act criminalizes the aiding of an enemy. The provision states that:

29. (1) Any person subject to military law under this Act who, with intent to assist the enemy

(a) abandons or delivers up any place or post which it is his duty to defend, or induces any person to abandon or deliver up any place or post which it is that person's duty to defend; or

(b) does any act calculated to imperil the success of operations of the Defence Force, or of any forces co-operating therewith or any part of any of those forces; or

(c) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorised by international usage; or

⁵³ International Covenant on Civil and Political Rights 1966

Additionally, aiding an enemy suffices where military personnel furnish the enemy with arms anything likely to assist him. Further, the harbouring or protection of an enemy not being a prisoner of war or giving any false air signal or altering with any air signal amounts to aiding an enemy.⁵⁴

Clearly, the said section 29 of the Defence Act considers it a serious offence for any individual to abandon or surrender a post or military position that they are duty-bound to defend. This includes inducing others to do the same. Such actions are seen as direct threats to national security and the success of military operations.⁵⁵

Further, section 29 also imposes a punishment on any act that endangers or undermines the operations of the Defence Force, or allied forces working in cooperation with it. This reflects the importance placed on maintaining the effectiveness and safety of military campaigns.⁵⁶

The appellant was a trained soldier and a member of ZPRA, an army of liberation of the Patriotic Front. On the day the deceased met his death the appellant was on duty in a ZPRA camp guarding certain spies including a number of Selous Scouts of whom the deceased was one. Every guard had been given strict instructions by their superiors to ensure that none of the persons being guarded escaped. His orders were that in the event of any such person attempting to escape the guard was to fire one warning shot and, if ignored, to shoot the person. It was alleged that if any prisoner succeeded in escaping, the guard would be liable to the death penalty.

It must be noted that military personnel maybe allowed to take the life of an enemy who attempts to escape by the defence of justifiable homicide. In **M v People**⁵⁷ the appellant was a trained soldier and a member of ZPRA, an army of liberation of the Patriotic Front. On the day the deceased met his death the appellant was on duty in a ZPRA camp guarding certain spies including a number of Selous Scouts of whom the deceased was one.

Every guard had been given strict instructions by their superiors to ensure that none of the persons being guarded escaped. His orders were that in the event of any such

⁵⁴ Chapter 106 of the Laws of Zambia

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ [1979] ZMSC 1

person attempting to escape the guard was to fire one warning shot and, if ignored, to shoot the person. It was alleged that if any prisoner succeeded in escaping, the guard would be liable to the death penalty.

The deceased attempted to escape, and was shot and killed by the appellant after failing to stop when two warning shots were fired. The Appellant was consequently convicted of the offence of murder. On appeal, counsel for the appellant urged the court to consider the defence of justifiable homicide.

The court held that the defence of justifiable homicide is available to a person who uses reasonable force to prevent the escape of an enemy of the Republic of Zambia. In addition, the court stated that failure to stop the deceased from escaping could not only have placed the appellant's life in jeopardy, but the security of Zambia could have been endangered. The appellant was justified in taking the deceased's life.

Another significant offence arises when a person, having been captured as a prisoner of war, aids the enemy in any capacity not sanctioned by international laws. This includes helping with military operations, psychological tactics, or morale-influencing measures. The provision also criminalizes supplying the enemy with arms, ammunition, or any materials that could potentially aid them, as well as harbouring or protecting an enemy who is not a prisoner of war.

The law further addresses acts related to military communication, specifically the giving of false air signals or tampering with equipment used for such signals. Additionally, failure to fully comply with air operation orders from a superior officer—especially when such operations are of a warlike nature—is considered a serious dereliction of duty. Another offense covered involves causing the enemy to capture or destroy Defence Force aircraft, either through direct actions or failures in duty.⁵⁸

Under subsection (1), individuals found guilty of these acts by a court-martial may face penalties specified in the Act. It must be noted that Parliament abolished the death penalty by amending the Penal Code⁵⁹ as well as amending the Defence Act pursuant

⁵⁸ Chapter 106 of the Laws of Zambia

⁵⁹ Chapter 87 of the Laws of Zambia

to the Defence (Amendment) Act.⁶⁰ This Act essentially abolished the death penalty for court marshal.

In the case of **Chrissy Lubasi v The People**,⁶¹ the Court of Appeal pronounced itself on the legality and abolishment of the death penalty. The Court stated that:

We are satisfied that one thing that is prominent and not in dispute is that the Penal Code (Amendment) Act No. 23 of 2022 became Law on 23rd December 2022. With that amendment, the death penalty was abolished.⁶²

Further, it is also important to noted that Zambia acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) on the Abolition of the Death Penalty.⁶³

However, subsection (2) of section 29 distinguishes cases where the person acted knowingly but without intent to aid the enemy. In such cases, if intent cannot be proven, the offender is liable to imprisonment or a lesser punishment. Subsection (3) deals with negligent actions that lead to the loss of military aircraft to the enemy, stating that such individuals are also subject to imprisonment or a lesser penalty upon court-martial conviction.⁶⁴

It is clear that section 29 of the Defence Act underscores the seriousness of military offences that compromise national defence. It draws clear distinctions between deliberate, knowing, and negligent actions, ensuring appropriate punishment based on the offender's intent and the consequences of their actions. The overarching goal is to preserve the discipline, effectiveness, and security of the Defence Force and its operations.

3.2 Sections 102 of the Defence Act

Section 102 of the Defence Act provides for confirmation of proceedings of court-martial. The Act states that:

⁶⁰ Act No. 12 of 2023

⁶¹ APP No. 200/2022

⁶² Ibid

⁶³ Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) on the Abolition of the Death Penalty

⁶⁴ Chapter 106 of the Laws of Zambia

102. (1) Where a court-martial finds the accused guilty on any charge, the record of the proceedings of the court-martial shall be transmitted to a confirming officer for confirmation of the finding and sentence of the court on that charge.

(2) A finding of guilty or sentence of a court-martial shall not be treated as a finding or sentence of the court until confirmed:

Provided that this subsection shall not affect the keeping of the accused in custody pending confirmation or the operation of sections one hundred and three and one hundred and four or the provisions of this Act as to confirmation or approval.

Essentially, section 102 of the relevant Act outlines the procedure for confirming the findings and sentences of a court-martial. According to subsection (1), when an accused person is found guilty by a court-martial, the complete record of the proceedings must be submitted to a confirming officer. This officer is responsible for reviewing and confirming both the verdict and the sentence handed down by the court-martial.

Subsection (2) clarifies that a guilty verdict or sentence does not attain legal effect until it has been confirmed by the confirming officer. In other words, the court-martial's decision is not deemed final or enforceable unless and until it is formally ratified. However, this requirement does not prevent the accused from being held in custody while awaiting confirmation. Additionally, the provision explicitly states that it does not interfere with the application of Sections 103 and 104, or any other provisions in the Act that relate to confirmation or approval procedures.

In essence, Section 102 ensures a system of checks and balances within military justice by requiring independent confirmation of court-martial decisions before they take effect, while still allowing for practical enforcement measures such as custodial detention during the confirmation process.

It must be noted however that there exist potential risks to due process in that the confirming officer is part of the chain of command and may also be part of the convening authority, thereby undermining the independence and fairness of the

proceedings. This raises the risk that decisions are influenced by military or political goals, rather than law and fairness.

In addition, in military courts, when a senior officer (not a trained judge) has the power to reverse or confirm judgments, it blurs the line between judicial and executive roles. Further, even if the confirming officer acts fairly, the perception of bias may persist — especially if they overrule acquittals or increase sentences.

It is noteworthy to mention that there exist some challenges in meeting fair trial standards under the proceedings under the court marshal. The first concern speaks to the lack of judicial independence. That is, military courts often consist of officers who are not legally trained and who remain part of the military hierarchy. This raises questions about their ability to impartially assess complex legal questions like intent, especially when the outcome may reflect on the chain of command.

The second relate to limited legal representation. In many military systems, including Zambia's, access to independent legal representation may be limited or inconsistent. The accused may not fully understand their right to challenge the mental elements of the offence (e.g., lack of knowledge, coercion, mistake of fact). Without adequate legal support, an accused person may fail to present crucial evidence that would negate intent.

It must be noted however that a person convicted by the Court Marshall may lodge an appeal to the Supreme Court. Section 136 of the Defence Act allows a convicted person, with leave of the Supreme Court to appeal to that Court against his conviction. The Supreme Court in **George Chanda v the People**⁶⁵ held that the approach that the Supreme Court adopts when dealing with appeals from courts martial is provided in section 138 of the Defence Act.

The said section 138 provides that;

138 (1) subject to the provisions of section one hundred and thirty-nine, on an appeal under this part against a conviction, the Supreme Court shall allow the appeal if it thinks that the finding of the court-martial is unreasonable or cannot be supported having regard to the evidence or involves a wrong

⁶⁵ Appeal No. 51/2022

decision on a question of law or that, on any ground, there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the Supreme court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

The above section 138 (1) outlines the circumstances under which the Supreme Court may allow or dismiss an appeal against a conviction arising from a court-martial. The section operates subject to the provisions of Section 139 and provides clear criteria for determining the outcome of such appeals.

According to this provision, the Supreme Court is obligated to allow an appeal if it concludes that the finding of the court-martial was unreasonable, not supported by the evidence, legally flawed, or resulted in a miscarriage of justice. These grounds ensure that the appellate court focuses on both the factual and legal soundness of the original decision. This reflects a commitment to fairness and justice, ensuring that individuals are not wrongfully convicted due to procedural errors, misapplication of the law, or misinterpretation of the evidence.

However, the section also includes a proviso that gives the Supreme Court some discretion in the interests of judicial efficiency and finality. Even where the Court finds merit in a point raised by the appellant suggesting that the appeal could technically succeed, it may still dismiss the appeal if it believes that no substantial miscarriage of justice has occurred. This means that the Court may look beyond minor errors or technicalities, focusing instead on whether the conviction overall was fair and just.

In essence, Section 138 (1) balances the rights of appellants with the need to preserve the integrity of the judicial process. It ensures that appeals are not allowed on trivial grounds while preserving the fundamental principle that justice must not only be done, but must be seen to be done.

3.3 Section 104 of the Defence Act

Section 104 of the Defence Act essentially provides for the revision of findings of court-martial. Section 104 (1) confers power on the confirming officer to direct a court-martial

to revise any findings of guilty where it appears that the finding was against the weight of evidence or that some question of law determined at the trial and relevant to the finding was wrongly determined.⁶⁶ This mechanism essentially provides sufficient protection against wrongful convictions.

In addition, subsection 2 of section 104 requires the confirming officer giving the direction to review the finding of the court martial to provide a statement of the reasons for the direction.⁶⁷ Section 104 (3) provides that

*(3) On any revision of a finding the court shall reconsider the finding, and (unless the court adheres thereto) may substitute therefor either a finding of not guilty or any other finding to which the court could originally have come at the trial in lieu of the finding under revision.*⁶⁸

This provision sets out the powers of a court when revising a finding from a previous trial. It establishes that, during such a revision, the court must reconsider the original finding in its entirety. This means the court is required to take a fresh look at the case, including the evidence and legal conclusions that led to the original verdict.⁶⁹

If, after this reconsideration, the court does not agree with the original finding, it is not limited to simply setting it aside. Instead, it has the authority to substitute a new finding. The new finding may be either one of not guilty, effectively acquitting the individual, or any alternative finding that the court could lawfully have made at the time of the original trial. This ensures that the revised outcome remains within the legal framework and possibilities that were available during the initial proceedings.⁷⁰

The provision reflects a commitment to ensuring justice by allowing errors in original findings to be corrected, while also maintaining the integrity of the judicial process. It gives the court the flexibility to reach a just conclusion without being bound to the earlier decision, provided the substituted finding would have been legally permissible during the original trial.⁷¹

⁶⁶ Chapter 106 of the Laws of Zambia

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Ibid

Further, section 104 (4) of the Defence Act provides that upon review, the court martial must not be allowed to receive further evidence. Section 104 (5) provides for the substitution of a different offence. The provision states that-

(5) Where on any such revision the court either adheres to the original finding or substitutes therefor a finding of guilty of another offence, or of the same offence in different circumstances the court may substitute a different sentence for the original sentence.⁷²

It must be noted there is a clear limitation on the powers of a court when revising or substituting a sentence. While the court may reconsider and alter the original sentence during a review or appeal, it is expressly prohibited from imposing a punishment that is more severe than the one originally given.

There are two key restrictions set out. First, the court cannot substitute a punishment that exceeds the maximum punishment imposed by the original sentence. This ensures that the individual is not subjected to a harsher legal penalty as a result of seeking a review or revision. Second, even if the substituted punishment falls within the same category of sentence, the court must not impose a sentence that, in its own opinion, is more severe in nature than the original one. This gives the court a degree of discretion in assessing the relative severity of punishments but ultimately prevents any escalation of punitive measures.

The rationale behind this restriction is to protect the rights of the appellant and to prevent any chilling effect that might discourage individuals from appealing out of fear of receiving a harsher outcome. It reinforces the principle of fairness in the justice system, ensuring that the process of appeal or revision does not result in unjustified increases in punishment.

In addition, section 104 (6) of the Defence Act prohibits the confirming officer from directing the revision of any substituted finding on a previous direction of the confirming officer, or the revision of the original finding if adhered to by the court on such a previous direction. However, the provisions of the Act shall apply to the proceedings of the court on any such revision as it applies to their deliberations on the

⁷² Ibid

original finding or sentence, and any substituted finding or sentence shall be treated for all purposes as an original finding or sentence of the court.

Lastly, the decision of the court on the revision shall not be required to be announced in open court.

3.4 Conclusion

In summary, this chapter evaluated the fairness and due process in the disciplinary procedures and penalties outlined in sections 29, 102, and 104 of the Defence Act. The chapter has established that section 29 of the Defence Act considers it a serious offence for any individual to abandon or surrender a post or military position that they are duty-bound to defend. This includes inducing others to do the same. Such actions are seen as direct threats to national security and the success of military operations. In addition, section 29 also imposes a punishment on any act that endangers or undermines the operations of the Defence Force, or allied forces working in cooperation with it. This reflects the importance placed on maintaining the effectiveness and safety of military campaigns. In addition, section 102 of the relevant Act outlines the procedure for confirming the findings and sentences of a court-martial. According to subsection (1), when an accused person is found guilty by a court-martial, the complete record of the proceedings must be submitted to a confirming officer. This officer is responsible for reviewing and confirming both the verdict and the sentence handed down by the court-martial. However, this chapter has established there exist potential risks to due process in that the confirming officer is part of the chain of command and may also be part of the convening authority, thereby undermining the independent and fairness of the proceedings. This raises the risk that decisions are influenced by military or political goals, rather than law and fairness. In addition, in military courts, when a senior officer (not a trained judge) has the power to reverse or confirm judgments, it blurs the line between judicial and executive roles. Further, even if the confirming officer acts fairly, the perception of bias may persist — especially if they overrule acquittals or increase sentences. Further, section 104 of the Act sets out the powers of a court when revising a finding from a previous trial. It establishes that, during such a revision, the court must reconsider the original finding in its entirety. This means the court is required to take a fresh look at the case, including the evidence and legal conclusions that led to the original verdict

CHAPTER FOUR

HUMAN RIGHTS IMPLICATIONS OF DISCIPLINARY PROCEDURES IN THE ZAMBIAN DEFENCE FORCE: A COMPARATIVE ANALYSIS WITH KENYAN DEFENCE ACT

4.0 Introduction

The previous chapter evaluated the fairness and due process in the disciplinary procedures and penalties outlined in sections 29, 102 and 104 of the Defence Act. The chapter established that section 29 of the Defence Act considers it a serious offence for any individual to abandon or surrender a post or military position that they are duty-bound to defend. This includes inducing others to do the same. Such actions are seen as direct threats to national security and the success of military operations. In addition, section 29 also imposes a punishment on any act that endangers or undermines the operations of the Defence Force, or allied forces working in cooperation with it. This reflects the importance placed on maintaining the effectiveness and safety of military campaigns. In addition, section 102 of the relevant Act outlines the procedure for confirming the findings and sentences of a court-martial. According to subsection (1), when an accused person is found guilty by a court-martial, the complete record of the proceedings must be submitted to a confirming officer. This officer is responsible for reviewing and confirming both the verdict and the sentence handed down by the court-martial. Further, section 104 of the Act sets out the powers of a court when revising a finding from a previous trial. It establishes that, during such a revision, the court must reconsider the original finding in its entirety. This means the court is required to take a fresh look at the case, including the evidence and legal conclusions that led to the original verdict.

This chapter therefore undertakes a comparative analysis of the disciplinary frameworks of the Zambian and Kenyan defence force, focusing on human rights.

4.1 Disciplinary Procedures in The Kenyan Defence Act 2012

4.1.1 Aiding an Enemy

Section 58 of the Defence Force Act⁷³ criminalises the aiding of an enemy. The provision states that-

58.(1) A person who is subject to this Act commits an offence if that person, with intention to assist an enemy or otherwise—

(a) abandons or delivers up any place or post which it is the person's duty to defend, or abandons the person's place of duty;

(b) induces any person to abandon or deliver up any place or post which it is that person's duty to defend, or induces any person to abandon that person's place of duty;

(c) does any act calculated to imperil the success of operations of the Defence Forces, or of any co-operating forces, or any part of the Defence Forces or of co-operating forces;

(d) having been captured by the enemy, serves with or aids the enemy in the prosecution of hostilities, or in the taking of measures calculated to influence morale;

(e) furnishes the enemy with arms or ammunition, or with supplies of any description, or with any other thing, whether similar to the foregoing or not;

(f) harbours or protects an enemy who is not a prisoner of war;

(g) fails to make known to the proper authorities any information received from an enemy;

(h) gives any false air signal, or alters or interferes with any air signal or any apparatus for giving an air signal; or

⁷³ Kenyan Defence Forces Act 2012

(i) when ordered by the person's superior officer, or otherwise under orders, to carry out any warlike operations in the air, fails to use the person's utmost exertions to carry such orders into effect.

Clearly, section 58(1) of this Act outlines various serious offences committed by individuals subject to the Act, particularly in the context of aiding the enemy or undermining military operations. These offences are rooted in actions that demonstrate disloyalty, negligence, or intentional sabotage in situations of conflict or war.⁷⁴

The section begins by criminalizing the act of abandoning or surrendering any post or place that a person is duty-bound to defend, or deserting their place of duty. It extends further to penalize those who influence or persuade others to commit such acts of abandonment, recognizing the danger posed by internal collapse of military discipline.

Additionally, any act that jeopardizes the success of military operations—whether those of the national Defence Forces or allied forces—is also an offence. This reflects the serious consequences of undermining operational integrity during wartime.⁷⁵

The provision addresses treachery in captivity by making it an offence for any captured individual to assist the enemy, whether by participating in hostilities or by engaging in psychological operations meant to harm the morale of friendly forces. It further includes supplying the enemy with arms, ammunition, or any other resources, as well as harboring or protecting enemy individuals who are not lawful prisoners of war.⁷⁶

Failing to report information received from the enemy to the proper authorities is also an offence under this section, as is interfering with or falsifying air signals or related apparatus, which are critical for communication and coordination during military operations. Lastly, the section targets wilful disobedience or negligence by criminalizing the failure to execute warlike operations with full effort when ordered to do so.⁷⁷

⁷⁴ Ibid

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ Ibid

Overall, this section is designed to maintain discipline, ensure loyalty, and protect the operational effectiveness of the Defence Forces by criminalizing a wide range of behaviours that could aid the enemy or compromise military efforts.

It must be noted that section 58 (3) of the Kenyan Defence Forces Act provides for the penalty for a person who aids an enemy. That is subsection 3 of Section 58 outlines the penalties applicable to individuals convicted by a court martial for offences committed under this section. The severity of the punishment depends primarily on the intent behind the offence, particularly whether the act was committed with the intention of assisting the enemy.⁷⁸

Where the offence is proven to have been carried out with the intent to aid the enemy, the convicted person may face the most severe penalties under the Act, including the death penalty or any other punishment prescribed. This reflects the gravity with which acts of betrayal or treason are regarded, especially in the context of national security and military operations.⁷⁹

In cases where the offence was not committed with intent to assist the enemy, the punishment is still severe but less extreme. The person is liable to life imprisonment or any lesser penalty provided by the Act. This distinction recognizes that while the actions may be dangerous or negligent, the absence of intent to aid the enemy warrants a different degree of culpability.⁸⁰

It is clear that the above provision providing for the death penalty has the potential to raise human rights implications. The death penalty is one of the most controversial human rights issues in the world. Its use raises complex moral, legal, and social questions about justice, deterrence, and the sanctity of human life. It is argued that the death penalty whether imposed in a military setting or traditional court infringes on a number of human rights including the right to life.

Article 3 of the Universal Declaration of Human Rights (UDHR)⁸¹ and Article 6 of the International Covenant on Civil and Political Rights (ICCPR) recognize the right to life

⁷⁸ Section 58 (3) Kenyan Defence Forces Act 2012

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Article 3 of the Universal Declaration of Human Rights (UDHR)

as a fundamental human right.⁸² The death penalty directly violates this right by allowing the state to intentionally end a person's life.

The other human rights implication speaks to the rest of wrongful execution, because the death penalty is irreversible, the risk of executing an innocent person is a serious

It must be noted that although the death penalty is still applicable in Kenya, the Courts in Kenya have held that the death penalty is unconstitutional as it violates the right to life. In the case of **Francis Karioko Muruatetu & Anr v Republic of Kenya**⁸³ the petitioners and others were arraigned before the High Court (Mboghohi Msagha J.) for the offence of murder. Upon their conviction, they were sentenced to death as decreed by Section 204 of the Penal Code. Their appeal to the Court of Appeal against both that conviction and sentence was dismissed. Aggrieved by that decision, they filed two separate appeals in the Supreme Court.

The petitioners argued that the mandatory death sentence imposed upon them and the commutation of that sentence by an administrative fiat to life imprisonment are both unconstitutional and therefore null and void. The Court held that the mandatory nature of the death sentence as provided for under Section 204 of the Penal Code is unconstitutional.

It is clear that the decision of the Supreme Court of Kenya (Court) in **Francis Karioko Muruatetu and Another v Republic (Muruatetu)**, finding the mandatory nature of the death penalty unconstitutional, represents not only a victory for human rights in Africa but also the transformative capacity of contemporary constitutions in Africa and the growing assertiveness of African judiciaries. In the judgment, the Court held that the mandatory death penalty is “out of sync with the progressive Bill of Rights” in Kenya's 2010 Constitution and an affront to the rule of law. The Court also relied on global death penalty jurisprudence to find the mandatory death sentence “harsh, unjust and unfair. Consequently, the Court mandated that all trial courts conduct a pre-sentencing hearing to determine whether the death penalty is deserved. The Court's judgment

⁸² International Covenant on Civil and Political Rights (ICCPR)

⁸³ Francis Karioko Muruatetu & Anr v Republic Of Kenya [2017] eKLR,

could spell the end of the mandatory death penalty in Kenya after almost 120 years on the statute books.⁸⁴

The above case is relevant to this research in that it illustrates that although the penalty for aiding an enemy is death as provided for under Section 58 of the Defence Force Act, such penalty has been frowned upon and efforts to eradicate the same have commenced.

Unlike Kenya, Zambian Parliament abolished the death penalty by amending the Penal Code⁸⁵ as well as amending the Defence Act pursuant to the Defence (Amendment) Act.⁸⁶ This Act essentially abolished the death penalty for court marshal.

In the case of **Chrissy Lubasi v The People**,⁸⁷ the Court of Appeal pronounced itself on the legality and abolishment of the death penalty. The Court stated that:

We are satisfied that one thing that is prominent and not in dispute is that the Penal Code (Amendment) Act No. 23 of 2022 became Law on 23rd December 2022. With that amendment, the death penalty was abolished.⁸⁸

Further, it is also important to note that Zambia acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) on the Abolition of the Death Penalty.

4.1.2 The Kenya Defence Forces (Court Martial) (Procedure) Rules, 2024

It must be noted that unlike Zambia, Kenya has enacted a comprehensive regulatory framework on the procedures under the Court of Marshal in the Defence Force. The Kenya Defence Forces (Court Martial) (Procedure) Rules, 2024⁸⁹ are intended to provide a uniform, clear and consistent procedural framework for how courts martial are convened, constituted and conducted across the Kenya Defence Forces.

⁸⁴ Pathways to Justice: Implementing a Fair and Effective Remedy following Abolition of the Mandatory Death Penalty in Kenya: An expert report submitted by The Death Penalty Project upon invitation by the Government Sentencing Task Force 2019

⁸⁵ Chapter 87 of the Laws of Zambia

⁸⁶ Act No. 12 of 2023

⁸⁷ APP No. 200/2022

⁸⁸ Ibid

⁸⁹ Kenya Defence Forces (Court Martial) (Procedure) Rules, 2024

These rules aim to safeguard the rights of persons subject to military law by embedding procedural protections: for example, the right to be informed of charges, to prepare a defence, to representation and to object to members of the court.

With respect to the disciplinary procedures, an accused appears before the court marshal is expected to take plea. Section 25 of the Kenya Defence Forces (Court Martial) (Procedure) Rules provides for the procedure on plea of guilty. If the accused pleads guilty and there are no other charges or co-accused persons with pending not-guilty pleas on the same charge sheet, the court proceeds directly to trial under Rule 26.

As regards the plea of not guilty, section 28 outlines the procedure when an accused pleads not guilty in a court martial. After the plea, the court must ask if the accused wishes to request an adjournment on the grounds of procedural irregularities or lack of adequate time to prepare a defence. If an adjournment is requested, both the accused and the prosecutor may present evidence and make arguments. The court may then grant the adjournment if it serves the interests of justice. This rule ensures fairness and adequate preparation in the trial process.⁹⁰

Part XIII of the Kenyan Rules provide for deliberation on sentence. The provision states that-

The Court shall deliberate on the sentence *in camera* and no person, other than the Members of the Court Martial and an Officer Under Instruction, shall be present during the deliberations.

In addition, the Court Marshall may impose a sentence on the accused. Rule 52 of the Kenya Defence Forces (Court Martial) (Procedure) Rules, 2024 outlines the formal procedure that a Court Martial must follow when imposing a sentence after an accused person has been found guilty. This rule ensures that sentencing is conducted in a structured, fair, and transparent manner, while also allowing for the possibility of clemency under the constitutional framework.⁹¹

⁹⁰ Section 28 of the Kenya Defence Forces (Court Martial) (Procedure) Rules, 2024

⁹¹ Section 52 of the Kenya Defence Forces (Court Martial) (Procedure) Rules, 2024

Under sub-rule (1), the Court Martial is required to impose a sentence for each offence for which a guilty finding has been recorded. This means that the court cannot issue a general sentence covering all offences but must consider and pronounce a separate sentence for each specific count. This promotes clarity in sentencing and ensures accountability for every charge.⁹²

Sub-rule (2) provides that the sentence must be formally recorded in Form V, as specified in the Schedule to the Rules. This standard form ensures consistency in the documentation of sentencing decisions and supports procedural uniformity across all courts martial.⁹³

The process of determining the appropriate sentence involves careful deliberation. According to sub-rule (3), both the Judge Advocate and the Members of the Court Martial must give their individual opinions on the sentence. These opinions are not to be delivered in open court, but rather in camera, ensuring privacy and confidentiality during the sentencing discussion. Only the Judge Advocate and the Members of the Court Martial may be present during this session.

The opinions must be given orally, in a set order: beginning with the junior-most member of the court and proceeding by rank to the senior-most member, with the Judge Advocate expressing their view last. This hierarchical order helps prevent junior members from being influenced by senior ones and ensures independent contribution to the sentencing process.

Sub-rule (4) provides the Court with discretion to recommend mercy to the President. If the Court believes there are circumstances justifying clemency, it may make such a recommendation. However, this must be accompanied by reasons, which are to be formally recorded in the court proceedings. This requirement promotes transparency and ensures that such recommendations are not arbitrary but are based on sound reasoning.

Finally, sub-rule (5) outlines the procedure for forwarding mercy recommendations. The Convening Officer is tasked with transmitting any such recommendation to the Advisory Committee on the Power of Mercy, as established under Article 133(2) of

⁹² Ibid

⁹³ Ibid

the Constitution of Kenya. This Committee advises the President on the exercise of the constitutional power to grant pardons, reprieves, or reduce sentences. Thus, the rule links the military justice process with the broader constitutional framework for mercy and clemency.

Section 54 provides for the announcement of sentence. Thus, each sentence imposed by the Court and each recommendation of mercy shall be announced in open court by the Judge Advocate and immediately thereafter, the Judge Advocate shall announce in open court the conclusion of the trial. After the announcement of the conclusion of the trial, the Judge Advocate shall date and sign the record of the proceedings. The Judge Advocate shall, in accordance with the Convening Order, forward to the Convening Officer the dated and signed record of the proceedings.

4.1.3 Appeal to the High Court

Unlike Kenya, an appeal of the Court Marshal lies with the Court of Appeal. It must be noted that a person convicted by the Court Marshal may lodge an appeal to the Supreme Court. Section 136 of the Defence Act allows a convicted person, with leave of the Supreme Court to appeal to that Court against his conviction. The Supreme Court in **George Chanda v the People**⁹⁴ held that the approach that the Supreme Court adopts when dealing with appeals from courts martial is provided in section 138 of the Defence Act.

In Kenya, however, the Kenyan Rules provide that an appeal of the decision of the Court Marshal lies with the High Court thereafter subsequent appeal lies with the Supreme Court. Section 186⁹⁵ provides that grants a person convicted by a court martial the right to appeal their conviction, sentence, or both. This appeal may be made first to the High Court and the individual can pursue further appeals to higher courts, such as the Court of Appeal or the Supreme Court, in accordance with the law. This right protects the interests of justice by allowing errors in law, fact, or procedure to be reviewed and corrected by civilian courts, ensuring that military trials conform to the broader legal standards of the country.

⁹⁴ Appeal No. 51/2022

⁹⁵ Section 166 of the Kenya Defence Forces (Court Martial) (Procedure) Rules, 2024

Additionally, under Section 186(1)(b), the Director of Public Prosecutions (DPP) has the authority to appeal to the High Court against the sentence if they believe it is too lenient or inappropriate under the circumstances. This balances the rights of the accused with the interests of the state and military discipline.⁹⁶

Section 186(2) further empowers the DPP to appeal against an acquittal by a court martial. If a person is found not guilty of a charge, the DPP may challenge that decision in the High Court. This provision ensures that errors in favour of the accused—such as misapplication of the law or disregard for critical evidence—can also be corrected on appeal.

It is clear that the above section enhances human rights protection within military procedures in Kenya. The legal framework provides important safeguards to ensure that military justice operates in accordance with the principles of fairness, accountability, and the rule of law. By permitting civilian judicial oversight—where errors in law, fact, or procedure may be reviewed and corrected by civilian courts—the Kenyan system promotes transparency and ensures that military trials adhere to the broader national and constitutional legal standards. This mechanism acts as a critical check against potential excesses within the military justice system, reinforcing the idea that even members of the armed forces are entitled to equal protection under the law and to a fair trial, as guaranteed under both domestic and international human rights instruments.

In contrast, the Zambian legal framework lacks comparable protective mechanisms for disciplinary procedures within the military. The absence of such civilian oversight or appellate review creates a legal vacuum in which disciplinary decisions made by military authorities are often final and unchallengeable. This situation renders the system susceptible to abuse, as military personnel may face arbitrary or disproportionate punishment without adequate recourse to impartial adjudication. Moreover, the concentration of disciplinary power within the military hierarchy can compromise the independence and impartiality of proceedings, particularly in cases involving allegations of misconduct or dissent within the ranks.

⁹⁶ Section 189 of the Kenya Defence Forces (Court Martial) (Procedure) Rules, 2024

The lack of external review also undermines accountability and transparency, both of which are fundamental principles of human rights protection. Without civilian judicial supervision, there is a heightened risk that disciplinary processes may violate basic procedural rights, such as the right to be heard, the presumption of innocence, and access to legal representation. These shortcomings contravene key international human rights obligations to which Zambia is a party, including the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights⁹⁷ (ICCPR), both of which emphasize the necessity of fair trial guarantees and judicial oversight of all forms of legal proceedings.⁹⁸

Therefore, to strengthen the protection of human rights within Zambia's military justice system, it is imperative to introduce legal reforms that incorporate independent review mechanisms similar to those found in Kenya. Such reforms would help ensure that disciplinary procedures are not only efficient but also consistent with constitutional and international standards of justice, thereby fostering greater trust in the military justice system and upholding the rule of law.

Section 189 sets out the powers of the High Court when handling appeals. It enables the court to review the validity of a conviction and, where appropriate, substitute the conviction or sentence. Under subsection 189(1), if the High Court finds that a person was wrongly convicted of one charge but properly convicted of another, and the original sentence was not legally appropriate for the latter offence, the High Court has the authority to impose a new, lawful sentence. This provision ensures that an incorrect conviction does not entirely invalidate the court martial's findings where other valid grounds for conviction exist.

Subsection 189(2) deals with situations where the court martial could have lawfully convicted the person of a lesser or alternative offence, based on the facts presented. If the High Court is satisfied that the evidence proved the lesser offence, it may substitute the conviction accordingly rather than simply allowing or dismissing the appeal. This allows the High Court to tailor its decision to the

⁹⁷ International Covenant on Civil and Political Rights

⁹⁸ African Charter on Human and Peoples' Rights

factual and legal realities of the case without wholly overturning the court martial findings.

It is clear that Sections 186 and 189 form a comprehensive appellate framework within the military justice system in Kenya. They safeguard the rights of convicted persons while maintaining the integrity and discipline of the armed forces. By providing for both upward appeals and judicial review of sentencing, these provisions ensure that military trials are not isolated from the civilian judicial system and that justice is served with due process and legal accountability.

4.2 Conclusion

In summary, this chapter undertook a comparative analysis of the disciplinary frameworks of the Zambian and Kenyan defence force. The essay has established that unlike Zambia, Kenya has a comprehensive legal framework regulating disciplinary procedures under the Court Marshal. The chapter established that Kenya's legal framework strengthens human rights protection in military justice by allowing civilian oversight and judicial review of military decisions, thereby ensuring fairness, accountability, and adherence to the rule of law. In contrast, Zambia's lack of similar safeguards leaves its military disciplinary system vulnerable to abuse and arbitrary decisions, undermining the principles of justice and fair trial guaranteed under national and international human rights standards.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

This research analysed the human rights implications of disciplinary procedures in the Zambian defence force. The research undertook a comparative study with Kenya. The research further analysed whether the disciplinary procedures under Sections 29, 102, and 104 of the Defence Act is consistent with fair trial standards. In addition, the research also drew lessons Kenya regarding human rights in military discipline.

5.1 Summary of the Research Findings

The findings arising from the research are detailed as follows:

1. In chapter one, the research introduced the research by providing for a background to the research, the statement of the problem, the objectives of the research, as well as the review of literature related to this research.
2. In chapter two, this research analysed the human rights implications arising from the discretionary powers granted under Section 3 of the Defence Act and evaluates whether the current legal framework provides adequate safeguards against the over-extension of active service periods and examines how such practices align with Zambia's human rights commitments, particularly in relation to the rights of military personnel. This essentially helped understand the gaps in the law with the view of drawing lessons.
3. The research in chapter found that section 3(2) of the Defence Act clearly empowers the President to declare military units as being on active service for periods of up to three months, with the option to renew such declarations indefinitely in similar increments. Notably, the provision lacks any transparent procedures for reviewing these declarations or mechanisms for challenging them, raising concerns about accountability and oversight. It is important to note that there exist no administrative or parliamentary procedures the indirectly offer checks and balances on the President with respect to declaring military units on active service.

4. The most significant implications are the potential for prolonged deployments without adequate checks and balances. Without stringent procedural safeguards or parliamentary review, these extensions can accumulate, resulting in extended periods of active service for soldiers.
5. As regards human rights implications, the research in chapter two found that prolonged active service declaration invariably affects the right to health. That is, prolonged military deployment is physically and psychologically demanding. Soldiers deployed for long periods may face fatigue, burnout, and long-term psychological trauma, such as post-traumatic stress disorder (PTSD). Continuous exposure to high-risk or high-stress environments without sufficient rest and recovery violates the right to health, enshrined under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Zambia is a party.⁹⁹
6. Further, chapter two established that the right to family life, protected under Article 23 of the International Covenant on Economic, Social and Cultural Rights¹⁰⁰ is severely affected by long-term active service deployment or repeated deployments. Soldiers are often separated from their families for extended periods, which can result in emotional strain, marital breakdowns, and negative effects on children's development. The inability to participate in family life not only affects the soldier but also places undue psychological and financial stress on spouses and dependents.
7. The chapter further established that deployment is the disruption of the family unit. Military personnel are frequently separated from their spouses, children, and extended families for months at a time, sometimes for years if deployments are repeatedly extended. This separation can weaken family cohesion,

⁹⁹ Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),

¹⁰⁰ Article 23 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),

particularly where communication is limited or erratic due to the nature of the assignment.¹⁰¹

8. In chapter three, this research evaluated the fairness and due process in the disciplinary procedures and penalties outlined in sections 29, 102, and 104 of the Defence Act. The chapter established that section 29 of the Defence Force Act considers it a serious offence for any individual to abandon or surrender a post or military position that they are duty-bound to defend. This includes inducing others to do the same. Such actions are seen as direct threats to national security and the success of military operations. In addition, section 29 also imposes a punishment on any act that endangers or undermines the operations of the Defence Force, or allied forces working in cooperation with it. This reflects the importance placed on maintaining the effectiveness and safety of military campaigns.
9. In addition, the research in chapter three established that section 102 of the relevant Act outlines the procedure for confirming the findings and sentences of a court-martial. According to subsection (1), when an accused person is found guilty by a court-martial, the complete record of the proceedings must be submitted to a confirming officer. This officer is responsible for reviewing and confirming both the verdict and the sentence handed down by the court-martial.
10. However, the chapter established there exist potential risks to due process in that the confirming officer is part of the chain of command and may also be part of the convening authority, thereby undermining the independence and fairness of the proceedings. This raises the risk that decisions are influenced by military or political goals, rather than law and fairness.
11. Further, the research in chapter three found that section 104 of the Act sets out the powers of a court when revising a finding from a previous trial. It establishes that, during such a revision, the court must reconsider the original finding in its

¹⁰¹ Iversen AC, van Staden L, Hughes JH et al. The stigma of mental health problems and other barriers to care in the UK Armed Forces. BMC Health Serv Res 2011;11:31.

entirety. This means the court is required to take a fresh look at the case, including the evidence and legal conclusions that led to the original verdict.

12. In chapter four, the research undertook a comparative analysis of the disciplinary frameworks of the Zambian and Kenyan defence force, focusing on human rights. The chapter firstly found that Zambia and Kenya have a similar provision regarding the offence of aiding the enemy as both legal frameworks impose the death penalty as the penalty for aiding an enemy.
13. To this end, chapter four established that death penalty has the potential to raise human rights implications. The death penalty is one of the most controversial human rights issues in the world. Its use raises complex moral, legal, and social questions about justice, deterrence, and the sanctity of human life. It is argued that the death penalty whether imposed in a military setting or traditional court infringes on a number of human rights including the right to life.
14. The chapter also established that Article 3 of the Universal Declaration of Human Rights (UDHR)¹⁰² and Article 6 of the International Covenant on Civil and Political Rights (ICCPR) recognize the right to life as a fundamental human right.¹⁰³ The death penalty directly violates this right by allowing the state to intentionally end a person's life.
15. The chapter also found that although the death penalty is still applicable in Kenya, the Courts in Kenya have held that the death penalty is unconstitutional as it violates the right to life. Unlike Kenya, the Zambian Parliament abolished the death penalty by amending the Penal Code¹⁰⁴ as well as amending the Defence Force Act pursuant to the Defence (Amendment) Act.¹⁰⁵ This Act essentially abolished the death penalty for court marshal.

¹⁰² Article 3 of the Universal Declaration of Human Rights (UDHR)

¹⁰³ International Covenant on Civil and Political Rights (ICCPR)

¹⁰⁴ Chapter 87 of the Laws of Zambia

¹⁰⁵ Act No. 12 of 2023

16. As regards proceedings, the chapter found that unlike Kenya, an appeal in Zambia of the Court Marshal lies with the Supreme Court. It must be noted that a person convicted by the Court Marshall may lodge an appeal to the Supreme Court. Section 136 of the Defence Act allows a convicted person, with leave of the Supreme Court to appeal to that Court against his conviction.
17. In Kenya, however, the Kenyan Rules provide that an appeal of the decision of the Court Marshal lies with the High Court thereafter subsequent appeal lies with the Supreme Court. section 186¹⁰⁶ provides that grants a person convicted by a court martial the right to appeal their conviction, sentence, or both. This appeal may be made first to the High Court, and the individual can pursue further appeals to higher courts, such as the Court of Appeal or the Supreme Court, in accordance with the law. This right protects the interests of justice by allowing errors in law, fact, or procedure to be reviewed and corrected by civilian courts, ensuring that military trials conform to the broader legal standards of the country.
18. The research established that Kenya's military disciplinary framework enhances human rights protection by embedding principles of fairness, accountability, and the rule of law within its procedures. Through civilian judicial oversight, errors in law, fact, or procedure can be reviewed and corrected by civilian courts, ensuring that military trials comply with national and constitutional legal standards. This oversight serves as a safeguard against potential abuses of power, affirming that members of the armed forces are entitled to equal protection and fair trial rights under both domestic and international human rights laws.
19. In contrast, Zambia's military justice system lacks equivalent mechanisms to protect human rights within its disciplinary procedures. The absence of civilian oversight or appellate review allows disciplinary decisions made by military authorities to stand unchallenged, creating opportunities for arbitrary or disproportionate punishment. This concentration of authority within the military

¹⁰⁶ Section 166 of the Kenya Defence Forces (Court Martial) (Procedure) Rules, 2024

hierarchy undermines the independence and impartiality of proceedings, especially in cases involving internal dissent or misconduct. Consequently, the system is vulnerable to abuse and fails to provide sufficient protection for service members' rights.

20. Furthermore, the lack of external review in Zambia weakens accountability and transparency—core principles of human rights protection. Without civilian judicial supervision, procedural safeguards such as the right to be heard, the presumption of innocence, and access to legal representation are at risk of being violated. These deficiencies contravene Zambia's obligations under international human rights instruments like the African Charter on Human and Peoples' Rights and the ICCPR. Therefore, introducing independent review mechanisms similar to Kenya's would enhance fairness, align Zambia's military justice system with international standards, and strengthen the overall protection of human rights and the rule of law.

5.3 Recommendations

Based on the findings of the study, the following recommendations were made:

1. Amend section 3 of the Defence Act to establish parliamentary oversight

The most significant implications are the potential for prolonged deployments without adequate checks and balances. Without stringent procedural safeguards or parliamentary review, these extensions can accumulate, resulting in extended periods of active service for soldiers. Thus, there is need to amend section 3 (1) of the Zambia Defence Act in order to provide checks and balances in order to regulate the President's power to declare military personnel on active service. In Spain for example, the Spanish constitution stipulates that "It is incumbent on the King, after authorization by the Parliament, to declare war and make peace" (article 63, para. 3).¹⁰⁷

¹⁰⁷ Article 63, paragraph 3 of the Spanish Constitution

2. Amend section 102 to require confirmation of sentences by civilian courts

Section 102 seeks to ensure a system of checks and balances within military justice by requiring independent confirmation of court-martial decisions before they take effect. However, there exist potential risks to due process in that the confirming officer is part of the chain of command and may also be part of the convening authority, thereby undermining the independence and fairness of the proceedings. This raises the risk that decisions are influenced by military or political goals, rather than law and fairness.

There is therefore need for to amend section 102 to require confirmation of sentences by civilian courts in order to promote and protect the right to fair trial and judicial independence.

3. Enact a Comprehensive Law to Regulate Court Martial Proceedings

It is essential for Zambia to enact a new, comprehensive law that clearly outlines the procedures governing court martial proceedings. Such legislation would provide a structured and transparent legal framework to ensure that military justice is administered fairly, consistently, and in accordance with constitutional and international human rights standards. Currently, the absence of a detailed and independent framework leaves room for procedural inconsistencies, potential bias, and violations of fundamental rights within the military justice system.

An independent legal framework is crucial because it upholds the principles of **fair trial, impartiality, and accountability**. Military courts, by their nature, operate within a command structure that can easily influence judicial decisions, especially in cases involving superior officers or politically sensitive matters. Establishing clear procedural safeguards through an autonomous legal framework would help insulate court martial proceedings from undue command influence, thereby enhancing their legitimacy and credibility.

BIBLIOGRAPHY

CASE LAW

Chrissy Lubasi v The People APP No. 200/2022

Francis Karioko Muruatetu & Anr v Republic of Kenya [2017] eKLR,

Ernerst Katongo, Masiye Simwanza, Felix Kabwer and Mike Maoneka v The Attorney General Appeal No. 129/2013

George Chanda v the The People **APPEAL NO. 51/2022**

M v People (S.C.Z. Judgment 1 of 1979) [1979] ZMSC 1

Major Issac v The People S.C.Z. Judgment No. 24 of 2009

Muwana vs Attorney General [2002] ZMSC 162

Ndili vs Attorney General [2004] ZMSC 9

Stephen Ouma Odede v Republic [2019] KEHC 11654 (KLR)

BOOKS

Bush, K. (2003). „Hands-on Peace and Conflict Impact Assessment (PCIA)“, Walking the Path of Peace: Practicing the Culture of Peace and Peace and Conflict Impact Assessment, Program P- CLGS (ed.), Manila, Philippines: Philippines-Canada Local Government Support Program: 71–109.

Creswell JW. *‘Research Design Qualitative, and Mixed Methods Approaches’*, (SAGE Publisher, 2nd ed, 2009)

Nzala, P. E. (2010). The role of the military justice system in preservation of the institution. Lusaka: University of Zambia.

Pathways to Justice: Implementing a Fair and Effective Remedy following Abolition of the Mandatory Death Penalty in Kenya: An expert report submitted by The Death Penalty Project upon invitation by the Government Sentencing Task Force 2019

ARTICLES

Fahey, J. „Peace Studies: Beginning and Development“, Nigel J. Young (editor in chief), *The Oxford International Encyclopedia of Peace*, Vol. 3, Oxford University Press, pp. 491-578. 2010

Geneva Centre for Security Sector Governance 'National Institute of Military Justice and DCAF' MacCarrick's G 'The Right to a Fair Trial in International Criminal Law (Rules of Procedure and Evidence in Transition From Nuremberg to East Timor)'

Jones N, Greenberg N, Fear NT et al. The operational mental health consequences of deployment to Iraq for UK Forces. *J R Army Med Corps* 2008;154:102–106.

Iversen AC, van Staden L, Hughes JH et al. The stigma of mental health problems and other barriers to care in the UK Armed Forces. *BMC Health Serv Res* 2011;11:31.

Kobusingye O (2010), *The Correct Line? Uganda under Museveni*, ArthourHouse, Central Milton Keynes.

Military Readiness: Comprehensive Approach Needed to Address Service Members Fatigue and Manage Related Efforts.

Philip K,R and S.B Guze 'Strategies to Protect the Health of Deployed U.S. Forces'

Lindy H, Michelle N, and Juan J, *Military Discipline: Where are we going wrong* available at https://upjournals.up.ac.za/index.php/strategic_review/index accessed on 02 November 2024.

Pruitt, L. D., Smolenski, D. J., Bush, N. E., Tucker, J., Issa, F., Hoyt, T. V., & Reger, M. A. (2019). Suicide in the military: Understanding rates and risk factors across the United States' Armed Forces. *Military Medicine*, 184(1), 432–437

Rona R, Fear N, Hull L, et al. Mental health consequences of overstretch in the UK armed forces: first phase of a cohort study. *BMJ* 2007; 335:603e1

Ronald Naluwairo, Military courts and human rights: A critical analysis of the compliance of Uganda's military justice with the right to an independent and impartial tribunal. *African Human Rights Journal*, 448-469, 2019.

Raymond J.T and Shazia N. "International Human Rights Law and Military Personnel: A Look Behind the Barrack Walls." *American University International Law Review* 14, no. 2 (1998): 519-543.

Ronald Naluwairo, Military courts and human rights: A critical analysis of the compliance of Uganda's military justice with the right to an independent and impartial tribunal. *African Human Rights Journal*, 448-469, 2019.

Vashakmadze, *Understanding Military Justice*. Geneva: Geneva Centre for the Democratic Control of Armed Forces (DCAF). 2010.

World Health Organisation. *The ICD-10 Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines*. Geneva, Switzerland: WHO, 2012.



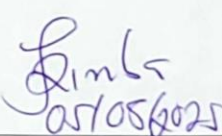
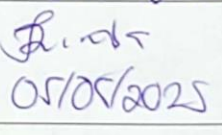
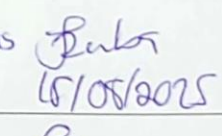
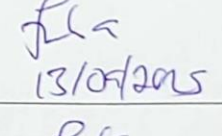
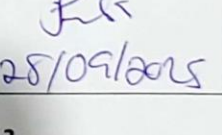
UNIVERSITY
of LUSAKA
Pursuing for Quality Education: Our Defining Force

SCHOOL OF LAW

L400B / Dissertation II – DIRECTED RESEARCH (OBLIGATORY ESSAY)

RESEARCH CLEARANCE FORM

NAME: CHANDA MUTALE STUDENT NUMBER: LLB211482923
SUPERVISOR: MRS KETIKIE MUTALE TOPIC: AN ANALYSIS OF HUMAN RIGHTS IMPLICATIONS IN THE ZAMBIAN DEFENCE FORCE: LESSONS FROM KED-14

Stage	Supervisor's Comments	Supervisor's Signature & Date	Student's Signature & Date
Research Proposal	The scope is too broad, provide a specific focus of this research	 05/08/2025	05 August -25 
Chapter 1 – Introduction	The scope is too broad, provide a specific focus of this research.	 05/08/2025	05 August -25 
Chapter 2 –	Indicate the key human rights instruments or constitutional provisions that will be analyzed throughout the chapter.	 18/08/2025	18 August -25 
Chapter 3 –	Indicate the concept of fairness and due process in disciplinary procedures	 13/09/2025	13 October -25 
Chapter 4 –	Provide adequate analysis of section 58 of the Defence Act	 28/09/2025	28 - October -25 

Chapter 5 – Conclusions & Recommendations	proceed to send first draft of the dissertation	<i>[Signature]</i> 13/11/2025	13 November-25
Abstract, Table of Contents, Bibliography and Appendices	Ensure the table of Content is automated	<i>[Signature]</i> 15/11/2025	19 November-25
First Draft	Heavily proofread your work and edit once changes are done proceed to send second draft	<i>[Signature]</i> 15/11/2025	19 - November -25
Second Draft	Ensure you are within the page limit	<i>[Signature]</i> 15/11/2025	19 - November -25
Final Draft	Approved	<i>[Signature]</i> 20/11/2025	20 - November -25

***NOTE:** Please attach this form to the back of your dissertation at the end of the research, before submission of the dissertation via the Moodle e-learning platform.

10:16

5G 53%



Profile | Plagiarismchec...

plagiarismcheck.org



CHECK.ORG



C

S



20.63%

Similarity total



28.35%

AI total

[View Report](#)

#30122717 - University of Lusaka - 20 Nov

SCHOOL OF LAW

AN ANALYSIS OF HUMAN RIGHTS IMPLICATIONS OF DI
LESSONS FROM KENYA

By:

CHANDA MUTALE

LLB211482923

AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSI
FOR THE AWARD OF THE BACHELOR OF LAWS (LLB) D
2025

DECLARATION

I, CHANDA MUTALE, do hereby declare that this disser
DISCIPLINARY PROCEDURES IN THE ZAMBIAN DEFENC
the School of Law at the University of Lusaka as part o
degree, is solely of my own and that it has, to the best