

CHAPTER 71
STATE PROCEEDINGS ACT

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AN ACT

to provide for civil proceedings by and against the State and the civil liabilities and rights of the State and its servants; and for purposes connected with the aforesaid matters.

[4th June, 1965]

Act 27 of 1965,

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Act 38 of 1970,
(/)
Act 22 of 1974.

PART I
PRELIMINARY

1. Short title

This Act may be cited as the State Proceedings Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**agent**”, when used in relation to the State, includes an independent contractor employed by the State;

“**civil proceedings**” includes proceedings in the High Court or a subordinate court for the recovery of fines or penalties;

“**Defence Force**” means the Defence Force of Zambia maintained in accordance with the provisions of section 4 of the Defence Act;

“**prescribed**” means prescribed by any written law;

“**proceedings against the State**” includes a claim by way of set-off or counter-claim raised in proceedings by the State;

“**public officer**” means a person holding or acting in or performing the functions of an office in the civil service of the Government and includes the President, the Vice-President, a Minister, a Junior Minister, the Secretary to the Cabinet, the Attorney-General, the Solicitor-General, the Auditor-General and members of the Zambia Police Force;

“**rules of court**” means, when used in relation to the Supreme Court, the High Court or a subordinate court, rules made under the Supreme Court of Zambia Act, the High Court Act and the Subordinate Courts Act respectively;

“**State**” means the sovereign Republic of Zambia;

“**statutory duty**” means a duty imposed by or under any written law;

“**subordinate court**” means a court constituted under section 3 of the Subordinate Courts Act;

“**written law**” means the Constitution, an Order in Council, an Act, an Applied Act, a British Act, an Ordinance and a statutory instrument.

(2) Any reference in this Act to the provisions of this Act shall, unless the context otherwise requires, include a reference to rules of court made for the purposes of this Act.



(3) Any reference in Part IV or V to civil proceedings by or against the State, or to civil proceedings to which the State is a party, shall be construed as including a reference to civil proceedings to which the Attorney-General, or any Government department, or any public officer as such, is a party:

Provided that the State shall not, for the purposes of Part IV or V, be deemed to be a party to any proceedings by reason only that they are brought by the Attorney-General upon the relation of some other person.

[S 3 am by Act 38 of 1970.]

PART II
SUBSTANTIVE LAW

3. Liability of State in contract

Subject to the provisions of this Act, the State shall be subject to those liabilities in contract to which, if it were a private person of full age and capacity, it would be subject and any claim arising therefrom may be enforced as of right against the State in accordance with the provisions of this Act.

4. Liability of State in tort

(1) Subject to the provisions of this Act, the State shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject—

(a) in respect of torts committed by its servants or agents;

(b) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employers; and

(c) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property;

Provided that no proceedings shall lie against the State by virtue of paragraph (a) in respect of any act or omission of a servant or agent of the State unless the act or omission would apart from the provisions of this Act have given rise to a cause of action in tort against that servant or agent or his estate.

(2) Where the State is bound by a statutory duty which is binding also upon persons other than the State and its officers, then, subject to the provisions of this Act, the State shall, in respect of a failure to comply with that duty, be subject to all those liabilities in tort (if any) to which it would be so subject if it were a private person of full age and capacity.

(3) Where any functions are conferred or imposed upon a public officer as such either by any rule of the common law or by any written law, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the State in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the State.

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(4) Any written law which negatives or limits the amount of the liability of any Government department or public officer in respect of any tort committed by that department or officer shall, in the case of proceedings against the State under this section in respect of a tort committed by that department or officer, apply in relation to the State as it would have applied in relation to that department or officer, if the proceedings against the State had been proceedings against that department or officer.

(5) No proceedings shall lie against the State by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.

4A. Restriction on court orders against State

Notwithstanding the provisions of this Act, no court of law shall make an order for damages or compensation against the State in respect of anything done under or in the execution of any restriction or detention order signed by the President:

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