

The Lusaka Statement on Government Under the Law



The Commonwealth

Office of Civil and
Criminal Justice Reform

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Introduction

The nature and scope of judicial review of administrative action as a remedy is concerned with reviewing not only the merits of the decision, but also the decision making process itself. Whereas the English common law traditionally did not focus on matters of administrative law, the last decades have seen a significant growth in the role of the courts in reviewing public decisions, in order to ensure that the individual is given fair treatment by the authority to which he is subject.

Judicial review today typically aims at remedying illegality, irrationality, and procedural impropriety within public decision making. The principle of legitimate expectation is also recognized within some jurisdictions.

The Lusaka Statement on Government Under the Law aims to capture the essential requirements of administrative law, together with principles that reflect good administrative practice across the Commonwealth.

Background

In October 1992, a workshop was held in Lusaka, Zambia, bringing together members of the judiciary, lawyers, academics, senior civil servants and other government representatives to discuss ways in which the administration of government business could be improved. The participants discussed fundamental issues relating to a just and honest government in the context of administrative law and practice, including the role of the courts, the citizen's right of redress, and ways in which civil servants and Ministers should exercise their discretionary powers.

Participants at the workshop agreed a concluding statement referred to as the Lusaka Statement on Government under the Law.

The Statement was considered and endorsed by Commonwealth Law Ministers at their meeting held November 1993 in Grand Baie, Mauritius. Law Ministers endorsed the Statement as a notable contribution to administrative law and recognized that the guiding principles it contained were valuable examples of what would often be good practice.

The Lusaka Statement on Government Under the Law

WE express our joint belief in the central place enjoyed by an independent, impartial and informed judiciary in the realisation of just, honest, open and accountable government. These are the hallmarks of the democratic society which our people are guaranteed by our Constitution, and which our people are entitled to expect.

WE believe that it is entirely consistent with best democratic practices for the actions of governments to be scrutinised by the courts at the instance of citizens, to ensure that decisions taken and administrative practices followed comply in all respects with the Constitution, with relevant statute and other law, and with best administrative practices - namely that administrative decisions be taken fairly, reasonably and according to law. In developing our jurisprudence in this area, the fundamental human rights provisions of our Constitution are of particular importance.

BY providing for judicial review of administrative action, the law provides not only a means for citizens to seek redress where they believe they have a grievance against official action, but also for them thereby actively to promote good administrative practice. In the non-judicial sphere the office of the Investigator-General also plays a most important role.

THE essential requirements of administrative law are that administrative action be confined to areas authorised by the law; that the rules of natural justice be followed; that each case be dealt with on its merits and without taking account of extraneous factors; that similar cases be treated in the same way; and that persons taking decisions should not have any personal or other interest in the outcome.

THE following principles reflect good administrative practice and in many instances are enforceable through the courts.

Guiding Principles

An administrative authority, when exercising a discretionary power should:

1. pursue only the purposes for which the power has been conferred;
2. be without bias and observe objectivity and impartiality, taking into account only factors relevant to the particular case;
3. observe the principle of equality before the law by avoiding unfair discrimination;
4. maintain a proper balance between any adverse effects which its decision may have on the rights, liberties or interests of persons and the purpose which it pursues;
5. take decisions within a time which is reasonable having regard to the matters at stake;
6. apply any general administrative guidelines in a consistent manner while at the same time taking account of the particular circumstances of each case.

Procedure

7. **Availability of guidelines:** Any general administrative guidelines which govern the exercise of a discretionary power should either be made public or communicated (in an appropriate manner and to the extent necessary) to the person concerned, at his or her request, whether before or after the taking of an act concerning the person.
8. **Right to be heard:** In respect of any administrative act of such a nature as is likely to affect adversely his or her rights, liberties or interests, the person concerned should be entitled to put forward facts and arguments and, in appropriate cases, submit evidence which should be taken into account by the administrative authority; in appropriate cases the person concerned should be informed, in due time and in an appropriate manner, of these rights.
9. **Access to information:** Upon request, the person concerned should be informed, before an administrative act is taken and by appropriate means, of all factors relevant to the taking of that act.
10. **Statement of reasons:** Where an administrative act is of such a nature as to affect adversely the rights, liberties or interests of a person, the person concerned should be informed of the reasons on which it is based either by stating the reasons in the act itself or, upon request, by communicating them separately to the person concerned within a reasonable time.
11. **Indication of remedies:** Where an administrative act is given in writing and which adversely affects the rights, liberties or interests of the person concerned, it should indicate the specific remedies available to the person as well as any time-limits which may be involved.

Review

12. An act taken in exercise of a discretionary power should be subject to judicial review by a court or other competent body; however this does not exclude the possibility of a preliminary review by an administrative authority empowered to decide both on legality and on the merits.
13. Where no time limits for the taking of a decision in exercise of a discretionary power have been set by law and the administrative authority does not take its decision within a reasonable time, its failure to do so should be open to review by a competent authority.
14. A court or other independent body which controls the exercise of a discretionary power should possess such powers of obtaining information as are necessary for the proper exercise of its functions.

Implementation

15. In their implementation, the requirements of good and efficient administration, the legitimate interests of third parties and major public interests should be given due weight, but where these requirements make it necessary to modify these principles in particular cases or specific areas of public administration, every endeavour should be made to conform with these principles and to achieve the highest possible degree of fairness.

ADMINISTRATIVE law in these and other ways provides a firm basis for the guidance of ministers of government and civil servants in the discharge of their duties. By upholding these principles, the judiciary serves the public interest, not only in specific cases but by providing both guidelines for future administration and remedies where these are appropriate and proper procedures have not been followed. There is thus a creative tension between two branches of government - the executive and the judiciary - which endures to the public benefit. While it lies to the government to make and execute policy, it rests with the judiciary to ensure that policies are both made and implemented within the parameters prescribed by our Constitution and by our country's laws, and for its decisions in these as in other matters to be respected.

HOWEVER the judiciary has a broader role than this. In a democracy, the people can exercise their franchise only periodically and are empowered to remove from office those who fail to honour the trust and responsibility reposed in them. On a daily basis, it falls to the judiciary no less than to members of the legislature to hold the executive accountable under the rule of law, and to ensure (on the people's behalf) that government takes place on a constitutional basis and under the law. This includes ensuring that minorities and minority interests are protected under the law, for although the government is chosen by the majority, it must, in a democracy, rule for all.

FOR such procedures to function properly it is essential that:

- the executive ensures that senior civil servants enjoy appropriate security of tenure and have a full appreciation of, and are encouraged to discharge, their own responsibilities for good administrative practice, and of the proper role of the judiciary;
- senior civil servants ensure that their own staff receive appropriate training and guidance in good administrative practice and the basic requirements of administrative law, so as to ensure that best administrative practice is followed and that the room for individual citizens to feel aggrieved is minimised;
- the judiciary be well-versed in the judicial review of administrative action (including, if need be, the establishment of a division within the High Court comprising specialist judges) and be adequately resourced with up-to-date legal materials, including promptly produced Zambian law reports;
- the legal profession be equipped both through proper training in law faculties and through continuing legal education programmes to discharge their own vital function in preparing cases that should be brought before the courts for consideration;
- the general public be informed - and be kept informed - of their rights and of fact that the law can provide redress in cases of arbitrary, discriminatory and unfair administrative action by government, and be assured of appropriate access to legal aid; and
- the legal procedures for judicial review of administrative action be reviewed, and kept under regular review, to ensure that it meets the expectations of Zambian society and reflects best prevailing Commonwealth practices.

IT IS OUR belief that if the above programme of action can be implemented effectively, the quality of administration will be consistently improved and sustained, to the ultimate betterment of the lives of all our citizens.

We therefore solemnly pledge ourselves to its fulfilment and urge others who may have a part to play to join us. Our people are entitled to no less.

Lusaka

Zambia

15 October 1992



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