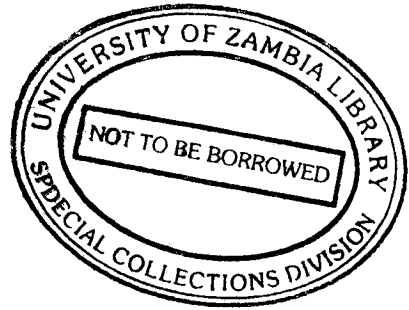


THE HUMAN RIGHTS COMMISSION

- AN OVERVIEW

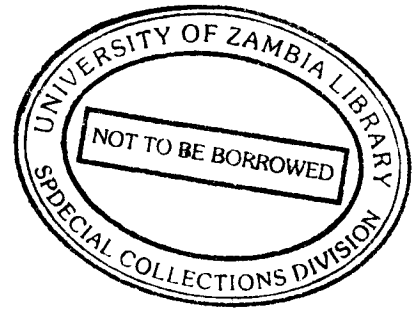


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Lusaka,

December 2005



THE UNIVERSITY OF ZAMBIA SCHOOL OF LAW

I recommend that the Directed Research Paper prepared under supervision by **Mercy Pondamali** entitled:

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SCHOOL OF LAW

THE HUMAN RIGHTS COMMISSION – AN OVERVIEW

by

MERCY PONDAMALI

*Being a dissertation submitted in partial fulfillment of the
requirements for a Bachelor of Laws (LL.B) Degree at
The University of Zambia*

School of Law
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DEDICATIONS

To my parents, Anne and Edward Pondamali and my sister Barbara Pondamali.

Mum, you gave life to me but did not live long enough to see me grow into what you wanted. Sorry I never told you all I wanted to say, I assumed we will always be together. I really miss you.

Dad, you taught me to be courageous and to persevere in hard times. You laid the foundation for me to realize my dreams. Wish you were still here to delightfully watch me realize them one by one.

Barbara, there were so many things that we would have shared if only time was on our side. Wish you were still here ...

MYSRIP

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I also thank my roommate Fannie Sakala who helped me in the small ways that matter, the small details that would otherwise have been omitted. Fannie thanks for being such a good roommate.

Having saved the best for last, I want to say thank you to my dear husband and friend Duncan Lungu, who in hard times and times of loss gave me reasons to move on and encouraged me not to walk with the fear for what I have lost but with love for what I have found. Duncan you are the best and wonderful friend I have ever had. I thank God for making you a part of my life.

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PREFACE

The aim of this essay is to have an overview study of the Human Rights Commission and to critically assess its effectiveness in carrying out its intended objectives of promoting and protecting human rights. It is primarily designed for everyone as the subject of human rights violation affects all persons directly or indirectly.

The essay has raised questions on the importance of establishing institutions such as the Human Rights Commission. In answering such questions it has taken a brief study in the protection and promotion of human rights before and after the establishment of the Commission. It has been generally concluded that such institutions are important in hearing individual claims of human rights abuse, maladministration of justice and improve public awareness of human rights. When people know of their rights they are able to stand up against the violators of their rights.

Indeed the central aim of this essay is to determine the impact that the Human Rights Commission Act has on the effectiveness of the Commission. Thus it has pointed out provisions which impact negatively on its effectiveness and has recommended ways in which the Commission can be made more effective. Most of the recommendations border on the urgent need to revise the Commissions founding legislation.

The weaknesses and shortcomings of the Human Rights Commission can thus be attributed to the shortcomings of its regulating statute. Certain provisions of the Human Rights Commission Act directly or indirectly have a negative impact on the effectiveness of the Commission. The Act only confers recommendatory powers on the Commission. The Commission does not have power to compel the observance of its decisions. The provisions in relation to funding also impact negatively on the Commission. The Act provides that the major source of the Commissions funds is the Government. The funds from other sources can only be obtained with the President's approval. These provisions, coupled with the provisions concerning the appointing procedure, curtail the autonomy of the Commission. It is undoubted that any person will owe his or her loyalty to the appointing authority and this has grave consequences. Therefore, there is urgent need to put in place legislation which will in all respects stimulate the effectiveness of the Commission in its full realization of human rights.

Nevertheless, it is also important to note that the full realization of human rights cannot be achieved solely through adequate legislation. In recognition of this fact, the Human Right Commission is entrusted with the important responsibility of improving community awareness of human rights. Promotion and education about human rights may involve informing the public about the Commissions' own functions and purposes, provoking discussions on various important questions in the field of human rights, organizing seminars and training courses and disseminating human rights publications.

CHAPTER ONE

THE HISTORICAL BACKGROUND OF THE CONCEPT OF HUMAN RIGHTS

IN ZAMBIA

1.1 INTRODUCTION

Human rights are rights inherent in mankind's nature. The concept of human rights has always existed in all human societies. Thus their existence did not come about with establishment of the Human Rights Commission. Historically, human rights in Zambia date as far back as the pre-colonial period. The study of the human rights situation during the pre-colonial period is important because of the debate as to whether Africans had human rights before the Europeans came. As human rights are inherent in every human being in every society, such debates were, therefore, baseless. However, it can be argued that the formulation and enforcement of human rights during the pre-colonial period was very different from the way they are formulated and enforced today.

During the colonial period human rights were widely abused. The abuses were so wide that one could correctly say that the idea of human worth and dignity was not respected by the colonial masters. Nonetheless, it was the Europeans who formulated human rights into a presentable form and instituted systems of implementation. However, this is not to say that they invented human rights. This chapter will discuss the historical background of the concept of human rights in

Zambia. Considered will be the formulation of human rights during the pre-colonial era and the colonial period.

1.2 THE CONCEPT OF HUMAN RIGHTS DURING THE PRE-COLONIAL PERIOD

During the pre-colonial period the vast majority of the people were illiterate and hence ignorant of their rights. However, human rights existed and were respected. For instance, the right to life was respected and harshly enforced. In enforcing this right, the family of a person who had been killed would either revenge or be compensated. Revenge was usually done by killing any family member of the perpetrator of the murderous act. This was done so as to discourage people from killing. Another respected right during this period was the right to property. This right was highly respected and this respect was evidenced in the fact that cases of theft were very rare. It was extremely rare that a person would enter another person's house without that other person's permission. Violators of the right to property were put to shame by being paraded. In typical African societies no one owned land. Land belonged to the clan, and it was for those that had died, those that were living and those to be born.

No matter how primitive a society is it has some form of a government. Even then people had a right to participate in the traditional government. They would meet to discuss issues that concerned the village as a whole. The right to participate in the affairs of government cannot be exercised without the right to freedom of

illustrate the violation of individual freedoms and rights during the colonial rule. In this case the applicant was a representative of the Watchtower Bible and Tract Society and was convicted of two offences under the Penal Code of the territory. The evidence against him was that he was found with four books entitled 'Deliverance' and one entitled 'Jehovah'. It was argued that the importation of such literature was by proclamation of 1935 prohibited. The applicant's arguments included that the proclamation was repugnant to a basic principle embodied in the law of England, which in its recognition of freedom of conscience applied to Northern Rhodesia. In this case the court made a point to the effect that religious matters were subject to the control of the legislature if in its view such matters needed some control. The court further concluded that:

When the case involves books containing politico-religious teachings of a kind noticeable in those under review, the matter assumes a different complexion. Politico-religious discussions among the educated invariably excites controversy and its propaganda among primitive people may lead quite feasibly to misconception.

The findings of the Court in this case clearly show how personal rights and freedoms were violated in the colonial period. In their efforts to dominate the Africans, the colonial masters unregrettably infringed on their personal rights and freedoms.

Another aspect of human rights abuse was with regards to land. When the whites came, what the British did was to pass an ordinance which converted all land acquired by the British South African Company to crown land. All land outside native reserves was for the crown. In terms of human rights, therefore, the right to property for the natives was limited. The natives' conception that land belonged to those who had died, those who were alive and those to be born could no longer apply³.

The right to education was another right which was seriously curtailed. The education which was made available to the Africans was that which was only enough to make them qualify to do clerical and back-breaking jobs. Thus the Africans' right to education and employment was limited. The Employment of Natives Ordinance worked to suppress the human rights of the natives. Human rights were widely abused mostly due to the European's idea of racial discrimination. However there were instances where justice required the respect for human rights.

There were cases which were decided with a view to respecting and promoting human rights. In the case of **Latson Chipili and Others V R⁴**, the court was prepared to substitute the sentence of imprisonment with a fine because there was considerable delay in getting the case down for appeal. The case emphasized the right to a fair trial and that justice delayed is justice denied. In the case **Sosala Kayela V William Jacobus Botes⁵**, Sosala, a 42 year old African was assaulted by a 26 year old white South African William Jacobus. The

learned trial magistrate convicted the defendant and sentenced him to pay three pounds. After stating the case to the High Court the High Court ruled that it was not the intention of the legislature to confer upon courts power to deny an African plaintiff the right to damages for assault.

As stated above, the colonial period was highly characterized by widespread racial discrimination. Racial discrimination was evident in education, public facilities, employment and even legislation. There were separate laws governing the blacks and the whites. The African Affairs Board was a board concerned with the African legislation affairs and of course it was seriously discredited in the eyes of Africans⁶. However, through the ratification of human rights instruments, Britain was able to extend certain basic human rights to its colonies. Thus with time human rights awareness grew among Africans who started agitating for equal rights in all respects of life. Therefore a need arose to put in place human rights legislation which would apply equally to both Europeans and Africans.

1.4 THE BILL OF RIGHTS

In 1945 the United Nations came into being and put on its agenda the issue of human rights. The United Nations declared that:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, Sex, language, religion, political or other opinion, national or social origin, property, birth or other status⁷.

This was done to ensure the proclamation of human rights by colonial powers in territories they were colonizing. In discussing the origin of the Bill of Rights in African countries, the Universal Declaration of Human Rights is of great importance. This document is of special relevance to any discussion of human rights within the context of any African Commonwealth country with a bill of rights. The document had an impact in arousing the human rights consciousness among Africans. The European Convention on Fundamental Rights and Freedoms of 1950 was itself inspired by the Universal Declaration of Human Rights of 1948. Thus when Britain ratified the Convention it meant that Britain was bound to apply rights embodied in the Convention to its colonies. Britain was able to extend certain basic human rights in the bill of rights from such instruments. The Convention provided that:

*The High Contracting Parties shall secure within their jurisdiction
the rights and freedoms defined in Section one of this Convention⁸.*

Thus as a High Contracting party, Britain was bound to secure within its colonies the rights and freedoms provided as these colonies were under its jurisdiction.

1.5 THE MONCKTON COMMISSION

The basic human rights were made applicable to Zambia by entrenching them in the Constitution. The Monckton Commission of 1959 played an important role in influencing the British government to have the bill of rights entrenched in the

Federal Constitution. The Monckton Commission was chaired by Viscount Monckton and it was appointed to review the Federal Constitution which was increasingly becoming unpopular among Africans⁹. The Commission made a number of recommendations. However, of relevance to this study is the recommendation to include the bill of rights in the Constitution of the Federation of Rhodesia and Nyasaland. The Commission argued, among other things, that this would promote greater security among all peoples of the Federation. More importantly, the Commission argued that such a bill would provide a standard upon which institutions, whether political or judicial, would base their protection of the people's rights. Furthermore, the bill would guard the liberties of all persons whether they were Federal citizens, British citizens, British protected persons or aliens¹⁰.

The Monckton Commission's recommendation was of course adopted and a bill of rights was first written in the country's self-government Constitution of 1963. The independence Constitution of 1964 retained the bill of rights and so have subsequent Constitutions. The question however is, has the entrenchment of the bill of rights in the supreme law of the land improved the protection of human rights?

In conclusion, it can be stated that the concept of human rights did not come with the coming of the white man nor did it come with the entrenchment of the bill of rights in the Constitution. Way still the concept of human rights did not come with the establishment of the Human Rights Commission.

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CHAPTER TWO

HUMAN RIGHTS BEFORE AND AFTER THE ESTABLISHMENT OF THE HUMAN RIGHTS COMMISSION

2.1 INTRODUCTION

Zambia attained its independence on 24th October 1964 under a Republican Constitution which provided for a bill of rights similar to that which was provided for in the self-government Constitution of 1963. The entrenchment of the bill of rights in the Constitution coupled with the attainment of independence made people to reasonably anticipate for an improved culture of human rights protection. This chapter will discuss the protection and enforcement of human rights before and after the establishment of the Human Rights Commission. Considered will be whether or not the establishment of the Commission improved the protection and promotion of human rights.

2.2 HUMAN RIGHTS BEFORE THE ESTABLISHMENT OF THE HUMAN RIGHTS COMMISSION

When Zambia attained its independence there were three political parties, namely the United National Independence Party (UNIP), African National Congress (ANC) and National Progressive Party (UPP). UNIP was the ruling party with Dr. Kenneth David Kaunda as the first republican president. The

existence of the two opposition parties; ANC and UPP was shortened by the ruling party's strong desire to perpetuate itself in power. Dr. Kaunda and his party feared the increasing strength of the opposition. Thus they used all kinds of methods to make people defect from the opposition parties to UNIP. Leaders of the opposition were denied certain entitlements, such as official incentives and accommodation. There was massive discrimination on the grounds of political opinion and affiliation. All this was done with a view of coming up with one party; UNIP.

Initially Dr. Kaunda was of the view that UNIP would become the only party through the ballot box. However, with the increasing strength of the opposition, this view proved to be unattainable. With the increasing desire to perpetuate itself in power, the ruling party, contrary to its proclamations, resorted to use legislation to eliminate the feared opposition. Thus on February 25th 1972 President Kaunda announced that the cabinet had decided that Zambia should become a one party state¹. This inevitably led to the amendment of the Constitution which had to provide for a one party state. The comforting aspect however was that the bill of rights under the independence Constitution was reproduced in the one party Constitution. The question however is, to what extent were these fundamental rights and freedoms protected under the one party system of government?

2.3 HUMAN RIGHTS UNDER THE ONE PARTY SYSTEM OF GOVERNMENT

The method adopted in establishing a one party system of government was a violation of human rights in itself. President Kaunda, using his discretionary powers, appointed a commission of inquiry. The Commission was chaired by Mainza Chona, hence it was called the Chona Commission. It was mandated not to collect views on whether or not people wanted a one party system of government but on what course the one party system of government was to take². This in itself suppressed people's freedom of opinion and right of participation in the political process. President Kaunda decided on behalf of all the people of Zambia that they wanted a one party state instead of leaving it to them to decide. The introduction of a one party state was merely imposed on the people, thus undermining their opinions and suppressing their right to participate in government affairs. The very idea of a one party participatory government impacted negatively on fundamental rights and freedoms. Notwithstanding the fact that they were entrenched in the one party Constitution.

The guaranteed rights under the bill of rights are not capable of existing within a one party state. It is obvious that the adoption of a one party system would impinge on the enjoyment of certain rights and freedoms. Professor Nwabueze stated in his book that:

A bill of rights cannot co-exist with a de jure one party state without serious modifications and qualifications³.

It is true that though the bill of rights was retained by the one party system it was widely and injuriously modified. The most modified rights were those of a political nature. The one party system negatively affected almost all the guaranteed rights directly or indirectly. The rights which were affected directly and severely were freedom of expression, freedom of assembly and association and freedom against discrimination on political grounds⁴.

Democracy as defined by Abraham Lincoln is a government of the people, by the people and for the people. For this assertion to come true people's views and opinions should be respected. For a government to be said to be for the people, and of the people, people's rights and freedoms should be fully and freely exercised. Thus people should discuss political and social issues freely and they should give their critical opinions against the government freely and openly without any fear of being victimized. For all these issues to be attained, freedom of expression should be highly respected. However, in a one party state freedom of expression is inevitably curtailed. It was not fully realised in a one party state for obvious reasons. As there was just one party, everyone was expected to join and speak in favour of that one party. People could not openly criticize the party and its government. Though Dr. Kaunda called this period as the one party participatory democracy, the very idea of a democratic society was non existent. In a democratic society people should be free to express their views.

The suppression of the freedom of expression extended even to parliament. In an ideal democracy parliament plays an important role in protecting human rights by checking the abuse of power by the executive⁵. However, this was not the case with the parliament that existed during the period under review. During this period members of parliament were ideally elected at the mercy of the president, hence they obviously owed their loyalty to the president. With this kind of situation obtaining, it was not possible for parliament to criticize abuse of power by the executive branch of government. How possible is it for one to challenge the abuse of human rights when the major violator is the person to whom he owes his loyalty? Any MPs who criticized party leaders or policies were suspended. In his watershed speech in 1975 President Kaunda said among other things that:

As party members MPs should at all times observe party rules.

They should also defend party policies in the House instead of attacking them – policies and decisions made by this National Council are expressions of the people's will. They are the wishes of the majority and they should be respected⁶.

This and other related speeches delivered by President Kaunda were essentially threats to the MPs who desired to preserve their positions. Having such positions was the only basis for the enjoyment of certain political and economic rights. Hence MPs fearfully observed all party policies and rules no matter how injurious they were to the protection of human rights. They could only criticize them in privacy. Freedom of expression is one of the most important elements in the

sustenance of a free and democratic society⁷. However with its massive curtailment in the one party system one would question the democratic nature of that era.

The freedoms of assembly and association were limited in the period under discussion. As UNIP was the only political party, everyone was expected to belong to that party. This limited people's freedom of assembly and association as not everyone was willing to join the party for various reasons. Formation of organisations though non political was closely checked. The party and its government controlled and regulated the Constitutions of all formed organisations. They ensured that such organisations were not political in any way. In fact almost all public institutions were under the control of the government including trade unions and the media. As the UNIP government was not popular among the majority of the population most people could not join even non political organisations as they were under the control of the hated government. The government also ensured that ex-members or leaders of UPP and ANC did not hold sensitive positions in the non-political organisations. The government feared that they would politically influence the people who would subsequently rise against the government. Thus the exercise of freedom of assembly and association was seen as a threat to UNIP which knew of its increasing unpopularity among the people. This is the extent to which freedoms of assembly and association were limited in the one party system.

In a democratic society people should be protected against discrimination on the ground of political opinion. On the contrary in the one party system there was massive discrimination based on political opinion. Those who did not belong to UNIP were highly discriminated against in all aspects of life. They were deprived of good and high paying jobs even though qualified. Those without UNIP membership cards were denied access to certain public places and could not board public buses. People were forced to move with UNIP membership cards⁸. For one to participate in the political process they had to be UNIP members. It was evident that being a member of UNIP was the only basis for the enjoyment of most rights and freedoms. The wide discriminatory policies of the government perpetuated for a long period of time. The more firmly Kaunda established himself in power, the more his policies gained ground. Thus with time, the abuse of human rights by the executive branch of government became the order of the day. The president's powers were enlarged and became virtually uncontrollable. The one party era was characterized by reduced political space as a result of a powerful executive presidency, a meek parliament, lack of an independent press and almost non existent civil society⁹. There was massive violations of human rights during this period especially detention without trial and torture of those suspected of organising political groups against the government. President Kaunda and his party lost legitimacy and became increasingly unpopular among the people who were politically frustrated. President Kaunda who was aware of his unpopularity could no longer contain pressures from the public which sought to revert to a multi-party system of government.

In 1990 the government was forced to concede to demands for the re-introduction of a multi-party democracy. The Movement for Multi-party Democracy (MMD) led the fight for change. In December 1990 the Constitution was amended in order to allow for the formation of political parties. A new Constitution was drafted and came into effect in August 1991. The 1991 Constitution also entrenched the bill of rights¹⁰. In landmark elections held in October 1991, UNIP and its leader Kenneth Kaunda suffered a crushing defeat at the hands of the MMD and its leader Fredrick Chiluba, the former President General of Zambia Congress of Trade Unions. It has been asserted that President Kaunda's era was a state of emergency through out until 1991¹¹. Fredrick Chiluba lifted the state of emergency and established the Human Rights Commission.

2.4 ESTABLISHMENT OF THE HUMAN RIGHTS COMMISSION

The massive violation of human rights in the one party state confirms that human rights are not secured by the Constitutional guarantee alone. Individual rights and freedoms can effectively be protected by establishing public institutions vested with the power to protect human rights. Such institutions should remain independent of the executive branch of the government. Given Zambia's poor human rights record as evidenced by the Second Republic, the Chiluba government sought to create an institution to hear individual claims of human rights abuse and maladministration of justice¹². Thus in May 1993, the Munyama Human Rights Commission, named after its chairman Bruce Munyama, was

appointed by President Chiluba. It was an ad hoc Commission mandated to investigate and establish violations of human rights during the Second Republic years (1972 – 1991) and after 31st October 1991 when Zambia reverted to a multi-party state¹³. The Commission went round the country collecting submissions. The evidence received confirmed that people's rights were violated. The Commission submitted a report to the president in September 1995. The report exposed the existence of secret detention centres throughout the country where human rights abuses took place in both the Second and Third Republics. Thus, among other things, the Munyama Human Rights Commission recommended the establishment of a Permanent Human Rights Commission. In response to this recommendation the government in 1996 announced its intention to establish a permanent Human Rights Commission¹⁴. The Human Rights Commission came into being in 1997 following the enactment of the Human Rights Commission Act Number 39 of 1996. The amended 1996 Republican Constitution provided for the establishment of a permanent Human Rights Commission, under Article 125. The re-introduction of a multi-party state coupled with the establishment of a permanent Human Rights Commission was seen as a step in the direction of making Zambia a haven of human rights.

2.5 HUMAN RIGHTS AFTER THE ESTABLISHMENT OF THE HUMAN RIGHTS COMMISSION

Zambia's transition from a one party state to a multi-party state and the subsequent establishment of the permanent Human Rights Commission came

with the expectation of a new democratic state based on respect for human rights. Democratic states themselves should be those that violate human rights least and protect them best. After its establishment the Commission was active and showed commendable initiatives. Before its establishment most people did not know their rights. When people know of their rights they are able to stand up against the violators of their rights. Thus the Commission saw it fit to start up programmes on community awareness of human rights. There were human rights awareness programmes on radio in both English and local languages. The Human Rights Commission managed to train law enforcement officers in the area of human rights. Thus even to date law enforcement officers at Lilayi cannot graduate if they do not pass the human rights component. However despite the establishment of the Human Rights Commission and its campaigns against abuse of human rights, violations of human rights still continued.

President Chiluba made statements of commitment to the principles of freedom of expression. However the state continued to criminalize freedom of expression by bringing criminal charges against newspaper reporters and editors. Though an independent media existed, the government's harassment of the media curtailed the freedom of expression and this can be equated to the government controlled media of the Second Republic. Editor-In-Chief Fred M'membe and other editorial staff of The Post Newspaper spent weeks in detention¹⁵. The Zambian Parliament made an unprecedented decision to find them in contempt and sentenced them in absentia for publishing an article that criticized a speech made by the vice president and other ministers. They were released as a result

of a High Court judgment by Justice Kabazo Chanda who ruled that parliament was wrong to put them on trial and sentence them in absentia.

The right of peaceful assembly is guaranteed in the bill of rights and regulated by the Public Order Act¹⁶. However, this Act has widely been used against the opposition parties and civil society groups. The case of **Resident Doctors Association of Zambia and Others V The Attorney General**¹⁷ serves to illustrate the police violation of the freedom of assembly and association. In the case Justice Chitengi held that:

Any person wishing to hold a public meeting, procession or demonstration does not require to obtain a permit from the police for such an event and that the police have no power to refuse any person from holding a public meeting, procession or demonstration at all.

The foregoing discussion illustrates that even after the establishment of the Human Rights Commission, human rights abuses were perpetuated. The abuse of human rights in this era reflected the human rights situation of the one party rule, in that they were both characterized with massive violation of human rights by the Executive branch of government especially detention without trial and torture. The government's human rights record remained poor. Although there were some improvements in some areas, serious problems remained and new ones emerged. For instance this time there were less political killings by the government or its agents but by law enforcement officers who committed numerous unlawful killings and inhuman treatments, though the Constitution¹⁸

prohibits such practices. This can be illustrated by the severe inhuman treatment perpetrated by police officers against suspects of the October 28, 1997 coup attempt. On 29th October President Chiluba declared a state of emergency as provided for under Section 30 of the Constitution.

Under the state of emergency the president of the Zambia Democratic Congress Party, Dean Mung'omba was detained. The police interrogators allegedly suspended him from a metal bar by his handcuffed hands and rope-tied legs¹⁹. Captain Jackson Chiti, was allegedly tortured. He was allegedly involved in the failed coup and was convicted and sentenced to death. On medical grounds, President Mwanawasa remitted his whole punishment. He was thus released after serving seven years in prison. On 28th June 2004, Captain Jack Chiti complained to the Human Rights Commission and claimed to be compensated for the torture and inhuman treatment he was subjected to by the investigations officers. After establishing that the alleged inhuman treatments and torture were actually perpetuated by the police officers, the Commission recommended that the victims be compensated²⁰. However, this recommendation proved to be futile when the government said that those who wanted to be compensated should take the matter to court. Thus the best the Commission could do was to advice Captain Chiti to take his case to court and the Commission had no option but to close his case as its powers ended on merely making a recommendation.

The Human Rights Commission also made recommendations for the prosecution of those in the police force who allegedly committed torture. However no apparent steps were taken by authorities to bring justice to those responsible.

It can therefore be concluded that the Commission, in accordance with its founding statute²¹ can only make recommendations and does not have the power to compel the enforcement of its recommendations. This serves to illustrate that the Commission is still a weak institution as it is unable to effect change on some of the more serious government abuses of human rights. The limitations of the Commission are largely due to weaknesses in its founding statute; the Human Rights Commission Act.

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21. Section 13 of the Human Rights Commission Act

CHAPTER THREE

EFFECTIVENESS OF THE HUMAN RIGHTS COMMISSION

3.1 INTRODUCTION

The Human Rights Commission's mandate, under the Human Rights Commission Act, is to promote and protect human rights. In carrying out its mandate, the Commission is faced with a number of constraints. The limitations of the Commission are largely due to weaknesses in its founding statute. There are mixed opinions as to whether this is due to legislative oversight or actual design on the part of government. This chapter will critically assess the bearing that the Human Rights Commission Act has on the effectiveness of the Commission.

3.2 FACTORS CONTRIBUTING TO THE INEFFECTIVENESS OF THE HUMAN RIGHTS COMMISSION

The question that one might ask is whether the Commission has the will and means to perform the tasks given to it by law. In answering this question, it can be stated that the Commission must have the will to perform the tasks it has been given by law, but the same law that gives it these tasks limits its means to perform such tasks.

The greatest weakness of the Commission can be attributed to the provisions of section 13 (1) of its founding statute. The said section provides as follows:

The Commission shall:

- (a) send written reports of its findings to the parties concerned; and*
- (b) dependant on the findings, make such recommendations as it considers necessary to the appropriate authority.*

In view of the foregoing provision, the Commission's powers end at simply making a recommendation. When a recommendation is made to a concerned authority, such authority has to make a report to the Commission on any action taken by such authority to redress any human rights violation within 30 days¹.

However, in certain instances, no action is taken by the authority to which a recommendation has been made. As the Commission's powers end at merely making a recommendation, it cannot enforce it. The lack of enforcement powers is a major impediment. When the recommendations are ignored, the founding legislation makes no provision on what further action can be taken by the Commission to compel the authority to act on the recommendation made. As such, the recommendations have little or no meaningful impact. As previously mentioned in the preceding chapter, following the Commission's recommendation that Captain Jack Chiti and other victims of the 1997 torture be compensated, the government ignored the recommendation. As the Commission had no power to compel the government to act on its recommendation, the best it did was to advise Captain Chiti to take the case to court.

The Human Rights Commission also made recommendations for the prosecution of those in the police force who allegedly committed torture, however, no apparent steps were taken by the authorities to which the recommendation was made. The Commission recommended particularly that Police Chief, Teddy Nondo, be retired due to torture allegations by the detainees. However, the government promoted him to Deputy Commissioner in the Drug Enforcement Commission² and as the Commission's powers ended at making a recommendation, it would not compel the government to retire Teddy Nondo. The consequences were that perpetrators of human rights violations remained in the police force and the chances are that they can effect the same violations again.

- Publication of human rights abuses deters the violators from further perpetrating such abuses, as they fear to be labeled as human rights violators. The act of making public reports on human rights abuses is mostly used by international institutions, for instance, the International Labour Organisation and the Committee of Ministers under the European Convention for the protection of human rights and fundamental freedoms. However, in accordance with its founding legislation, the Human Rights Commission has no power to make public its reports. In short, the Act gives the Commission no power to enforce its findings beyond that implicit in its capacity. In other countries, such as South Africa, the report is submitted to the Executive and may be made public. Unlike the Zambian Commission, the Human Rights Commission in South Africa has strong enforcement powers.³ It may also institute court proceedings in its own

name or on behalf of a person or a group of persons.⁴ Our Commission has no such powers. As is the case with the *Zambian Human Rights Commission*, the *South African Commission* cannot make legally binding decisions it can only make recommendations. In fact, apart from the *Ugandan Human Rights Commission* and the *Ghana Commission on Human Rights and Administrative Justice*, no Commission in Africa has more than recommendatory powers.

Another provision, which may be said to have a negative impact on the effectiveness of the Human Rights Commission, is that relating to the appointment process. Section 5 of the Human Rights Commission Act lays down the composition of the Commission. The Commission consists of the Chairperson, the Vice-Chairperson and not more than five other Commissioners, who are appointed by the President, subject to ratification by the National Assembly.

An assessment of the composition of the National Assembly reveals that most of the members come from the ruling party and have no record of commitment to human rights. They, undoubtedly, owe their loyalty to the President of the day. The consequence of this is that the chances of them going against the President's wishes are minimal. Therefore, whomever the President appoints, National Assembly can readily ratify that appointment as a matter of allegiance to the President. The President is, therefore, at liberty to appoint anyone knowing very well that that appointment will be ratified. The greatest concern is that the President may appoint, as Commissioners, persons who do not even have

human rights credentials or records of commitment to human rights. This appointment process leaves much to be desired. The persons appointed are more likely to owe their loyalty to the President, hence undermining the independence of the Commission. As Presidential appointees, the Commissioners may not have the authority to assert their independence from the government. It is impossible for the Commissioners to fearlessly criticize government's human rights abuses. This is perhaps the reason why most cases successfully handled by the Commission are those relating to employment grievances and prison conditions. An assessment of the Commission's 1998 report indicated that of the 960 complaints handled since its inception, 797 of the cases were labor related.⁵

The Human Rights Commission Act provides in section 5 subsection 3 that:

*The chairperson and vice-chairperson shall be persons who have
Held or are qualified to hold high judicial office.*

Apart from this, the Act does not lay down any other qualifications to the office of Commissioner. International instruments use such criteria as 'persons of high reputation and known competence in the field of human rights'. If the Human Rights Commission Act was to also employ such qualifications, it would ensure that only appropriate persons hold the office of Commissioner. An examination of the secretariat staff hired to support the work of the Commission also reveals some weaknesses. The Commission has relied largely on civil servants for its support staff rather than to recruit qualified Zambians. This perhaps is due to its financial constraint. Therefore, it opts for those individuals who can offer cheap

labour rather than the most qualified who will obviously demand for decent salaries.

The Commission has been avoiding issuing statements on serious patterns of human rights abuses by the government. It has remained active on non-controversial issues. The police force, which is part of the Executive branch of government, has repeatedly been committing serious human rights abuses. Extra judicial killings and other human rights abuses by the police only receive intermittent attention from the Commission. For instance, on March 28th, 2004, President Mwanawasa's mother, Miriam Mokola suffered third-degree burns in a Ndola bus accident. Following her death, the police handcuffed the driver of the bus, Humphrey Mumba, to his hospital bed. The handcuffs prevented Mumba, who was also badly burned, from turning over in his bed, which complicated his recovery. It was only after media reports that the President ordered that the handcuffs be removed and no action was taken against the police responsible.⁶ Though the Human Rights Commission issued a statement on this issue, it did not adequately intervene in the matter. The responsible police officer was charged with police misconduct however no further action was taken. On 26th January 2005, police stood by and watched as 200 Movement for Multiparty Democracy (MMD) members assaulted supporters of journalist Roy Clarke; the supporters had gathered outside of the Lusaka High Court for Clarke's deportation hearing case.⁷ The Commission did not intervene in this matter and no investigation was conducted. It was allegedly reported that the government ordered the police not to interfere.

On August 30th 2000, University of Zambia students who were protesting against the new tuition and boarding fees increments were subjected to police brutality, degrading and inhuman treatment. Over 300 students were arrested and before they were ferried to Edwin Imboela stadium and various other police stations, they were ordered to roll in muddy water and were compelled to sleep on the tarred campus roads face upwards. Others were made to do frog jumps and many of them fainted.

One female student, in an effort to escape from the police brutality, jumped from the third floor of one of the October 24 hostels and broke her spinal code. The government issued a statement to the effect that she was to be flown to South Africa for treatment, however, this never happened. Of great concern was that the Human Rights Commission, an institution with the mandate to protect human rights was never reported to have issued a critical statement against the conduct of the police. It is also debatable as to whether it ever instituted any investigations in the matter way still recommend that the police officers involved be taken to task. Perhaps this, like many other recommendations made by the Commission against the police force, would have been ignored.

Another weakness of the Act can be found in Section 7 subsection 2. The section provides that:

A Commissioner may be removed from office for inability to perform the functions of the Commissioner's office, whether arising from infirmity of body or mind, incompetence or for misbehavior.

The Act does not state what constitutes incompetence or misbehavior, nor does it state the authority, which would remove the Commissioners. Thus, it leaves it all up to the President as the appointing authority to effect such removals. It is also under the President's discretion to determine which conduct constitutes incompetence or misbehavior. This kind of setup can put Commissioner's in perpetual fear of loss of their office. They cannot openly criticize the government for fear of being cited for misbehavior.

In view of the foregoing, serious questions remain about the ability of the Commission to take to task the executive branch of government and its agencies and to remedy many known human rights violations. It can be stated that to secure effective intervention into human rights violations, the Commission must be independent so that the government does not affect its work. Though section 3 of the Act provides for the autonomy of the Commission and states that in the performance of its duty, the Commission shall not be subjected to the direction and control of any person in authority, in reality the Commission is subject to the control of the government. However, as long as the independence of the Commission is not clearly defined in its founding legislation, questions will remain about its autonomy in relation to the government, since the President directly appoints the Commissioners and has power to remove them.

The success of any organisation largely depends on its resource base. Section 22 subsection 1 of the Human Rights Commission Act stipulates that the funds of the Commission shall consist of such money's as may:

- (a) be appropriated by Parliament for the purpose of this Act;*
- (b) be paid to the Commission by way of grants or donations; and*
- (c) vest in or accrue to the Commission.*

Subsection 2 goes on to provide that the Commission may, subject to the approval of the President:

- (a) accept money by way of grants or donations from any source, and*
- (b) raise, by way of loans or otherwise, such money's as it may require for the discharge of its functions.*

The weak links in the above provisions are in subsection (1) (a) and subsection two (2). The very idea of the Commission being funded by the government undermines its autonomy. Although the Human Rights Commission Act and the Constitution⁸ guarantee the autonomy of the Commission, the Commission is subject to government control. It is highly likely for the executive to manipulate the Commission through funding, since it can threaten to withdraw funding if the Commission insists on its independence and taking the government to task. Moreover, the idea of grants, loans and donations being received with the President's approval impinges on the independence of the Commission. The government fears that the body or person who is giving money to the Commission may be doing so with a hidden motive; to manipulate the

Commission. The other fear is that if the Commission begins to attract either internal or external funding, it is likely to become more and more independent and when it asserts its independence, it can independently intervene in a number of sensitive abuses of human rights especially those in which the government is involved. Therefore, in its efforts to control the Commission, the government has insured that it is the major financier so that the Commission is very dependent on it. The consequences are that it is likely to owe its loyalty to the government and ultimately may not take it to task or criticize it openly. For instance, after the Commission publicly condemned the government's use of torture on suspects of the 1997 coup attempt, the government suddenly withdrew its offer of a government premise; Ndeke House as the Commission's offices.⁹ Perhaps this was a warning to the Commission to be more compliant. Although the Commission obtained permanent premises in 1998, it complained that the government had cut most of its funding and that the lack of funding was impeding its work.¹⁰

It is very clear that an under funded Commission will not be able to execute its mandate. Many things depend on finances, including the recruitment of qualified staff. Section 22, subsection 3 of the Act provides that there shall be paid from the funds of the Commission:

- (a) the salaries, allowances, pension and loans of the Commissioners and staff;*

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- (b) such reasonable traveling, transport and subsistence allowances for the Commissioners and members of any committee of the Commission when engaged in the business of the Commission; and*
- (c) any other expenses incurred by the Commission in the performance of its functions.*

It is impossible for the Commission to meet the above costs when you take into account the existing funding system. Moreover, the Commission is entrusted with the important responsibility of improving community awareness of human rights. However, it has not adequately discharged this task. Its defense is that resource constraints limit its ability to pursue more such projects. To carry out its mission effectively, the Commission needs a budget and the capacity to hire supporting and investigative staff, including lawyers and qualified researchers.

The office of human rights Commission is a very challenging office and needs adequate commitment. However the Commissioners are only part-time officers.

This limits their commitment to their mandate of protecting and promoting human rights. In cases where a Commissioner's full time job is demanding and well paying, the Commissioner is likely to be more committed to that other job, thus neglecting his office as a commissioner. This is true especially with the inadequate funding that the Commission experiences, thus minimal salaries for Commissioners and staff. There is therefore urgent need to determine the conditions of service of Commissioners and staff in order to guarantee tenure of

office and improve morale for increased service delivery. Moreover, the tenure of office for Commissioners also impacts negatively on the effectiveness of the Commission. The Human Rights Commission Act provides in section 7 subsection 1 that a Commissioner shall be appointed for a term not exceeding three years, subject to renewal. This provision is also likely to curtail the commitment of the Commissioners to their work. For instance a Commissioner may have long term plans to make the Commission effective in promoting and protecting human rights and three years may be too short a period to execute all the plans. Though there is provision for renewing the term of office, it is up to the appointing authority to either accept or reject the request to renew.

In view of the foregoing critical analysis of the Human Rights Commission Act, it can be concluded that for an institution such as the Human Rights Commission to function effectively, its independence from the government and political policies is very cardinal. As has been asserted earlier, the Executive branch of government is the major violator of human rights. Moreover, if the Commission does not assert its independence, it will be very difficult for it to directly criticize the government. Should the Commission fail to show independence and energy in the defense of human rights, its efforts to create the impression that it effectively protects human rights will be subject to challenges. As a matter of reason, the Commission's founding legislation impacts negatively on its independence. Financial control by the government of an institution whose purpose is to criticize and challenge its human rights conduct is one way of ensuring that that institution's autonomy and power base are eroded.

ENDNOTES

1. The Human Rights Commission Act, Section 13 (2).
 2. <http://www.hrw.org/reports98/zambia>.
 3. South Africa: Human Rights Commission Act, Section 10.
 4. South Africa: Human Rights Commission Act, Sections 7 and 8.
 5. <http://www.hrw.org/reports/1997/WR97/AFRICA-10.htm#p576-244470>
 6. <http://www.state.gov/g/drl/rls/hrrpt/2004/41633.htm>
 7. *ibid.*
 8. Section 3 of the Human Rights Commission Act and Article 125 of the Constitution.
 9. <http://www.hrw.org/reports98/zambia>.
 10. *ibid.*
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CHAPTER FOUR

ACHIEVEMENTS OF THE HUMAN RIGHTS COMMISSION

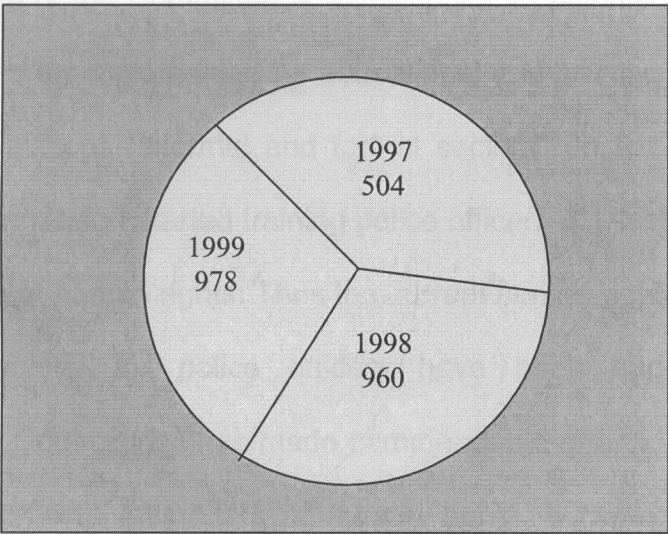
4.1 INTRODUCTION

From its inception the Human Rights Commission has been faced with a number of constraints in carrying out its mandate of promoting and protecting human rights. However, despite these obstacles, the Commission has managed to achieve quite a number of things. However it can achieve even more if certain measures were to be put in place, for instance making amends to its founding legislation. This chapter aims at discussing the major achievements of the Commission since its inception.

The establishment of the permanent Human Rights Commission came with the expectation of a new democratic state based on respect for human rights. After its establishment, the Commission showed commendable initiatives. It created five administrative departments: Administration and Finance; Legal; Research and Planning Programmes; Training and Human Resources Developments; and Education, Information and Communication. In addition to this, the Commission created eight operational thematic committees to address Conciliation, Mediation and Arbitration; Torture; Children's Rights; Gender Equality; Economic, Social and Cultural Rights; Civil and Political Rights; Communal and Minority Rights and Information, Education and Communication.

4.2 HUMAN RIGHTS EDUCATION AND SENSITIZATION

Before the establishment of the Human Rights Commission, most people had little or no knowledge of their rights, thus they did not recognize other people’s rights. When it was established, the Commission carried out countrywide campaigns to sensitize the public on their rights. The Commission formed Thematic and Provincial Committees to help in the programme of sensitization in all the provinces in the country¹. It decided to train the public on human rights and during the trainings, the public cited the police as the major violators of human rights. Therefore the Commission had to change its sensitization approach and decided to train the public side by side with the law enforcement officers. The results of these training programmes were that police brutality went down and the number of complaints received by the Commission increased. The pie chart below shows how the number of complaints received by the Commission increased from its inception to 1999.



As part of its sensitization programmes, the Commission commenced radio programmes to increase public awareness of human rights. There were, and are

even now radio programmes on human rights in seven local languages and English entitled 'Human Rights Corner'.

The sensitization programme involved partner assistance with the Curriculum Development Centre and the Ministry of Education. As a way of promoting a sustainable human rights culture, the Commission recommended to the said institutions that a human rights component be included in the school curriculum. The inclusion of a human rights component in the school curriculum is a clear indication that we are on the right path towards building a sustainable human rights culture. This exercise is perhaps the reason behind the curtailment of corporal punishment in schools.

In conjunction with the Ministry of Education, the Commission spearheaded the formation of the National Committee for Human Rights Education in the year 2000. The mandate of the Committee is to formulate a National Plan for Human Rights Education to be implemented by educational and training institutions and civil society organizations, informal and formal sectors². In the same year the Human Rights Commission started training police officers at Lilayi Police Training College in the area of human rights. Thus the current human rights courses in the basic training courses for police officers have been supported by the Commission. The Commission has made commendable efforts in educating the law enforcement officers in matters of human rights. It considers awareness among this group as critical to improving respect for human rights.

4.3 PRISON VISITATION

The Human Rights Commission has been very visible in its programme of prison inspection. Pursuant to section 9 of the Human Rights Commission Act, the Commission has the mandate to visit prisons and places of detention or related facilities with a view of assessing and inspecting conditions of persons held in such places and make recommendations to redress existing problems. The Commission has visited almost all the prisons and police cells in all the country's provinces. The inspections have revealed that Zambian prisons are in a deplorable state. The problems faced include congestion, filth, lack of clean water, inadequate food and generally no decent sleeping facilities³. This study has led to the Commission's intervention in a number of cases of persons who are illegally detained. The Commission has also been making recommendations to redress the identified problems. As the Commission has no enforcement powers, it is up to the appropriate authority to act on the recommendations made.

The Human Rights Commission visibly intervened in the torture of the 1997 attempted coup suspects. A number of detainees collapsed in court due to illness brought about by poor remand prison conditions. The Commission exposed the torture of seven of them, and sought better medical care for them. It was reported that the Commission's Torture Report marked its high mark of acceptability by its critics that it was an autonomous and independent Commission⁴.

4.4 INVESTIGATIONS

Pursuant to Section 10 subsection 1 of the Human Rights Commission Act, the Commission is empowered to investigate any human rights abuses on its own initiative or on receipt of a complaint or allegation. The Investigations and Legal Services Department is thus one of the most important and busy departments of the Commission. From its inception the Commission has made a number of investigations in different kinds of cases. For the Commission to come up with an informed and persuasive recommendation, it has to carry out intensive investigations into cases before it. In 1997 it undertook investigations on its own initiative on allegations that torture was committed against soldiers and civilians alleged to have been involved in the failed coup attempt of 28 October 1997.

The police force has repeatedly been committing serious human rights abuses. Extra judicial killings and other human rights abuses by the police have been on the increase. In 1997, the Commission decided to conduct investigations into allegations of excessive use of force by the police on unarmed civilians. This was facilitated by the allegation of excessive use of force on an unarmed group of civilians who attempted to march to Freedom house. Some people were allegedly injured in the encounter with the police⁵. The investigation on this matter was followed by the investigations into the alleged shooting of opposition leaders; Dr. Rodger Chongwe and Dr. Kenneth Kaunda in Kabwe. However, like in other cases, the Commission, after carrying out its investigations, issued a recommendation. In particular, it recommended that the law governing the use of

firearms and live ammunitions at both lawful and unlawful assemblies be restricted.

In the year 2000 the Commission intervened in the August unrest at the University of Zambia and condemned the excessive use of force by the police. The Commission intervened in the matter and appealed for the release of all students that were held at Imboela Stadium⁶.

An assessment of the cases handled by the Human Rights Commission shows that the highest number is recorded in labour related matters. The Commission has been conducting investigations on accusations of interference in labour matters by the key stakeholders, in particular the Zambia Federation of Employers. The Federation has however claimed that it is the only institution with the power to deal with labour related disputes. However workers rights are human rights. Thus the Commission uses its statutory mandate to investigate all allegations of human rights violations. A number of employees have been retrenched with ease especially those in privatized companies. A number of Zambian workers have been discarded in favour of those from the investors' countries. The Commission's investigations revealed that investors were taking advantage of the high poverty levels in the country by applying slave conditions on Zambian workers⁷. Thus the Commission recommended that government should formulate and put in place a human resource development policy which could be a condition for acceptance of new investments in Zambia. The

Commission once instituted investigations into the alleged violations of workers rights committed by Shoprite Checkers Limited against several of its employees.

Pursuant to Section 9, the Commission has the mandate to investigate human rights violations and any maladministration of justice. The Commission therefore has a duty to protect the right to a fair trial. The Commission has been receiving complaints where cases had been pending before the courts of law for a long time without judgment. The Commission has been conducting investigations in such cases, however with a number of constraints, for instances investigators are threatened with contempt of court charges and that they are interfering with the independence of the judiciary. Thus the Commission has not been very visible in the area of investigating maladministration of justice especially where a case is already before the courts of law. Its founding legislation has perhaps contributed to this. It provides that the Commission shall not have powers where a matter is pending before a court⁸.

4.5 DECENTRALISATION

Since its inception, the Commission had offices only in Lusaka, where it is headquartered. Because of this centralization, the Commission and its services were inaccessible to people in other provinces especially in rural areas. Therefore the Commission saw it as an urgent need to extend its operations and physical presence to other provinces. Hence in 2004 the Ndola provincial centre was officially opened. After opening the Ndola provincial centre, the Commission opened two more provincial centres in Mongu and Kasama. In addition, another

provincial centre was just opened in Chipata in December 2005. The Kasama provincial offices were opened in early 2005 and at the opening ceremony the chairman of the Human Rights Commission stated that provincial offices would serve as nerve centres in the education and sensitization campaigns in rural areas and disseminate information on human rights⁹. Thus provincial centres are important in that they would assist the Commission to check abuses and violations of human rights in rural areas. The benefits of taking the Commissions services closer to the people are overwhelming. Reporting of cases is made easier, cheaper and meaningful. People from outlying rural areas may not easily afford to come to Lusaka to lay a complaint especially where there is no certainty of the Commission's recommendations receiving a positive response.

In conclusion it can be stated that this chapter has not exhausted all the achievements of the Human Rights Commission but has only stated the most commendable ones. Nonetheless the Commission can achieve even more if certain measures, as recommended in the next chapter were to be put in place.

ENDNOTES

1. Human Rights Annual Report (1997) p. 7.
2. Human Rights Annual Report (2000) p. 16.
3. <http://www.hrw.org/reports98/zambia>.
4. Human Rights Commission Annual Report (1997) p. 19.
5. Ibid p. 17.
6. Human Rights Commission Annual Report (2003) p. 30.
7. Human Rights Commission Annual Report (2000) p. 27.
8. Human Rights Commission Act. Section 10 (5).
9. The Post Newspaper (Lusaka), Monday, January 3, 2005.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 CONCLUSION

This chapter will serve as the last chapter to this study. Thus it will state the general conclusion and make recommendations with regards to ways in which the Commission can fully realize its intended goals.

This study has made an overview study of the Human Rights Commission and has critically assessed the effectiveness of the Commission in carrying out its mandate of promoting and protecting human rights.

The study has discussed the concept of human rights during the pre-colonial and colonial period. It has thus discussed how human rights were formulated and protected then. Human rights did not come about with the establishment of the Commission or any other international instrument on human rights. Human rights are inherent to human beings. Nonetheless, the establishment of the Commission improved the recognition of human rights. Rights that are not known cannot be asserted or defended. Thus the Commission began by getting every person in Zambia to know their fundamental freedoms and basic rights.

In its mandate of protecting and promoting human rights, the Commission has been faced with a number of constraints. The limitations of the Commission are largely due to weakness in its founding legislation. The Human Rights Commission Act has a number of provisions which impact negatively on the effectiveness of the Commission. The Act gives the Commission no power to enforce its recommendations. Instead, it has the power to make recommendations to the appropriate authority, which has the power to either enforce or reject the recommendations made.

The appointment procedure of Commissioners and the funding system undermine the independence of the Commission. The inadequate funding also contributes to the seemingly ineffectiveness of the Commission. It is impossible for the Commission to carry out community awareness of human rights with limited resources. A number of things depend on finances even the recruitment of qualified staff. This study has critically examined the Human Rights Commission Act and has pointed out the provisions which limit the effectiveness of the Commission and how.

Despite all the constraints that the Commission is faced with, it has however made visible achievements. From its inception, the Commission's aim has been to sensitize the public on the issue of human rights. It is only fair to state that it has done a commendable job in this area. Through its sensitization campaigns, a number of people have been able to know and defend their rights. Recognition of human rights has thus improved. The Commission has been active in its

programme of training and educating police officers in the area of human rights. However the police are still the major violators of human rights. It has also been visible in its programme of prison inspection.

The benefit's of taking the Commission's services closer to the people are overwhelming. Reporting of human rights abuses is made easier and cheaper. Therefore the Commission has embarked on a decentralization programme and so far it has opened provincial offices in Ndola, Mongu, Kasama and Chipata. Its aim is to open provincial offices in all the nine provinces of the country and to also open district centres.

5.2 RECOMMENDATIONS

Having stated, in the previous chapter, the visible achievements of the Commission, we recommend the following as ways in which the Commission can achieve even more in its mandate of promoting and protecting human rights.

1. The powers of the Commission should be strengthened to enable it deal more effectively with cases of human rights abuse. Thus it should be empowered to enforce its own recommendations and impose sanctions on perpetrators of human rights abuse. In the alternative, the law should place an obligation on the government to enforce the recommendations of the commission.

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2. The Commission should be given a right to intervene even in cases pending before the courts. It is rather absurd for the Commission to refrain from commenting on a case which is in court when it has noticed maladministration of justice such as undue delay in disposing of a case.
 3. There is need for the Commission to assert its independence from the government and political policies. Therefore the procedure of appointing Commissioners should be changed. There should be an independent body through which the public can nominate persons for appointment and an independent tribunal to investigate and make recommendations for dismissing commissioners. The Commission must also be given greater autonomy in its finances instead of the present arrangement where the President must sanction every donation or grant to the Commission.
 4. In order to develop a human rights culture, there is need for increased funding to support the sensitization programmes; facilitate holding of workshops, promotion of human rights education in institutions of learning especially in rural areas. Funding is also needed in order to sustain the decentralization programme. At present there are only four provincial offices, including the Lusaka offices. Funding is therefore needed in order to decentralize the Commission and enhance service delivery.
 5. An assessment of the nature of complaints received by the Commission reveals that the highest number is recorded in labour related cases.
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Therefore the Commission should enhance its education of investors and other employers about the need to treat workers with dignity and not subjecting them to slave conditions.

6. The Commission should be empowered to initiate court proceedings on behalf of complainants. The dependence of the Commission on other authorities to take enforceable action does not give satisfactory assurance to the complainant for redress. In most cases such authorities ignore the recommendations.
7. The Commission should also be empowered to publicize its findings on human rights abuses. Publication of human rights abuses will deter the violators from further violation of human rights.
8. The Human Rights Commission Act should plainly state what behaviour amounts to incompetence or misbehaviour so that Commissioners are not arbitrarily removed from office.
9. To enhance their service delivery and guarantee tenure of office, Commissioners should serve on full time basis and they should be employed on pensionable employment contracts.

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10. An intensive awareness campaign must be conducted by the Commission to sensitize the masses and law enforcement officials on human rights. The Commission should not only concentrate on police officers but all law enforcement officers and these may include officers from the Anti Corruption Commission and the Prisons Service.
 11. To effectively promote and protect human rights, the Commission should employ the co-operation of various non-governmental organizations dealing with human rights and law enforcement agencies. Thus the Commission should ensure that whatever future measures it puts in place to combat human rights abuses, include the concerted efforts of these institutions.
 12. Most of the recommendations made above can only be realized by amending the Commission's founding legislation. Therefore there is urgent need to revise the Human Rights Commission Act.

The Commission cannot in its present condition achieve the recommendations submitted in this paper. It needs to be strengthened both financially and legally. Thus a more powerful and broader mandate should be provided for it to compel co-operation by the authorities, through imposing administrative or legislative sanctions when the exercise of its power to investigate and take remedial action is obstructed. Its mandate should, in addition, be expanded to enable it achieve the above stated recommendations.

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Lawrence Silasimba; The Constitutional Protection of Fundamental Rights and Freedoms in Zambia – An Historical and Comparative Study. 1979. PhD Thesis.

INSTRUMENTS

- The Universal Declaration of Human Rights.
 - The African Charter on Human and Peoples Rights.
 - The European Convention for Protection of Human Rights and Fundamental Freedoms.
 - The International Covenant on Civil and Political Rights.
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WEBSITES AND LINKS

- <http://www.hrw.org/reports/1997/zambia/zambia.htm#p60-1343>
 - <http://www.hrw.org/reports98/zambia>
 - <http://www.hrdc.unam.na/zm-history.htm>
 - <http://www.state.gov/g/drl/rls/hrrpt/2004.41633.htm>
 - <http://www.njas.he/sinki.fi/pdf-files/vol10num2/phiri/pdf>.
 - <http://web.amnesty.org/library/index/ENGAFR630041998?open&of=ENG-ZMB>
 - <http://www.hrw.org/reports/1997/WR97/Africa-10.htm#576-244470>.
 - <http://www.hrdc.unam.na/zm-facts.htm>.
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