

**AN ANALYSIS OF THE RELEVANCE OF HUMAN RIGHTS IN THE
INTERFACE OF ECONOMIC, SOCIAL AND POLITICAL DEVELOPMENT OF A
SOCIETY WITH PARTICULAR REFERENCE TO ZAMBIA**

BY

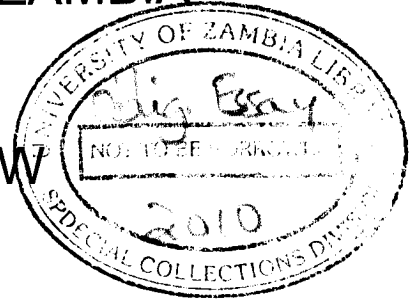
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AN ANALYSIS OF THE RELEVANCE OF HUMAN RIGHTS IN THE
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PREFACE

This Directed Research Paper endeavours to analyse the relevance of human rights in political, economic and social development of a society with particular reference to Zambia. The main reason for this is that, human rights observance is cardinal in the development of any society and that human rights are rights people have by virtue of being human. It must be stated that as much as human rights are vital for development, it cannot be so without strong institutions to guarantee their fulfillment and enjoyment. The civil and political rights in Zambia have attracted great attention as compared to the economic, social and cultural rights.

This is because the economic, social and cultural rights are not justiciable before courts and disputes resolution bodies. It is therefore, important that they are made constitutional priorities for economic and social development to be there in society.

ACKNOWLEDGEMENTS

The successful completion of this Directed Research Essay would not have come to its fruition without the untiring efforts and contribution of certain individuals. It is for this reason that I would love to acknowledge the following.

Firstly, my Supervisor, Mrs. Lillian Mushota. I would like to express profound gratitude to her for her guidance, patience, efficiency and the motherly touch in the way she guided me through the research. To her I say, "You are a legal Jurist par excellence and it was and still is, an honor to have been taught and supervised by you. May God richly bless you. You are a mother indeed."

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Finally, the Almighty Jehova God for the life, intellect and blessings bestowed upon me.

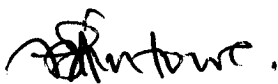
DEDICATIONS

This Directed Research paper is dedicated to my parents, Mr Norman Simutowe my father and my mother, Mrs Judy N. Simutowe 'Mama Judy' for their untiring effort and love in my life. It is also dedicated to the memory of my late Grandparents, Mr D.W Simutowe and Mrs J. Nayeme N. simutowe R.I.P.

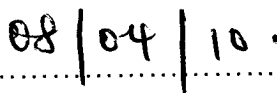
DECLARATION

I, Simutowe, Aaron, Computer Number 25054481, do hereby declare that the contents of this dissertation are my own original findings. I further declare that the information used herein, that is not mine, I have endeavoured to acknowledge.

I, further declare that all errors and shortcomings if at all any, herein are my own.

A handwritten signature in black ink, appearing to read 'Simutowe', written over a dotted line.

Signature

A handwritten date '08/04/10' in black ink, written over a dotted line.

Date

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ABSTRACT

The main objective of this Directed Research is to analyse and show the relevance of human rights in political, economic and social development of a society making particular reference to Zambia. To achieve this, the essay looks at the strength and independence of Human Rights agencies like the courts and Human Rights Commission. The research of economic, social and cultural rights. Thirdly, the civil and political rights in Zambia's political development. The research will look at the general nature of human rights and also give an analysis of the nature of economic and social rights as well as their relevance to development. It also shows the effectiveness of justiciability of economic, social and cultural rights is in the quest to making human rights a reality for most Zambians.

Finally, it analyses Zambia's economic and political situation and whether human rights observance will also give conclusion, summary and recommendations.

CHAPTER ONE

A BRIEF NATURE AND HISTORY OF HUMAN RIGHTS

1.0 INTRODUCTION

The subject of human rights cannot be easily understood without looking at the historical background¹.

The Universal Declaration of Human Rights, which is more than half a century old is divided into two separate international covenants, one on civil and political rights² and the other on economic, social and cultural (ESC) rights.³

The term 'human rights' refers to those rights that have been recognized by the global community and protected by national and international legal instruments. They reflect the moral conscience of the world and the highest common aspiration that everyone should live free from want and fear and have the opportunity to develop in dignity.⁴

Human rights provide a common framework of universally recognized norms, both to hold state and increasingly non-state actors accountable for violations and to mobilize collective efforts for economic justice, political participation and equality. Economic, social and cultural rights embody essential elements for a life of dignity and freedom including work, health education, food, water, housing, social security, health, environment and culture.⁵

It is important to guarantee the protection of human rights against the tyranny of government as it is a critical feature of development in society.

¹ Muna Ndulo & Turner civil liberties cases in Zambia P. IX

² The International covenant on civil and political rights (ICCPR)

³ The International covenant on Economic, Social and Cultural Rights.

⁴ It answemann, J (1998) A Human Rights Approach to Development, Rights and Humanity P.55

⁵ Vijjoeu and Precious (2007) Human Rights under threat P. 119.

On December 10th, 1948, the General Assembly of the United Nations Organisation approved the Universal Declaration of Human Rights. But the universal declaration was largely useless for one very important reason. There was no means of enforcing it. It was in the end a declaration pious aspirations, not of enforceable rights.⁶

Lord Acton, a great historian, once asserted that "power tends to corrupt, and absolute power corrupts absolutely"

The adoption of the General Assembly and the Universal Declaration of Human Rights (UDHR) of 10th December, 1948 constituted a major step toward to the promotion of the rule of law at the international and national levels. The declaration comprises in one consolidated text nearly the entire range of what today are recognized as human rights and fundamental freedoms.⁷

It must be keenly noted that in the past years, the civil and political rights in Zambia have attracted much attention as in the cases of Christine Mulundika and 7 others V. The Attorney General,⁸ William Steven Banda V. The Attorney General,⁹ Alfred Zulu v. The Attorney General.¹⁰ The guarantee and protection of civil and political rights in the constitution, Part III has seen political development in Zambia as regards the freedom of Assembly and Association.

Zambia was a protectorate of Great Britain for 70 years before independence was granted on October 24th, 1964.

First Zambian Republican President, Doctor Kaunda had this to say: "To summarize our position, I would say this. We are not concerned solely with the rights of Africans, we are struggling for human rights - the inalienable rights of all men."¹¹

⁶ Ndulo & Turner (1983) Civil Liberties cases in Zambia P.

⁷ Ibid

⁸ 1996/SCZ/25

⁹ 1992/HP/1005

¹⁰ 1994 No. 5 of 1994

¹¹ Ndulo & Turner (1983) Civil Liberties cases in Zambia P.

The economic, social and cultural rights in Zambia have not been entrenched in the bill of rights, Part III of the Zambian constitution. This has made them not justiciable before courts and disputes resolution bodies, hence citizens failure to bring cases before courts and disputes resolution bodies to demand for their implementation.

This means that the government cannot be taken to court law and forced to act if it cannot provide for these rights (citing a shortage of funds), or will not provide for their realization (asserting other priorities).

Economic, social and cultural rights have been defined as a bunch of individual and collective rights intended to ensure a good, wholesome and fulfilling life, not only for individuals but also for communities.¹²

This is the more reason why there is need to move economic, social, cultural rights from the weak category of state directive principles in part IX to the justifiable category of fundamental rights found in the bill of rights, Part III.

Undoubtedly in, the economic, social, cultural rights are indispensable for human and national development. There is simply no development without provision of Economic, Social and Cultural Rights.¹³

There is, therefore, need our economic, social rights to be constitutional priorities for economic and social development to be there in society. They must be in Part III of the Zambian constitution.

¹² Mudenda G. (1998) Economic, Social and Cultural Rights, S. African Human Rights Review P. 4

¹³ Ibid

The research examines the nature of these rights and analyze the challenges to their justifiability and enforceability. To achieve this, the chapter will, inter alia, discuss the history of human rights and Zambia's bill of rights.

Statement Of The Problem

The Bill of Rights was introduced in Northern Rhodesia territory with the adoption of the constitution which established self – government in 1963. since then, we can say that the Zambian constitution has always had an expression entrenched provision for the enforcement of the guaranteed rights. The court is under the duty to hear and determine the justiciable issues involved and provide remedies as it may consider appropriate.

Mulonda P.¹⁴ states that, following the adoption of the European convention on Human Rights any fundamental freedoms in 1950 and the entry into force of the convention in 1953, the British Government voluntarily extended clause in the convention was used by the United Kingdom on October 23, 1958 to extend the application of the convention to 42 of its then overseas territories including Northern Rhodesia (Present day Zambia).

It is of Paramount importance to provide a brief background of the European convention on Human Rights, in particular, to fully appreciate the concept of human rights. The understanding of human rights history helps in fully appreciating the construction of the value of human rights. The concept of human rights derives partly from how it is used historically, as human rights are a social historical construction.

Zambia was a British colony and the extension clause in the convention was used by the Great Britain to extend its application to Zambia. In this way, the constitution of Zambia has had an entrenched Bill of Rights to date.

¹⁴ Human Rights Commission, paper presented at National Constitutional Conference April 8 2008 P. 11

However, particular attention has to be paid to the position it gives to economic, social and cultural rights.

To this extent, there has been no strict enforcement of Human Rights in Zambia because of lack of independence in courts and other institutions involved in human rights protection.

The economic, social and cultural rights in Zambia have a non-justiciable character in Part IX of the current constitution. It is stated that the directive principles of state policy shall not be justiciable or legally enforced in any court, tribunal or administrative institution or entity.

Article 111 of the Constitution of Zambia,¹⁵ Cap 1 states that the directive principles of state policy set out in this part shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforced in any court, tribunal or administrative institution or entity.

Justiciability of the economic, social and cultural rights would therefore be necessary to advocate for as this includes major concern with protection of vulnerable groups such as the poor, the handicapped, those living with HIV/AIDS. These are issues of human rights relevance to economic and social development that must be addressed.

It is important to mention that the observance and enforcement of these rights is strengthened through strong institutional framework like the human rights commission.

Anyangwe C,¹⁶ observes that the performance of the duties of Human Right commission is autonomous.

¹⁵ Chapter 1 of the Laws of Zambia

¹⁶ Anyangwe, C, (2004) Introduction to Human Rights and International Humanitarian Law P. 208

He did not, however, give a critique of the autonomy of the Human Rights commission vis-à-vis the government, executive which is the main target.

However, in the quest to appreciate relevance of human rights to development, the performance of the duties of Human Rights commission ought to be analysed.

1.2 Objectives Of The Research

General Objectives

- To analyze the relevance of human rights in political social and economic development of a society. This would be through assessing the strength and independence of human rights agencies like the courts and human rights commission.
- To assess the strength and independence of human rights agencies like the courts and human rights commission, especially from the executive branch, which is the main target of their work.

Specific Objectives

- To assess impact of justiciability of economic, social and cultural rights.
- To assess impact of civil and political rights in Zambia political development.

1.3 Rationale of the Research

The study will endeavor to add knowledge that exists on the relevance of human rights to development. This however, would be in line with strict enforcement of the civil and political rights and justiciability of the economic, social and cultural rights. The paper will demonstrate that human rights alone without strict enforcement is irrelevant to development. The cases of Christine Mulundika and 7 others v. the Attorney General, Rodger Chongwe v. Attorney General will be the

guiding judicial precedents in demonstrating how strict enforcement and observance of civil and political rights read to political development.

1.4 Justification Of The Study

In the recent past, discussions have been held about economic, social and cultural rights in Zambia. However, not much analysis of economic, social and cultural rights as individual enforceable rights has been done. A widely spread misunderstanding has been that all economic, social and cultural rights must be provided by the state, and that they are costly and lead to an overgrown state apparatus. The human rights commission (HRC) and other human rights agencies in promotion of human rights will be assessed. This will be in determining their independence in execution of their duties, this results from a very narrow understanding of the nature of these rights and the corresponding state obligation, consequently some research about nature is required.

1.5 Research Methodology

This research, being an elaborative analysis of the relevance of human rights to economic, social and political development of society, will mainly be based on desk research and field research.

Desk research will involve secondary information, namely books, journals, articles and media reports obtained from various sources. On the other hand, field research will involve, inter alia, personal interviews with persons who are experts in human rights law and competent in issues of development as justiciability of economic, social and cultural rights. Such people will include those from the human rights commission, women and law in Southern Africa and the Jesuit Centre for Theological Reflection.

1.6 Human Rights Nature and Historical Perspective

The belief that everyone, by virtue of his or her humanity, is entitled to certain human rights is (maybe) fairly new. Its roots, however, lie in earlier traditional

documents of many cultures. It must be stated from the onset that you cannot understand nor fully appreciate the concept of human rights without recourse to history. The understanding of human rights history helps in fully appreciating the construction of the value of human rights. After all, the meaning of the concept derives part from how it is used historically, as human rights are a social, historical construction.¹⁷

It is important to stress the nature and historical perspective of human rights in order to appreciate their relevance to political, economical and social development of a society as this acts an illuminating factor in understanding the reason as to why human rights evolved.

The British philosopher John Locke (1632 – 1704) can be credited with developing a comprehensive theory of human rights. Locke, wrote that people from societies and societies establish governments, in order to assure the enjoyment of “natural rights”. Locke defined government as a “social contract” between rulers and ruled citizens. Citizens, he believed, are obliged to give allegiance only to a government that protects their human rights. These rights may have precedence over the claims and interests of the government. Government can only be legitimate when it systematically honours and protects the human rights of its citizens.¹⁸

The idea of equal rights, it must be emphasized, empowered the French revolution and declared a list of rights that man had. It must equally be noted with keen interest that, it included not only the rights of equality before the law, religion, expression, property,¹⁹ but also the right of control over public expenditure.

¹⁷ Freeman, M. (2004) Human Rights: An interdisciplinary Approach P. 14 – 15

¹⁸ Smith, R. K. (2003) Textbook on International Human Rights P. 9

¹⁹ Ibid P. 9

It must be appreciated that the French Revolution reveals that human rights are relevant to development as they demand equality before the law, religion, expression, property and accountability, transparency in public expenditure.

Thus, it can be argued, is the rationale behind the need to make economic, social and cultural rights justiciable, as will be later argued. It can therefore be stated at this stage that the American and French models serve as models during the historical development of fundamental human rights and freedoms.

The idea of human rights, which is also historically known as “natural rights” accurately traces its origins from the ancient regimes of the West and has developed as an aspect of Western political, philosophies. It is of paramount importance to make mention of natural rights as rights of the individual. They are considered beyond the authority of any government to discuss. Natural rights, which are a theoretical set of individual human rights that by their nature cannot be taken away, violated, or transferred from one person to another.²⁰

Freeman, M²¹. stresses that, tracing the early history of human rights, we can go as far as the classical Greece. It is possible to say that the Greeks recognized the rights of individuals in the sense of providing protection against tyranny. They were part of the natural law theory of law, stating that the natural law or God’s law was more important than human law. later, the Romans inherited the Greek emphasis of reason and the distinction between the rational ideal world and natural world and used these conception to build the Roman law.

1.7 World War II And The New Coming Human Rights

It is important that human rights protection is there to ensure future peace and political stability. It was therefore, important that after the second world war, that human rights had become one of the important objects of the United Nations

²⁰ Flowers, N. (2002) Celebrating the Universal Declaration for Human Rights P. 5

²¹ Freeman M. (2004) Human Rights: An interdisciplinary P. 16

charter so that the protection of human rights and treatment of its citizenry by a particular government was not a matter of sovereignty but internationally recognized.

In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Right (UDHR) which is a non-binding charter, partly in response to the atrocities of World War II. Although, the Universal Declaration of Human Rights is a non-binding resolution, it is now considered to be part of the central component on international customary law, which may be involved under appropriate circumstances by national and other judiciaries.

Freeman, M States that, the declaration urges member nations to promote a number of human, civil, economic and social rights, asserting these rights are a part of the “foundation of freedom, justice and peace in the world.”²²

The universal declaration of Human Rights, commonly referred to as the Magna Carta, extended the revolution in international law ushered in by the United Nations, namely, that how a government treats its own citizens is now a matter of legitimate international concern, and not simply a domestic issue. It claims that all rights are interdependent and in dividable.

With the goal of creating means of enforcing the UDHR, the UN commission on Human Rights want both and drafted two treaties. These are the international covenant on civil and political rights (FCCPR) and its optional protocol and the international covenant on economic, social and cultural rights (ICESCR).²³

Together with universal declaration of human rights they are commonly referred to as the international bill of rights. It is worthy noting however, that for the purposes of these of the present research, it is prudent to analyze why the declaration was split into two covenants. This separation must be stressed categorically because it

²² Freeman, M. (2004) Human Rights: An Interdisciplinary approach P.

²³ Smith, R. K (2003) Textbook on International Human Rights P. 11

anchors the current notion that economic, social and cultural rights are second generation rights and not justiciable.

So because of the west and east cold war, in the years that have since gone by civil and political rights have attracted much attention in theory and practice, while the economic, social and cultural rights have been regretted.

However, it must be noted that when the General Assembly decided to make the distinction by adopting two different covenants, it also passed a resolution emphasizing that the different sets of human rights were interrelated and indivisible. We contend therefore that there is no justification for treating ESC rights as lesser rights as compared to civil and political rights. This has been repeated ever since in United Nations for a. most recently at the world conference on human rights in 1993, in which 171 states took part and which, in Vienna Declaration and Programmes of nation, states that "all human rights are universal indivisible and interdependent and interrelated."²⁴

The notion that economic, social and cultural rights constitute "second generation" of human rights, the first generation being civil and political rights first put forward by Karel Vasaka 1979 appeared quite suggestive and has been repeated by many.

It is important to stress therefore that as civil and political rights have attracted great attention hence of political development, the economic, social and cultural rights are equally important and must therefore be given strong attention as well.

²⁴ Eide, A etal (1995) Economic, Social and Cultural Rights P. 21

1.8 Human Rights and the laws of Zambia

Zambia was a British colony and the extension clause in the convention was used by Great Britain to extend its application to overseas territories including the Northern Rhodesia now Zambia.

Following the ratification and adoption of the international bill of rights, the European nations in 1950 adopted the European Convention on Human Rights and Fundamental Freedoms, which came in force in 1953. Perhaps, this is the genesis of how the bill of rights found its way into African Independence constitutions.

Mulonda²⁵ asserts that 'The rights and freedoms which were entrenched under the Zambian constitution, and indeed under most other commonwealth Africa constitutions, were those in nature of "the traditional natural rights which trace their immediate origin from the European convention. In this way, the constitution of Zambia has had an entrenched Bill of rights to date. However, particular attention has to be paid to the position that it gives to economic, social and cultural rights.

1.9 Conclusion

In conclusion, it must be stressed that it is important to discuss the history of human right as it helps us understand human rights History also helps us know how human rights finally found their way in the Zambian constitution. In appreciating the relevance of human rights to political, economic and social development of a society, due regard must be had to the reason why we have a 'separated category of rights, civil and political rights on one end, and economic, social and virtual rights on the other hand. Human rights provide a common framework of universally – recognized values and norms/both to hold state and increasingly non-state actors accountable for violations and to mobilize participation and equality. The justiciability of economic social and cultural rights alleviate suffering of many poor Zambians as the

²⁵ Human Rights Commission, Paper presented at National Constitutional Conference, 2008 P. 11

rights would be under the bill of rights of the Zambian constitution hence making them a constitution priority for the state.

In 2003, Mulele Kwibisa²⁶, carried out a research on the importance of economic and social rights and their impact on living conditions of Zambians. She stated that for people to live their lives in dignity, they need civil and political rights as much as they need social and economic rights. She contended that these rights are fundamental if development of humanity and reduction of poverty is to be achieved in Zambia.

It therefore, follows that the justiciability of the economic, social and cultural rights as well as the strict enforcement and observance of human rights is much needed to ensure people lead dignified lives.

²⁶ Mulele K., (2003) Obligatory Essay, Social and Economic Rights in Zambia: Perspectives and prospects

CHAPTER TWO

ANALYSIS OF THE NATURE OF ECONOMIC AND SOCIAL RIGHTS AND THEIR RELEVANCE TO DEVELOPMENT

1.0 INTRODUCTION

Realisation of Economic, social and cultural Rights has direct implications for global and national development and has received increased public attention. One attempt to achieve improved global development has been the proclamation of the millennium Development Goals (MDGs) by the United Nations in September 2000. These goals aim at positively addressing the crippling poverty and growing suffering that grips the world over. Member states such as Zambia have committed themselves by 2015 to reduce by half extreme poverty and hunger, achieve universal primary education, promote gender equality and empower women, reduce child mortality, improve material health/combat HIV/AIDS, Malaria and other diseases, ensure environmental sustainability and to develop partnership for development.²⁷

This chapter will focus on analyzing the legal nature of economic and social rights and their relevance to social and economic development. It will further discuss what is meant by the justiciability of the economic, social and cultural rights. In relation to the current Zambia legal framework.

It must be borne from outset that there is a historical and fundamental distinction between civil and political rights and economic, social and cultural rights and this has without doubt created the misconception that the two categories of human rights are different on the basis of justiciability, with the economic, social and cultural right being non-justiciable.

Much as it is appreciated that the two classifications of human rights are said to be interdependent and indivisible, the issue of whether economic, social and cultural rights are true rights or mere aspirational targets has drawn considerable intellectual debate and discussion globally and Zambia inclusive.

²⁷ Mwale S. (2004) Policy Brief: Promotion of social justice and concern for the poor: JCTR.

In the vein of elaborating on the issue of justiciability of human rights as a general human rights issue, we draw nearer to the understanding of the legal implications of the concept of the indivisibility, interdependence and interrelation of all human rights - economic, social and cultural rights and civil and political rights.

Professor Tyler Jr.²⁸ defines justiciability as the “possibility of human right, recognized in general and abstract terms, to be involved before a judicial or quasi-judicial body that can: first, determine, in a particular concrete sense or case presented before it, if the human rights has, or has not, been violated, and second decide on the appropriate measures to be taken in the case of violation” This definition implies that not all cases brought before courts are accepted for their review.

Justiciability hence refers to the ability of a text to take full effect as a legal rule or to create legal effects. It is a notorious fact that not all statements embodied in legal enactments are or will be justiciable.

In demonstrating the legal nature of the economic, social rights as well as their relevance to development, it is important to be able to stress that their justiciability in the constitution is important so that they can be claimed as of rights.

A justiciable charge is one appropriate for or subject to court trial, while that which can be settled by law or a court of law is said to be a justiciable dispute.²⁹

To fully appreciate the legal nature of economic and social rights as well as their relevance to development, the definition of justiciability must be considered in the light of the Economic and social rights as scholars postulate that these rights in their inherent nature, are non - justiciable.

²⁸ Ralph S. Tyler (2006) The linkage Between Justiciability and remedies and their connections to substantive rights p. 653

²⁹ Hill, G (2003) West's Encyclopedia of American Law, v.s. Federal Procedure 2 ed. P. 98

In Zambia, and many other jurisdictions, law suits are considered as having three stages. First, at the threshold, the court determines justiciability, second, if the suit is justiciable, the court rules on the merits, finally, if the plaintiff prevails the court determines the remedy. Therefore, if one has a right, for instance one which is Economic and Social in nature and it passes through all these three stages, it can be said to be justiciable.³⁰

Economic, social and cultural rights are those rights which mandate that social conditions be adequate for meeting physical, moral and biological requirements for every category of people. They aim at ensuring everyone's access to resources, opportunities and essentials for adequate standard of living.³¹

These basic human requirements are central to meaningful development and poverty eradication. To ensure that 100% of all budgeted resources for poverty reduction programmes do in fact reach the intended beneficiaries, one appropriate legal mechanism is to ensure basic economic, social rights in our Bill of Rights. This would mean allocated funds would in effect be constitutionally "ring-fenced" or protected.³²

If economic, social and cultural rights are in the Bill of Rights, two results will occur firstly, the government will be obliged to make clear efforts to meet these basic needs. This will ensure accountability and transparency by the government in its preparation of the National Budget and in its distribution of the country's resources. Thus it will act as a criterion for government to prioritise development. Secondly, citizens will have a right to seek legal redress if these rights are denied or infringed upon. Claims can be made in court that the government is not fulfilling its constitutional obligations.³³

³⁰ JCTR: Policy Brief: What is the way forward to improve the lives of all Zambians

³¹ Mwale S. (2004) Police Brief: JCTR

³² Op CIT

³³ Mwale S. Policy Brief: Promotion of social justice and concern for the poor: JCTR

Therefore, there is strong evidence that development goals ought to be understood as basic human rights and not mere policy directives. This can be realized if the Economic, Social Rights are in fact enshrined in the Bill of Rights of the Zambian constitution.

The concept of justiciability is a complex one. It is approached in varying ways and degrees by various world legal systems with regard to their domestic laws.

It has been, for example, established in the recent supreme court opinions in the United States of America that certain aspects of justiciability are closely tied to, it not co-extensive with, questions of jurisdictions. In order for an issue to be justiciable by a United States Federal court, some conditions must be met. For instance, there must be an actual controversy between the parties. This means that the parties cannot agree to a lawsuit where both parties seek a particular judgement from the court rather, the parties have to each be seeking a different outcome.³⁴

In the case of Allen V. Wright,³⁵ it was demonstrated that one of the requirements is that the plaintiff (s) must also have standing to sue.

In order to have locus standing, the plaintiff(s) must be a party who has been or will be harmed if no remedy is given provided the defendant must be a party to whom the harm can be traced, and the court must have the ability to provide a remedy that will relieve the harm to the plaintiff.³⁶

The profound principle of locus standii as regards justiciability in Zambia has been espoused in many court cases.

³⁴ Nolan A et al (2007) Justiciability of social and economic rights: an Updated Appraisal P. 6

³⁵ 468 U.S. 737.

³⁶ Allen v. wright 468 U.S. 737

In the case of Chitala V. The Attorney General,³⁷ the need for applicant to have sufficient interest in the matter illustrated.

In law, standing or locus standii is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged.³⁸

In the United States for a matter to be justiciable, the question must be neither unripe nor moot.

An unripe question is one for which there is not yet a threatened injury to the plaintiff while a moot question is one for which the potential for an injury to occur has ceased to exist.³⁹

The court must also, has a justiciability requirement not be asked to resolve a political question as was adumbrated in the profound case of Nixon V. United States.⁴⁰

In Zambia, even as we consider the justiciability of Economic and Social Rights, it may also be useful to distinguish between insufficient or inadequate access to Economic and Social Rights resulting in poverty and whether such situation is the result of a violation of the concerned individual's right.

The realization or actual provision of economic and social rights entails obligations of conduct and of result.

If a country has relatively high income and high levels of absolute poverty, this could be an indication of a failure to take necessary and appropriate steps to the maximum of

³⁷ (1995 / 1997) ZR, 91

³⁸ Cook, R (2001) Advancing sale Motherhood through Human Rights.

³⁹ Poe v. Illman, 367 U.S. 497 (1961)

⁴⁰ 506 U.S 224 (1993)

available resources. This is the kind of check justiciability of economic, social and cultural rights would seek to provide.⁴¹

The justiciability of economic and social rights would enable individuals seek remedies and hold their governments accountable if the right is violated.

In the preceding chapter, an elaborate discussion on the history and content of Zambia's Bill of Rights, which are enshrined in part III of the constitution. It is however, also important to view it light of Economic and Social Rights.

In Zambia, justiciability of economic and social right is key in holding government accountable for not meeting their obligations under international law, which increasingly recognizes these rights as fundamental and justiciable human rights.

The economic and Social Rights are in the current Zambian constitution not specifically mentioned in Part III, the Bill of Rights, which contains fundamental rights and freedoms of an individual. But rather, they are within Part IX , "Directive principles of state policy".

Where the government would endeavour to provide, inter alia , clean and safe water, equitable educational opportunities in all fields and at all levels, adequate medical and health facilities, descent shelters for all persons, and development of a person's culture, tradition, custom or language that is not inconsistent with the constitution.⁴²

Article 111 of the same part IX clearly states that the "Directive Principles of state policy " shall not be justiciable or be legally enforceable in any court tribunal or administrative institution or entity.

⁴¹ Stew art, D. et al. (2004) Justiciability of Economic, Social and Cultural Rights : should there be an international complaints mechanism to adjuticate the rights to food, water, housing and health p. 497

⁴² Article 112 of cap. 1 of the laws of Zambia

It therefore follows that legally and otherwise, the economic and social rights are not “justiciable” They do not fall within the legal definition of justiciable rights. The courts of law are hence restrained from entertaining any action on basis of violation of rights in part IX of the current Zambian constitution on the basis of the experts provision of the law.⁴³

Unless the issue of justiciability of economic and social rights is addressed, the economic and social rights will remain in the legal limbo.⁴⁴

It is all too clear that the structural changes required to ensure the sustained enjoyment of economic and social rights in Zambia are as distant as they have ever been. The combination of economic reform, corruption and the exclusion of the voices of the poor has often led to higher costs of housing, education, health care, water and food.⁴⁵

These factors have surely benefited the rich, while simultaneously squeezing the poor even tighter, so that they find themselves even further from the basic attributes of life that economic and social rights were meant to provide. There deprivations in respect of the rights to adequate standard of living, the right to food, the right to housing and the right to health are widespread and severe in Zambia. In a submission to the United Nations Committee on economic, social and cultural rights, it was stated that there is evidence that the situation for many people is worsening. The report further states that “Rights within the covenant can be juxtaposed to a reality in Zambia which attests to their prima facie denial”.⁴⁶

The demand to incorporate economic and social rights is rooted on the respect for the dignity of the human person. That is, the worth of being human is not constituted by any human declaration or institution, but rather given by God, a universally shared reality.

⁴³ Cap. 9 of the Laws of Zambia.

⁴⁴ Mwale S. (2006) can we afford Economic, Social and Cultural Rights? P.3

⁴⁵ Nolan, A. et al (2007) justiciability of special and Economic Rights: an updated Appraisal P. 4

⁴⁶ OP CIT

There must be willingness to change the status quo which continues to deny many Zambians an opportunity to fully develop in an environment that legally recognizes, respects, protects and assures a standard of living worth of human dignity. Undoubtly, economic and social rights are indispensable for human and national development. There is simply no development without provision of economic and social rights. Full enjoyment of economic and social rights increases the capacity of each person to meet the basic needs and amenities necessary for a meaningful life.⁴⁷

Economic and social rights would ensure that there is development in Zambia especially when they are made justiciable in the Zambian constitution.

Basic rights such as adequate food, clean, water and sanitation, proper health care, basic education, priorities. This is why there is need to move economic, social and cultural rights from the weak category of "guiding principles" in part IX to the justiciable category of "fundamental rights" found in the Bill of Rights, Part III.⁴⁸

It must be appreciated that economic, social and cultural rights are 'equal rights' as well just as the civil and political rights. Must as they are referred to as the second generation rights, they are needed by all human beings to realize their full developmental potential in life.

The exercise of full human rights for all citizens is essential to integral and sustainable human development in Zambia.⁴⁹

The supreme court of India has used Part IV of the Indian constitution, which is the Directive Principles of state policy to impose positive duties on the. Thus non-justiciable economic, social and cultural rights have been enforced via creative interpretation of

⁴⁷ Mwale S. Policy Brief: JCTR

⁴⁸ JCTR Brief: What is the way forward to improve the lives of all Zambians?

⁴⁹ Mwale S. (2004) Policy Brief promotion of social justice and concern for the poor.

civil and political rights on the basis that penalty of the former prevents full enjoyment of the latter.

For example, the right to life (Article 21 of Indian constitution) has been interpreted to give rise to the right to live hood, to health, and to education. However, enforcement of decisions has proved difficulties: detailed court orders are often ignored by state officials especially if they are inconsistent with the constitution.

The Indian jurisprudence is the clearest example of judicial action to overcome distinctions between socio - economic and other human rights, by extending the scope of the right to life to encompass the right to a dignified life and thus to a number of elements which are indispensable for it. This is the case not only for the right to food, which is easily interpreted in the right to life (as the right to biological survival), but also for the right to education, which the Indian supreme court has rule to be protected under the same ambit.

This kind of judicial action gives meaning to rights which are usually neglected as directive principles of state policy or mere aspirations.

CONCLUSION

Economic and social rights are important in economic and social development of a society. It is important to stress that much as they are considered to be second generation rights, they are important for a meaningful and dignified human life. Sustainable economical, social as well human development is anchored on the realization and enjoyment of the economic and social rights as demonstrated above. It is of great interest to be able to mention also that as demonstrated in this paper civil and political rights are interrelated with economic and social rights. E. Nii Ashia Kotey in his key-note speech to the international commission of jurists, noted that,. "There is nothing inherent about the nature of economic and social rights which makes them

unenforceable by judicial process. It is simply that many states and many human rights systems have chosen not to enforce them through the judicial process".⁵⁰

It is therefore, important that the economic and social rights are made justiciable so that they are now purely legal rights and subject them to judicial review. It would thereafter be easier for people to be able to claim them as of right in the courts of law. It is only after such steps have been taken that it will be legally possible to prevent violation of these rights with impunity.

⁵⁰ The Linkage between justiciability and remedies and their connections to substantive rights

CHAPTER THREE

THE IMPORTANCE OF OBSERVING CIVIL AND POLITICAL RIGHTS TO ACHIEVE POLITICAL DEVELOPMENT

1.0 INTRODUCTION

Human rights concern themselves with the vision that the individual to the total scheme of that political community must be guarded against arbitrary and oppressive conduct of those exercising state power, or against the abuse of such power.

Due to the increasing power of the state and the rise of rulers who possessed so much power, there was need to protect the individual. It can be stated therefore that fundamental human rights as they are referred to in modern parlance were traditionally referred to as natural rights.⁵¹

The case of Christine Mulundika and others v. the Attorney General⁵² is an excellent precedent as regards the attention that civil and political rights have attracted hence the much seen development in the political circles in Zambia in terms of freedom of association and assembly.

Administrative accountability includes that of public officials to their superiors and to those whom they are mandated to serve. Judicial and quasi judicial accountability are established through legislation, its implementation and, in the final instance, the ability of a free and independent judiciary or quasi-judicial body to uphold the law through the effective enforcement of judicial pronouncements, thus supporting both the separation and balance of power.⁵³

⁵¹ Mulonda P, Human Rights Commission; Presentation to the NCC, April 28, 2008, p.11.

⁵² [1995 – 96] SCZ/25.

⁵³ Office of the High Commissioner for Human Rights (2004) Human Rights and Poverty Reduction; This

This chapter will focus on the importance of the observance of civil and political rights in political development of a society with particular reference to the cases of Rodger Chongwe V. The Attorney General, Christine Mulundika and 7 others V. The Attorney General.

It was alluded in chapter one (1), that... however, it must be observed that in the years that have since gone by, the civil and political rights in Zambia have attracted much attention as has been demonstrated in the cases of Christine Mulundika and 7 others V. The Attorney – General⁵⁴. William Steven Banda V. The Attorney - General.⁵⁵ Alfred Zulu V. The Attorney - General.⁵⁶

There has been political development in Zambia as regards the freedom of Assembly and association as a result of the guarantee and protection of civil and political rights in the constitution under Part III, the Bill of rights.

It must be established however, that for political development to be really appreciated in the observance of civil and political rights in Zambia, due regard must be had to the strict enforcement of the civil and political rights.

An excellent check must be put on the executive branch of government as it appears to be the main target of the courts and other human rights upholding institutions.

The chapter of the United Nations put human rights on the agenda of international politics and law. It did so by reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.⁵⁷

⁵⁴ 1996/SCZ/25

⁵⁵ 1992/HP/1005

⁵⁶ 1994/No. 5 of 1994

⁵⁷ Lambert, S. (2007) The Justifiability of Economic, Social and Culture rights P. 321

This has without doubt seen political development of societies as the dignity and worth of human persons to their freedom of expression and assembly have been uphold.

The advantage in entrenching the Bill lies in the fact that the guaranteed rights cannot lightly be taken away or modified.⁵⁸

In human rights terms the concepts of limited government' has meant 'non-interference' or 'negative immunity claims' and hence the quasi exclusive focus on civil and political rights (negative rights). It is for this reason that the normative range of human rights guaranteed in the traditional Bill of Rights tends to be confined to civil and political rights.⁵⁹

The rights enshrined in the Bill of Rights, Part III of the Zambian constitution are justifiable rights and since they are inscribed in the constitution, the justiciability of those rights partakes of the nature of constitutional litigation.

However, just as the mere fact of having a constitution does not entail the existence of a system of judicial review, so to the mere incorporation of human rights in a constitution does not ipso facto mean that those rights have hereby been protected.⁶⁰

It is therefore of paramount importance that there is strict enforcement and observance of the rights under part III of the constitution, the civil and political rights to ensure that these fundamental rights and freedoms are protected to assure that there is political development. Mechanisms have to be put in place for the effective enforcement of those rights.

The case of Christine Mulundika and 7 others V. The Attorney - General has demonstrated to be an excellent precedent in as regard political development by striking down the provisions in the public order Act Cap. 104 of the laws of Zambia which were

⁵⁸ Anyangwe C. (2004) Intro. To Human Rights International Humanitarian Law P. 199

⁵⁹ Ibid

⁶⁰ Anyangwe C. (2004) P. 205

unconstitutional by virtue of the Public order (Amendment) Act, No. 106 1996 by providing for the freedom of association and assembly.

In the New Patriotic Party V. The Inspector General of Police⁶¹, in relation to Ghanaian legislation making it a requirement to obtain a permit prior to holding an assembly, Hay From – Benjamin, JSC, opined at P. 41 and 42 of the transcript we have that such legislation creates a prior restraint on the freedom of the citizen to form or hold a meeting of procession and in terms of Articles 21 (d) also to demonstrate in a public place. A prior restraint is an injunction prohibiting the freedom of assembly procession or demonstration, whether such injunction or prohibition is imposed by statute or by order of court the citizens freedoms may be restrained by law on the grounds stated in the constitution but they cannot be denied. Any such denial will be unconstitutional and void."⁶²

Article 28 of the Zambian constitution gives the high court original jurisdiction to determine cases relating to human rights abuse. Anyone who alleges that any of his rights guaranteed in the Bill of Rights has been, is being or is likely to be contravened in relation to him, may apply for redress to the High Court.⁶³

It is important that much as there are reasonable restrictions in the enjoyment of the civil and political rights, persons entitled to their enjoyment must be free to exercise their fundamental freedoms and rights without unnecessary restraints and clawbacks for political development to be there.

The case of Rodger Chongwe V. The People⁶⁴ is one of the paramount cases that lives to substantiate how political development can be achieved through observance of civil and political rights in particular freedom of association and assembly.

⁶¹ Writ No. 4/93 – unreported.

⁶² New Patriotic Party V. Inspector General of Police (writ No. 4/93 unreported.)

⁶³ Cap. 1 of the laws of Zambia.

⁶⁴ Re: Rodger Chongwe case

Doctor Rodger M. Chongwe, a prominent Lusaka Lawyer has since sued the Zambian government for compensation following an assassination attempt on him and others inter alia first Republican President of Zambia, Doctor Kenneth Kaunda in Kabwe in 1996 on allegations of unlawful assembly and association.

The cases of Christine Mulundika and 7 others V. The Attorney - General, Rodger Chongwe V. The Attorney General both emanate from a common background of freedom of association and assembly in the Kabwe 'shooting incident'. The provisions of the Public Order Act that were unconstitutional have since been done away with hence seeing much more freedom of association and assembly in society.

After hearing and determining any application made to it, the court may make such orders as an order for compensation as in the Attorney General V. Musonda Mofya⁶⁵ as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions in the Bill of Rights.

The case of Rodger Chongwe V. The Attorney - General is an excellent precedent as regards due compensation being given when one's rights have been violated, as it has been established.

Progressive judges construe human rights provisions, civil and political rights, as to make them meaningful and effective. And where human rights are involved, they take a liberal approach to procedural requirements and to the rules of locus standi.⁶⁶

In a Nigerian case of Olushola Oygbemi V. The Attorney - General of Lagos, Wrti No. 3/92 the Nigerian court declared that if the powers of the police are exercised outside the constitutional boundaries, in any way that vitiate fundamental human rights provisions in the constitution, such action will be declared unconstitutional and illegal.

⁶⁵ (1995) ZE, 20

⁶⁶ Anyangwe C. (2004) Intro. to Human Rights and International Humanitarian Law P. 209

This would ensure that there is free movement, freedom of association and assembly as it would ensure the protection of fundamental rights against the tyranny of the 'few elites' in authority.

It would therefore, follow that political achievement or development will be meaningful and tangible as citizens would be free of want and fear from the few running government machinery, the executive, branch, which is the main culprit in informing fundamental, civil and political rights of citizen for its own political gain and strength.

Suffice it to say that civil and political rights have for years received, both at the international national levels. Much more prominence than the economic, social and cultural rights. Zambia is no exception in this regard. It is safe to state that, in the realm of civil and political rights, much has been achieved in Zambia.

Many people freely exercise and enjoy the fundamental rights and freedoms protected in the Bill of Rights entrenched in the constitution of the Republic of Zambia, all of which are civil and political rights.

Breaches of civil and political rights also lead to financial compensation, which by definition involves budgetary resources. A whole area of torts and administrative law focuses on state liability, which is regularly assessed and adjudicated by courts and tribunals.

Civil and political rights may also require the adoption of legislation or regulations, which is not free of charge - it involved legal advice, time consuming consultations, working time by advisors, legislators, regulators, etcetera. Such legislation and regulations need further implementation which again requires budgetary allocations. All decisions with budgetary outcomes imply, in a world of scarce resources, prioritization.

It is therefore, important that there is strict enforcement and observance of political rights in Zambia to ensure that there is political development. In the case of Rodger Chongwe

V. The Attorney - General, the issue of compensation has been a tight matter and has certainly cost the government billions of dollars due to non observance of the civil and political rights.

The due regard and adherence to civil and political rights in Zambia has hence led to the development of the political scenario in Zambia as there is 'fear' that hefty costs might be incurred in compensation, should there be impunity disregard violation of civil and political rights.

Justice Brandeis of the United States Supreme Court in Whitney V. California, said, Those who won our independence believed that the final end of the state was to make men free to develop their faculties, and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as end and as a means.

They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth, that without free speech and assembly discussion would be futile, that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine, that the greatest menace to freedom is an inert people, that public discussion is a political duty, and that this should be fundamental principle of American government.

They recognized the risks to which all human institutions are subject. But they know that order cannot be secured merely through fear of punishment for its infraction, that it is hazardous to discourage thought, hope and imagination, that fear breeds repression, that repression breeds hate, that menaces stable government, that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies, and that the fitting remedy for evil counsels is good ones.

Believing in the power of reason as applied through public discussion, they eschewed silence coerced by rule argument of force in its worst form.

Recognizing the occasion tyrannies of governing majority, they amended the constitution so that free speech and assembly should be guaranteed."

CONCLUSION

The observance and enforcement of the civil and political rights is of paramount importance in a society to ensure that there is political development in society. It is important to ensure that there is free political environment as a result of the civil and political rights' observance. The Chapter, has endeavoured to demonstrate the importance of observing the civil and political rights for political development in a society.

This is the kind of political development that would ensue should there be strict enforcement and observance of the civil and political rights in light of the cases of Christine Mulundika and 7 others V. The Attorney - General, and Rodger Chongwe V. The Attorney - General.

CHAPTER FOUR

ANALYSIS OF ZAMBIA'S ECONOMIC AND POLITICAL SITUATION AS REGARDS HUMAN RIGHTS OBSERVANCE.

1.0 INTRODUCTION

Zambia has celebrated her 44th year of independence. It is of natural justice and proper to reflect on the status and enjoyment of all human rights in the country as regards Zambia's political and economic situation. Human rights are traditionally divided into two main groups, namely civil and political rights and economic, social and cultural rights as the directive principles of state policy. It is of paramount importance to be able to stress also that assessment of whether human rights observance is there to guarantee development in Zambia has to be done, as it would be incomplete without reflecting on the prevailing political and economic conditions in the country.

This chapter will analyse Zambia's economic and political situation and whether human rights observance is present to guarantee developmental.

1.1 ANALYSIS OF ZAMBIA'S ECONOMIC SITUATION

The branches of government include the executive headed by the President (Chief of State and Head of government) and his Cabinet. There is the legislature and the judiciary which is made up of Supreme Court, High Court, Magistrate Courts, and Local Courts.

The Human Development Index (HDI)⁶⁷ is a good measuring rod when ascertaining a country's socio-economic and political situation.

The Human Development Index was first calculated in 1975 and Zambia was identified among a group of 8 countries with similar levels of Human Development – Botswana, Papua New Guinea, Ghana, Morocco, Congo, Lesotho, Kenya and Cameroon were the others. Zambia's Human Development Index (HDI) grew at a slow rate compared to the other 8 countries up to 1985 and from then the Human Development Index value declined sharply such that by 1995, Zambia's Human Development Index was lower than its 1975 values.⁶⁸

Human rights observance as regards the situation given above would be difficult. It is worthy noting that the economic, social and cultural rights which are so fundamental for economic and social development to be there are not observed as regards the condition of Zambia economically as from 1975 – 1995 as indicated by the Human Development Index.

The basic human requirements are central to meaningful development and poverty eradication. To ensure that 100% of all budgeted resources for poverty reduction programmes do in fact reach intended beneficiaries, one appropriate mechanism is to enshrine basic economic, social and cultural rights in our Bill of Rights.⁶⁹

⁶⁷ The concept of Human Development seeks to capture the process of expanding choices and opportunities for a kind of life people highly valued. UNDP P. 69

⁶⁸ UNDP Zambia Country Data 2007/08

⁶⁹ S. Mwale JCTR, Policy Brief: Promotion of Social Justice is concern for poor

The living conditions monitoring survey⁷⁰ conducted from 1991 to 2006 have shown that the incidence of poverty was at 64% in 1991 with the rural areas being the worst hit with 78% in 2006. Unemployment and underemployment are also serious problems in our country. The levels of unemployment in 2006 show that urban areas recorded higher unemployment rates (32%) than rural areas (5%). In terms of income distribution the mean monthly income for a Zambian household in 2004 was K511,377. Only about one in every three (3) households (35%) had mean monthly incomes that exceeded K300,000, implying that the majority of Zambian households, or appropriately 65% had incomes below the basic basket needs.

Per capital⁷¹ annual incomes were well below their levels at independence and at USD 921, place the country among the world's poorest nations. Share of National Income of the poorest 10% of Zambian (2004) is 1.2% while the share of national income of the richest 10% of Zambians (2004) is 38.8%.

There must be willingness to change the status quo which continues to deny many Zambians an opportunity to fully develop in an environment that legally recognizes, respects, protects and assures a standard of living worthy of human dignity. Undoubtedly, economic, social and cultural rights are indispensable for human and national

⁷⁰ Central Statistics Office (2006) Living Conditions.

⁷¹ UNDP Zambia country data 2007/08

development. There is simply no development without the provision of the economic, social and cultural rights.⁷²

It becomes very difficult therefore for development to be there in an instance where as illustrated by the Human Development Index (HDI) the economic situation in Zambia is not conducive to even guarantee the full or mere enjoyment of human rights in particular the economic, social and cultural rights.

Social indicators continue to decline, particularly in measurements of life expectancy at birth (about 40.5) years and maternal mortality (729 per 100,000 pregnancies).⁷³

In terms of access to health facilities in 2006, the majority of households, about 95% had access to a health facility. More urban households, 96.2% reported having used the facility compared to their rural counterparts with 94.4%. There are 12 doctors per 100,000 Zambians (2000-2004). As regards access to safe water, the proportion of households with access to safe water was 95%. Access to safe water was higher in urban (about 89%) than in rural areas (about 43%) while for sanitation about 59% of households in Zambia had own pit latrines, 7.3% communal latrine and another 4.6 percent used neighbours pit latrines. The child nutrition status on overall, 54.2% of children aged 3 - 59 months were stunted in Zambia.⁷⁴

⁷² JCTR: What is way forward to improve the lives of all Zambians?

⁷³ UNDP Zambia Country Data 2007/08

⁷⁴ Op Cit

It must be noted, however, that the economic situation in Zambia as regards human rights observance and henceforth the guarantee of economic development has been a dismal, there have been, however some positive achievements made in the economic situation of Zambia.

For 30 years, copper production declined steadily from a 1973 high of 700,000 metric tons to a 2000 low of 226,192 metric tons. The decline was the result of poor management of state owned mines and lack of investment. With the privatization of the mines in April, 2000, the downward trend in production and exports was reversed as a result of the mines in April 2000, the downward trend in production and exports was reversed as a result of investments in plant rehabilitation, expansion, increased exploration and high copper prices on the international market. Copper production rose to 535,000 metric tons in 2007. Zambia experienced positive economic growth for the ninth consecutive year in 2007 with a Gross Domestic Product of \$10.9 billion and a real growth rate of 6% (according to preliminary International Monetary Fund estimates).⁷⁵ The rate of inflation dropped from 30% in 2000 to a single digit inflation of 8.9% by December, 2007 due to fiscal and monetary discipline and the growth of the domestic food supply.⁷⁶

It is important to note at this point that the economic situation in Zambia has been well analysed and whether human rights observance is there to guarantee development or not. It is of natural justice to mention that human rights are not by themselves cheap

⁷⁵ US State Department (2009) Bureau of African Affairs: Background Note: Zambia/<http://www.state.gov>

⁷⁶ Ibid

although they are inherent, inalienable and universal. Their enjoyment carry with it duty as well.

In July, 2005, the G-8 agreed on a proposal to cancel 100% of outstanding debt of eligible Highly Indebted Poor countries to the International Monetary Fund, African Development Fund, and the IDA. Zambia is among the beneficiaries of this additional multilateral debt relief. Zambia has completed a Poverty Reduction and Growth Facility (PRGF) arrangement with the International Monetary Fund in 2007, and the government has not yet determined whether it will seek another PRGF program or pursue a different arrangement with the IMF, a Policy Support Instrument (PSI) which would not involve additional lending.⁷⁷

As established by the examples and statistics, government's current social safety measures are not succeeding in reversing the ever widening gap between the rich and the poor in Zambia. Therefore, additional strategies need to be devised to complement their efforts.

Human rights, specifically economic, social and cultural rights can be one of the strategies to employ in order to achieve social justice in Zambia. The right to work, the right to fair conditions of employment, the right to form and join trade unions, the right to social security, the right to protection of family, the right to an adequate standard of living, including the right to food, clothing and housing.⁷⁸

⁷⁷ Op Cit

⁷⁸ Zambia/<http://www.state.gov>

1.2 ANALYSIS OF POLITICAL SITUATION AND HUMAN RIGHTS OBSERVANCE TO GUARANTEE DEVELOPMENT.

The political situation in Zambia as regards human rights observance henceforth development can be at large be considered in the context of the civil and political rights in Zambia. It has already been alluded to in this paper, Chapter Three, in particular that the civil and political rights in Zambia have attracted much attention and this has subsequently seen political development in as regards human rights observance. The cases of Christine Mulundika and 7 Others V. the People,⁷⁹ Alfred Zulu V. The Attorney General.⁸⁰ Steven William Banda V. The Attorney General.⁸¹

The Zambian Constitution, for its part, contains an extensive catalogue of fundamental human rights and freedoms. However, as established already the economic, social and cultural rights provision therein are protected only in a rather limited and modest fashion. Most of the provisions relating to the economic, social and cultural rights are considered as a s Directive Principles of state policy that are fundamental to the governance of the country and the state is obliged to have regard to these principles in making laws.

The Zambian people have in the past three constitutional review commissions, recommended that the economic, social and cultural rights be included in the Bill of Rights of our Constitution.

⁷⁹ 1995/SCZ/25

⁸⁰ 1992/HP/1005

⁸¹

It must be made mention that there has been no political will to make the economic, social and cultural rights in Zambia justiciable on part of the political leadership of the day.

The Zambian Constitution from which all power and authority is derived, it being the fundamental law of the land puts unnecessary blockades on the full enjoyment of the political environment as regards human rights and their guarantee for development.

The Constitution fetters the judiciary by way of any apparent injunction against enforceability of the Directive Principles of state policy. The judiciary, on the other hand, does not pin the state to its obligations towards citizens by referring to the Bill of Rights – the Directive Principles of state policy symbolizes can demonstrably be read as forming part of an enforceable regime of fundamental rights. What then is crucial is the will of the state to implement this constitutional mandate. The separation of human rights into the distinct sets remains the underlying paradigm of most legal thinking produced on the subject of economic, social and cultural rights. From this perspective international law appears as a static, rigid system of water tight legal compartments, even when acknowledging some interrelatedness, the compartments remain the rule, nevertheless.

However, Zambia needs a perspective that takes a different view. Artificial separations are just that: artificial. Rights in real life are interwoven and each, in its own right, pose challenges to the legal mind, to provide a remedy. Justiciability is no longer a matter of

perfectly dissecting and distinguishing the inseparable but of finding the key relations between apparently separate notions. Remedies can take a myriad of forms.”⁸²

The South African legal formulation of the economic, social and cultural rights is particularly helpful in this endeavour in that it requires that the state to take reasonable legislation and other measures and takes under consideration the notion of available resources. This approach would allow the South African state the latitude to implement these rights “progressively” without being required to stretch beyond their available resources. While the measures of “unreasonableness” is not an exact science and courts may not necessarily be perfect in their evaluations thereof, the measure at least allows for a safety value in the face of otherwise expensive entitlements. The key to the South African model is that, while the courts do not decide the rights should be legally protected, they retain the power to review the “unreasonableness of policies implementing such protections.”⁸³

CONCLUSION

The adjudication of socio-economic rights is a hotly contested issue in international constitutional jurisprudence. It has been politically, economically, legally and historically argued and accepted that socio-economic rights are non justiciable. In Zambia, statistics, as quoted in the paper speak volumes for themselves. No matter how we slice it, deprivation, poverty, inaccessible health, education and welfare systems and immense human suffering remain distressingly common place because economic, social and

⁸² The Mwanakatwe Constitutional Review Commission (CRC) 1995 and the Mung’omba CRC 2005

⁸³ Harvard Law Review (2007) What Price for the Priceless? Implementing the Justifiability of the Right to water P. 10

cultural rights , the most promising path of potential hope we have been rejected in practice by those fuelling institutions of governance and economy. We as Zambians are thus left with the predicament for which there is only one realistic solution if we aim to rejuvenate economic, social and cultural rights. This is simply that our leaders and most respected commentators need to take a set back and re-evaluate the questionable virtues of treating economic, social and cultural rights and their civil and political counterparts as if they were separate and distinct, rather than interrelated and indivisible.

CHAPTER FIVE

CONCLUSION, SUMMARY AND RECOMMENDATIONS

1.0 INTRODUCTION

The general objective of this research was to analyse the relevance of human rights in political, social and economic development of a society. This was to be achieved through assessing the strength and independence of Human Rights agencies like the courts and Human Rights Commission. It must be mentioned without hesitation that the research was also aimed at assessing the impact of justifiability of economic, social and cultural rights. Furthermore, the research was aimed at assessing the impact of civil and political rights in Zambia's political development. The research looked at the general nature of human rights and also gave an analysis of the nature of economic and social rights as well as their relevance to development. We addressed the importance of observing civil and political rights in the political development of a society.

The research also assessed how effective the justifiability of economic, social and cultural rights is in the quest of making human rights a reality for most Zambians. It used as points of references various international human rights instruments and jurists, particularly on economic, social and cultural rights. The research also analysed Zambia's economic and political situation and whether human rights observance is there to guarantee development or not. It was highlighted in the research that neglect of economic, social

and cultural rights in Zambia, has led to poor socio-economic situation in the country. It was further reaffirmed that all human rights being universal, indivisible and interdependent, national institutions should adopt a comprehensive approach to the promotion and protection of human rights, which includes economic, social and cultural rights.

2.0 RECOMMENDATIONS

It must be acknowledged that most of the recommendations of this research are of more ways than not those made on the International Round Table on National Institutions implementing economic, social and cultural rights, which was held at the New Delhi, India from 29th November to 1st December, 2005 as regards social and economic development of a society. The core mantle of the Round Table was to discuss and strengthen the role and capacity of national institutions in protecting and promoting economic, social and cultural rights. The concluding statements of the Round Table meeting is so instrumental and instructive in reaching the recommendations of this research, as stated hereinunder.

2.1 POLICY RECOMMENDATIONS

- There is need to monitor and promote compliance with the international covenant on economic, social and cultural rights (ICESCR) and Zambia must continue to issue periodic, consistent and comprehensive state reports to all the relevant United Nations bodies.

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2.1 POLICY RECOMMENDATIONS

- There is need to monitor and promote compliance with the international covenant on economic, social and cultural rights (ICESCR) and Zambia must continue to issue periodic, consistent and comprehensive state reports to all the relevant United Nations bodies.

Adopt and ratify the optional protocol to the International Covenant on economic, social and cultural rights, international covenant on civil and political rights, which establish a complaint mechanism for the covenant.

The judiciary should learn from the best practices of other international and domestic judicial bodies' jurisprudence when confronted with a claim involving economic, social and cultural rights as well as civil and political rights. The South African and Indian Jurisprudence require special attention.

Assist in ensuring that domestic legislation that may impact on the enjoyment of the economic, social and cultural rights as well as civil and political rights is in compliance with international human rights norms and provides for sufficient protection of economic, social, cultural and civil and political rights which will be enshrined in the constitution and strengthen those already in the Bill of Rights of our constitution.

2 ZAMBIA'S OBLIGATION TO PROMOTE, PROTECT AND FULFILL ECONOMIC, SOCIAL AND CIVIL AND POLITICAL RIGHTS.

Work with bodies like the Anti-Corruption Commission and other institutions, within their prescribed mandate to combat corruption, which has a direct impact on the enjoyment of economic, social and cultural rights.

Help inform about, and where they do not exist to help in developing minimum standards to ensure implementation of economic, social, and cultural rights as well AS civil and political rights.

- Ensure that essential services which lead to the enjoyment of economic, social and cultural rights are provided at a minimum and affordable level. were, in the case of our country, most of these are privatized that state remains obligated to ensure that the provision of such services do not unnecessarily violate or contravene economic, social and cultural rights.
- The Zambian government, without the need of the any court order, must prioritise the implementation of economic, social and cultural rights to ensure their progressive realization within a given time frames.

2.3 LEGAL RECOMMENDATIONS

JUSTIFICIABILITY OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND LEGAL PROTECTION OF CIVIL AND POLITICAL RIGHTS.

- Ensure that the Bill of Rights in our constitution contains and makes as justifiable economic, social and cultural rights. It must be mentioned that the civil and political rights must be protected and strengthened through strong institutional framework. Where possible, implore the use of quasi-judicial powers in implementing economic, social and cultural rights including, for example, the presentation of amicus briefs to the judiciary, thereby assisting it in developing appropriate jurisprudence harmonizing civil and political rights with economic, social and cultural rights.
- Establishment of the constitutional court, which should have original and final jurisdiction in all matters of interpretation of the constitution and also determine a

question of violation of any provision of the Bill of Rights (which will include economical, social and cultural rights).

- Ensure that national institutions have adequate powers and competency to undertake investigations.

3.0 INSTITUTIONAL RECOMMENDATIONS

- Monitor activities and develop minimum standards to ensure the implementation of economic, social and cultural and civil and political rights for use by government agencies.
- Develop a strong research capacity to be able to deal with economic, social and cultural and civil and political rights effectively. This could be done by the Zambian Law Development Commission, the Human Rights Commission, Civil Society groups and other institutions.
- Pay attention to areas which impact on the full enjoyment of the civil and political rights as well as enjoyment of economic, social and cultural rights, including trade, the environment, corruption and the activities of non-state actors especially foreign investors in the present case of Zambia.
- Pay particular attention to economic, social and cultural rights in situations of conflict and recognize that a lack of respect for economic, social and cultural rights is a root cause of conflict and assess the positive and negative consequences of globalization and its impact on the enjoyment of economic, social and cultural rights.

NATIONAL INSTITUTIONS

strengthen the composition and functions of the Human Rights Commission to include the power to prosecute cases of human rights violations particularly economic, social and cultural rights..

The Office of the Ombudsman (Commission of Investigations) should be given constitutional mandate to more proactively to investigate all human rights violations, with a particular focus on economic, social and cultural rights.

Encourage and actively support advocacy, education and training on economic, social and cultural rights by a variety of means for rights-holders and public authorities, including the judiciary, and civil society.

CONCLUSION

From the foregoing, it can be concluded that the idea that economic, social and cultural rights, as a whole category are not fit for judicial adjudication is a serious misdirection and miscarriage of justice. Economic, social and cultural rights do not follow a single pattern and cannot be identified through a single trait or characteristic. Differences between economic, social, cultural and civil and political rights, are gradual and more managed than the traditional divide has suggested.⁸⁴

This research endeavoured to explore the relevance of human rights' observance to the relevance of economic, social and political development of a society with particular reference to Zambia. This research has reviewed that a number of conceptual and

International Commission of Jurists (2008) Courts and the Legal Enforcement of Economic, Social and Cultural Rights Comparative Experiences of Justifiability, P. 103.

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