



COMMISSIONS OF INQUIRY, THE ZAMBIAN
PERSPECTIVE: OBJECTIVES AND CONSTRAINTS.

BY

KATONGO NSOFU

An Obligatory Essay submitted to the
Faculty of Law of the University of
Zambia in partial fulfilment of the
requirements for the award of the
degree of the Bachelor of Laws (LL.B).

Faculty of Law
University of Zambia
LUSAKA.

JULY, 1988

OF ALL THOSE ARTS IN WHICH THE WISE EXCEL, NATURE'S
CHIEF MASTERPIECE IS WRITING WELL.

JOHN SHEFFIELD,
"ESSAY ON POETRY" 1682.

DEDICATED TO MY FAMILY -----FOR THE
SUPPORT, AND TO LOVENESS-----FOR ALWAYS BEING
THERE.

TABLE OF CONTENTS:

	Page:
PREFACE -----	1
CHAPTER I -	
Rationale for the enactment of the Act—	
Cap. 181-----	5
CHAPTER II -	
The legal basis of the Inquiries Act. -----	14
CHAPTER III -	
The objectives of selected commissions of inquiry-----	30
CHAPTER IV -	
The major constraints of selected commissions of inquiry -----	59
CHAPTER V -	
Conclusion-----	75

PREFACE

This work is an evaluation of commissions of inquiry in Zambia, their aims and objectives and the constraints faced in their fact finding role.

These ad hoc fact finding bodies are a creature of the administrative process and are appointed to make findings of fact on specific situations and make recommendations upon which government policy or action is based. They all seek to elicit factual data relevant to the formulation of a conclusion by government.

Social judgements and social action rest on factual data, proven or assumed. The means used to discover and evaluate data are as important a subject of study in the world of governmental action as they are in the world of science.

But it should be noted that people take them rather more for granted in the sphere of governmental action. It is generally assumed that the key issue is to get the facts, and it will be better known how to act.

It is interesting to note that facts can be assembled by a particular commission of inquiry and presented to the government for action and implementation, only to be totally disregarded or grudgingly accepted after a number

of years - like what occurred in the Mumpanshya commission of inquiry into the affairs of Zambia Railways.

In order to achieve its aim, this work has been divided into five (5) chapters.

Chapter I contains some introductory and general remarks on commissions of inquiry, highlighting the rationale for the enactment of the Inquiries Act, Cap 181. It also contains an analysis of the Parliamentary debates pertaining to the enactment of the Inquiries Act.

Chapter II has been devoted to the legal basis of commissions of inquiry, which incidentally is the enactment by Parliament, namely Cap 181. Linked to this will be an examination in depth of the actual provisions of Cap 181 - noting some of the disputes that have arisen in the interpretation of some of these provisions.

Chapter III has been singled out to illustrate the objectives of particular commissions of inquiry, looked at from the point of view of their respective terms of reference. Since commissions of inquiry are issued to inquire into any matter, in the public welfare or interest, it should be appreciated that their objectives differ according to the matters to be inquired into. But the basic aim is to make findings of fact and make recommendations on which government policy or action is based.

Chapter IV shall determine what are some of the major constraints faced by selected commissions of inquiry.

Chapter V is the conclusion. In this last chapter, it is aimed to assess whether commissions of inquiry are necessary in general.

The advantages and disadvantages; necessity and irrelevance of the commissions should guide this piece of work to the logical conclusion. A - comparison of the Zambia commissions of inquiry and two models in Great Britain shall be made, possible areas of reform in the Zambian model advanced.

The aim throughout has, therefore, been to objectively assemble, to weigh and to assess all the available data bearing on each of the chapters discussed in this obligatory essay.

I must pass my gratitude to a few persons, who helped in the conclusion of this work.

I must thank my parents for undertaking to fully finance the costs incurred in binding and typing my script.

I am deeply indebted to Mr. C. Beyani for the interest and guidance shown and rendered from the inception of this obligatory essay.

I would also like to sincerely thank Mr. Nyambe Mukelabai for supervising my work and for his enlightening contributions.

Special thanks go to Miss Loveness Hamalala for her encouragement, which helped in concluding this work on schedule.

I would also like to extend my gratitude to Mrs. Bridget Mpokosa for typing my script.

I also had the benefit of helpful comment from several of my colleagues in the law faculty.

Lastly, I would like to show my appreciation to members of staff of the University of Zambia Library, special collections section, for helping me locate some vital information related to my research.

I need hardly add that, as no part of this obligatory essay has previously been published, I hold myself responsible for all its shortcomings.

UNIVERSITY OF ZAMBIA,
L U S A K A ,
J U L Y , 1 9 8 8 .

K. NSOFU

CHAPTER I

In extremely general terms, a Commission of inquiry is an ad hoc fact finding body, which is appointed to inquire into certain matters relating to the administrative process.

Commissions of inquiry by their very nature are a very flexible instrument of public administration. Usually, they are appointed to make findings of fact on specific situations and make recommendations upon which government policy or action may be based. Exceptionally, however, they may serve a more subtle political purpose, such as to placate a volatile political situation.

The 1972 one-party Commission, partially served to pre-empt any major political problems by rushing through the introduction of the one-party state over a ten month period.

Similarly, when in 1975, a senior official of one of the then Liberation Movements of Zimbabwe, whose party was slightly out of favour with the Zambian government, died in a "car-bomb" explosion, following internal power struggles within his party, the Zambian government appointed a Commission of inquiry consisting of members from Zambia, other African countries and the Organisation of African Unity (O.A.U.) to ascertain the circumstances of the incident.¹ The report completely exonerated the Zambian government of any involvement in the incident and thus preserved Zambia's integrity.

The usage of commissions of inquiry in Zambia and its predecessor Northern Rhodesia, dates back as far as 1928, when the commission of inquiry ordinance was enacted.

This brings to the fore, that, the usefulness of commissions of inquiry and their importance were recognised in the era when our legal heritage was still sprouting.

In the Legislative Assembly debate on the Chinsali district disturbances, ² Mr. Mumbuna, ³ had asked the then Prime Minister, Mr. Kenneth Kaunda, whether Government would appoint an independent commission of inquiry to investigate the cause of the recent Chinsali troubles. The Prime Minister's response was in the negative. Mr. Kaunda asserted that though he appreciated the fact that the whole question of the Lenshina disturbances had caused and continued to cause great anxieties in the minds of all local law-abiding citizens, he did not see the justification for calling a Commission of Inquiry.

It appears like this negative decision hinged heavily on the fact that who was going to be met by the Commission of Inquiry?

If it was the forces of law and order, the idea was to find out whether there was any excess or abuse of power, but all the same the security forces would still be in operation.

If on the other hand it was from the Lenshina followers that information was sought, this would be impossible because these people were still shooting and hunting the security forces. In the words of the Prime Minister. " To think of a Commission of inquiry at this time is unthinkable and trying to attribute to Government something fallacious or that we have something to hide is absurd. When the time comes and it is justified to hold a Commission of inquiry, in calmer circumstances, we shall not hesitate to do so".⁴

This resolution gained unanimity in the house. This is a case in point which illustrates that commissions of inquiry have had a long history in Zambia's administrative and legal process and does indeed deserve a closer examination.

Since the enactment of the commission of inquiry ordinance in 1928, no other legislation pertaining to inquiries was initiated until 21 July, 1967, when the Inquiries Act ⁵ was passed. The latter enactment is the one that gives legal basis to the modern commissions of inquiry.

The then Minister of Legal Affairs, Mr. Skinner, brought the motion in the House to repeal the Commission of inquiry ordinance and replace it with the Inquiries Act. Mr. Skinner stated "Sir, This Bill repeals an antiquated and inadequate piece of legislation, namely the commission of inquiry ordinance which was enacted in 1928."⁶

Mr. Skinner considered it desirable that inadequate and antiquated legislation should be discarded in the same way as inadequate and antique buildings. He went on to state that, "I am sure that no honourable Member can doubt that this fine building in which we are now housed is a great improvement on the old National Assembly building. Equally well, I am sure that Honourable Members will see that the Inquiries Bill is superior to its predecessor, the Commissions of Inquiry Ordinance."

The rationale for the enactment was that from time to time matters of public importance arise which can not be dealt with by ordinary civil or criminal process, but which require investigation in order to allay public anxiety. The present Bill provides the machinery for the implementation and conduct of inquiries into such urgent matters.

Mr. Mitchley⁷ voiced concern that usually when commissions of inquiry have been used, it has mostly been on matters concerning mining labour and with government service.

He hoped that the Inquiries Act would not be used as a means of finding or inquiring into matters which more properly should be inquired into by the courts. Mr. Skinner allayed his fears by stating that the Inquiries Act would be used to hold inquiries into matters of public concern.

The purpose of this Bill is to allow inquiries into such matters as trade disputes, irregularities in hospitals, into other matters which cause public concern but which are neither offences nor matters which constitute a civil wrong.

After debating on the various provisions, the Inquiries Act came into being on 21 July, 1967.

It is on this new enactment, that modern commissions of inquiry are based, thus acquiring a legal basis. Commissions of inquiry have always been a feature of public administration. The most famous commissions appointed in recent years inquired into:-

- (a) The affairs of the Lusaka City Council.⁸
- (b) The Mufulira mine disaster in which scores of miners died.⁹
- (c) Allegations of opposition party leaders that some Senior Government Officials, some of them ministers, had either misappropriated or fraudulently obtained money from the Southern and Central Provinces "African Farming Improvement Funds."¹⁰
- (d) The introduction of the One-Party State."¹¹
- (e) An accident involving a pontoon in which twenty nine people died.¹²
- (f) The circumstances of the death of Herbert Chitepo, a leader in one of the Liberation movements in Zimbabwe.¹³

- (g) The wide-spread allegations of tribalism, corruption and thefts in Zambia Railways.¹⁴
- (h) The salaries and conditions of service in the government, local authorities and the parastatal sector.¹⁵

It has been deemed appropriate that since the public welfare is involved, the machinery of inquiry should be set in motion by the President. As such the statutory authority for the appointment of commissions of inquiry is contained in the Inquiries Act. Section 2. of that Act enacts:

" The President may issue a commission appointing one or more commissioners to inquire into any matter in which an inquiry would, in the opinion of the President, be for the public welfare. "

These powers are indeed very wide and there is hardly any exception to the range of matters which may constitute the subject of Commissions of Inquiry. It is interesting to note that the High Court of Zambia almost inadvertently placed limits on the powers of the President when, following the appointment of the Choma One-Party Commission, the leader of the then opposition party, petitioned it to declare that the President had acted 'ultra-vires' Section 2.¹⁶

He urged, quite ingeniously too, that it could not be in the public welfare to prepare to derogate from the rights of the people as they then were; in particular the freedom of association and expression which guaranteed people the right to form or belong to political parties other than the ruling party.

Although the qualifications for appointment as a member of a commission of inquiry are not stated, in practice the President appoints highly qualified persons to commissions. Usually these are High Court judges or experienced politicians. For example, Mr. Chona, the Chairman of the Chona Commission was then the Vice - President of the country; while Mr. Mwanakatwe, the Chairman of the Mwanakatwe salaries commission was then the minister of finance.

Commissions of inquiry vary in their contributions and usefulness. The controversies surrounding the Mumpanshya Zambia Railways Commission of Inquiry are notorious. The government only grudgingly accepted its findings two years after its report was submitted. Even then, no positive action was taken on the findings. On the contrary, the government even appointed a person who had been discredited in the report as the new General Manager of Zambia Railways. 17

The majority of commissions of inquiry have served a very useful purpose. Apart from being the basis for new government policies and decisions. The reports issued by some commissions of inquiry have attached alot of respect and have become valuable material for students of government in Zambia.¹⁸ These latter issues, so raised, shall be appropriately dealt with in depth in later chapters.¹⁹

FOOTNOTES

1. S.I. No. 107 of 1975
2. Republic of Zambia, Hansard No. 3
(Lusaka: Government Printers,
9th July - 27th August 1964) W.L.
3. Member of Parliament for Mazabuka; former
4. Republic of Zambia, OP.Cit, W.L.
5. Cap. 181
6. Republic of Zambia, Hansard No. 10b
(Lusaka: Government Printer 13th June
1967) W.L.
7. Member of Parliament for midlands, former
8. S.I. No. 415 of 1967.
9. S.I. No. 258 of 1970.
10. S.I. No. 26 of 1971 - Doyle Commission.
11. S.I. No. 46 of 1972 - Chona Commission.
12. S.I. No. 158 of 1974.
13. S.I. No. 101 of 1975.
14. S.I. No. 165 of 1977-Mumpanshya
Commission.
15. S.I. No. 126 of 1970; S.I. No. 134 of
1974.
16. NKUMBULA V. ATTORNEY-GENERAL (1972)
Z.R. 111 (H.C.) and (1972) Z.R. 205 (CAA.)
17. See The Leading Story Entitled "Mumpanshya
Report Controversy Deepens" in the Sunday
Times of Zambia, Vol. 8, No. 605,
23rd August, 1981.
18. The Reports by the Chona One-Party State
Commission of Inquiry, and the Mwanakatwe
Salaries Commission are particularly useful.
19. Chapters 4 and 5

CHAPTER II

As can be deduced from the preceeding chapter, commissions of inquiry in Zambia derive their legal basis from the Inquiries Act, Cap 181, of the laws of Zambia.

To fully appreciate the legal machinery that encompasses commissions of inquiry, it is imperative to examine in depth some of the main provisions of the Inquiries Act, and in so doing, highlight some of the disputes that have arisen in the interpretation of these same provisions - judicially and legislatively.

The Inquiries Act came into existence on 21 July, 1967, and in extremely general terms, its aim is provided for by its preamble, which states:

" An Act to provide for the issue of Commissions and for the appointment of commissioners to inquire into and report on matters referred to them, to prescribe their functions, and to provide for matters incidental to or connected with the foregoing."

The then Minister of Legal Affairs and Attorney-General,² logically and rationally concluded that since public welfare is at the core of the appointment of a Commission of inquiry, then it should be agreeable to all that if the machinery of inquiry is to be set in motion, it should be done so by the President.

Hence Section 2 (1) of the Inquiries Act states:

" The President may issue a commission appointing one or more commissioners to inquire into any matter in which an inquiry would, in the opinion of the President, be for the public welfare."

These are indeed very wide discretionary powers, which the President weilds, and naturally they have been the subject of both legislative and jucial debates.

Mr. Mitchley², hoped that these wide powers granted by the bill itself will not create public anxiety. His further sentiments centred on the issue that if the bill were to be used as a means of side-stepping the Courts in order to deal with matters quasi-criminal, then " what we are doing is to set up a sort of star chamber, albeit possibly a star chamber, and if that was the intention, which I pray it is not, then of course this would be a most unwelcome bill."³

The Minister of Legal Affairs was at pains to put it through to Mr. Mitchley that the sole purpose of this legislation was to hold inquiries into matters of public concern.

The powers of the President under Section 2 of the Inquiries Act, were the subject of judicial determination in Nkamula V. ATTORNEY-GENERAL⁴, where the applicant argued that the appointment by the President of the commission of inquiry under Section 2 of the Inquiries Act, Cap.181, was ultra vires and null and void because the matters to be inquired into could not be for the

'public welfare'; within the meaning of those words as used in the said section. This was so because as a question of law, the inquiry could not be for the 'public welfare' to prepare to deprive a citizen of any of the fundamental rights protected by the existing constitution. The Court of Appeal, however, held that the powers of the President to appoint a commission of inquiry under the Inquiries Act could only be challenged, if it did show that he acted in bad faith or upon the mistaken view of the law or fact. The Court went on to define "public" as an aggregate of the populace as opposed to an individuals interest. Thus, the application could not be entertained.

Though these inquiries are normally held in public, provision exists⁵ where proceedings can be held in 'camera'. Mr. Skinner put this issue into perspective, " I would think that wherever possible one would want the proceedings to be open to the public - it is part of the democratic principles to which we subscribe, that the people should be kept fully informed as to the government's actions and intentions. Accordingly, the people should not be excluded from an inquiry into a matter concerning public welfare."⁶

However, he went on to put forth the notion that it would be unrealistic to suggest that the people or public must never be excluded from proceedings before a commission of inquiry. But he did emphasize that the bias is in favour of publicity.

Mr. Liso⁷ was skeptical over the holding of commissions of inquiry in 'camera', due to his experience in detention during the pre-independence era. He was of the adamant view that had the numerous inquiries he had been subjected to, together with his colleagues, during the colonial period been held in public, with all the publicity accompanying them, they would not have suffered the inconvenience which they did. Mr. Liso maintained that they were alleged to have held meetings long after certain incidents had happened which were responsible for their detention, and despite the policemen's failure to adequately explain this anomaly they were still led back to the detention camps to 'rot indefinitely'. Mr. Liso summed up with rather subjective connotations, "so Sir, that is the danger of these inquiries in secret. It allows any Government, and I might hasten to add that governments have a peculiarity of being similar all over the world. It allows governments to do what they want because the people do not know what it is doing. Therefore, these inquiries should be held in public unless, perhaps, the inquiries deal with state security."⁸

In his reply, Mr. Skinner only limited himself to the question of 'detention', he did not address himself to the rationale of Mr. Liso's sentiments - viz - that a government can 'cover up' what it is really doing, by holding an inquiry in 'camera'.

Mr. Skinner stated that for people who are detained now, the constitution provides that a tribunal shall be established to inquire into their cases and it is the Preservation of Public Security ordinance which governs the establishment of this tribunal - A tribunal which inquires into detention will not be governed by the Inquiries Act - it shall continue to be governed by the Preservation of Public Security Ordinance and the Constitution.

Section 16 pertains to the power to cause investigation to be made before issuing a commission.

The rationale for this provision was that one of the difficulties which was likely to be faced by the President in deciding whether or not to hold an inquiry was the question of information. In other words, the President may suspect that there is need for an inquiry but he needs further information to finally decide whether this is so.

As a consequence, Section 16 contains provisions whereby the President, acting through the Attorney-General, can obtain the necessary information on which to base his decision. Very wide powers are allocated to the Attorney-General in this respect, prompting the honourable Member of Parliament, for MIDLANDS, to once again, voice his concern.

He was of the view that powers granted in the Act, viz a viz looking into people's banking accounts,⁹ etc could be a serious derogation of the rights of the individual. A person could find himself subject to an inquiry and find that all his private affairs have to be produced before it. Mr. Mitchely, acknowledged the fact that this was currently only done before courts, which are staffed by independent and qualified magistrates.

He went on to further state that, " the powers in this bill are granted to the honourable and learned Minister of Legal Affairs, who of course, is not an independent magistrate, he is part of the government. So he himself, is being granted wide powers to look into private affairs of people."¹⁰ Mr. Mitchely, thus hoped that, when this bill was passed, the honourable and learned Minister of Legal Affairs, will be able to state that it will only be used to relieve public anxiety - will only be used where matters of public interest or welfare are concerned, and that it would never be used as a means of inquiring into the private life of individual persons, where public concern does not arise.

Mr. Skinner" responded to the anxieties expressed by Mr. Mitchely, as regards the powers given to the Attorney-General in Section 16 of the bill. He conceded that sub-clause (5) of Clause 16 gives quasi-judicial powers to the Attorney-General as do sub-clauses (2) (3) and (4) of the same clause.

In his own words Mr. Skinner stated that,
" However, I, in common with Attorney-Generals in other countries, exercise quasi-judicial powers at various times, under various written laws and, of course, when I exercise these judicial powers, I exercise them as Attorney-General, I exercise them in my own discretion and independent of anybody else."¹²

For a Commission to carry out its functions, it must be given the necessary powers; equally, proceedings before a commission must be regulated. The Inquiries Act, therefore, contains the necessary provisions to deal with these matters.

Section 9 provides for the appointment of a Secretary by the President, for the purposes of any inquiry. " A Secretary shall discharge such functions as the Commissioners concerned shall direct."¹³

The employment of experts and assistants is provided for by Section 10 (1). Thus Commissioners, if authorised by the commission concerned may engage the services of such accountants, engineers, technical advisors, or other experts as may deem necessary to aid and assist them in the inquiry.

" Commissioners can fix, with the prior approval of the Minister of Finance, remuneration of any person to be engaged in pursuance of the provisions of sub-section (1)."¹⁴

Section 11 provides for the appointment of interpreters. Commissioners may appoint^{/an} interpreter who shall, before entering upon the duties of his office, take and subscribe before the commissioner, an oath or affirmation in the form set out in Part 11 of the first schedule.

The interpreter's remuneration is fixed by the commissioners.

Section 12 provides for legal representation before a commission of inquiry. It lays down three categories of person who can be legally represented before a commission of inquiry:

Firstly, any person whose conduct is the subject inquiry;

Secondly, any person implicated or concerned in the matter under investigation, and

Lastly, any other person who may consider it desirable that he should be so represented may, by leave of the commissioners, be so represented.

Sub-section (2) of the same section provides that the government shall be entitled to be represented at any inquiry by the Attorney-General or such person as he may nominated in that behalf. In the matter of application by CHRISTOPHER MUNDIA¹⁵, the applicant sought prerogative orders against a commission of Inquiry on the grounds that he had been denied legal representation as stated in Section 12.

Workers at Zambia National Provident Fund (Z.N.P.F.) went on strike on two occasions, in May and October, 1984, demanding the removal of the applicant from his position as Board Secretary.

Subsequently, a Commission of Inquiry was appointed pursuant to Statutory Instrument No.121 of 1984 - Its terms of reference being:

- (i) to establish the facts surrounding the strike by workers at Zambia National Provident Fund;
- (ii) inquire into events or circumstances leading to the strike during the period 8 May - 30 October, 1984 at Zambia National Provident Fund;
- (iii) to inquire into any matters which appear to the ~~commission~~ Commission of Inquiry to relate to the strike and which in the opinion of the Commissioners ought to be investigated;
- (iv) make such recommendation with regards to matters under inquiry, based on the light of its findings.

In the course of the proceedings, the applicant argued that he was the primary cause of the events leading to the appointment of the ~~commission~~ Commission of inquiry. He was therefore, a person whose conduct was implicated within the meaning of Section 12. He should thus be entitled to legal representation.

The state countered that the terms of reference did not by name mention or implicate the applicant and therefore, it was up to the commissioners to grant him legal representation. In his ruling Justice Sakala observed that the preliminary issue was whether the commission of inquiry exercises administrative functions or quasi-judicial functions. He held that as a general rule, an investigations body is under no duty to act judicially. It can not do more than recommend or advice another body on what cause of action must be taken.

A Commission of Inquiry is not a judicial or quasi-judicial body. At the end of an inquiry it will decide nothing and determine nothing.

Justice Sakala also note that legal representation does not include a right to cross-examine a witness.

In 1986, in the matter of CHRISTOPHER MUNDIA, the Supreme Court over ruled Mr. Justice Sakala's decision on the basis that legal representation entitles parties to cross examine witnesses. The applicant was the person whose conduct was implicated in terms of Section 12 of Cap 181 and was therefore entitled to legal representation.

The Inquiries Act contains the full paraphernalia of powers necessary to enable commissioners carry out their duties.

As a result of Section 5, it is the duty of commissioners "to make a full, faithful and impartial inquiry" in accordance with the terms of the

Once a commission of inquiry has been constituted, and " a commissioner becomes unwilling to act or dies, the President may, by statutory instrument, appoint a commissioner in his place."¹⁶

There are certain rules and procedures that Commissioners must adhere to, and indeed they also enjoy some privileges arising from their duties. Section 6 states that every commissioner shall, before entering upon the duties of his office, take and subscribe before a Judge, an oath or an affirmation, for the due execution of his office, in the form set out in Part I of the first schedule.

The first schedule is set out in the following manner:-

PART I

FORM OF OATH OR AFFIRMATION TO BE TAKEN BY COMMISSIONER

I,.....having been appointed under a commission issued by the President and dated the.....day of.....,19....., to be a commissioner to inquire into the matters specified in the said commission, do swear (or do solemnly and sincerely affirm) that I will faithfully, fully, impartially and to the best of my ability, discharge the trust and perform the duties devolving upon me by virtue of the said commission.
(in the case of an Oath here add) so help me God.

COMMISSIONER

TAKEN before me This.....day of.....1.19....

Commissioners enjoy immunity in the sense that no commissioner shall be liable to any action or suit for anything done by him as such Commissioner.¹⁷

There are rules that regulate the proceedings of commissions. Section 13(1) states that commissioners, in the discharge of any of their functions, shall not be bound by the rules of evidence or by the rules of procedure of any Court or tribunal, but may conduct their proceedings in such manner as they think proper and admit any evidence, written or oral, whether or not such evidence would be admissible in civil or criminal proceedings. "If commissioners are equally divided on any question that arises during their proceedings, the Chairman of the Commission shall have a second or casting vote."¹⁸

As a result of Section 14, commissioners have various powers which include examining witnesses on oath or affirmation, administered by them. Commissioners may also enter upon and inspect any goods and other things, the entry upon or inspection of which appears to them to be requisite for the purpose of the inquiry.

By virtue of Section 14 (1)(b) commissioners may require, by summons in the form prescribed in the second schedule, the attendance of any person whom they wish to call before them and call for the production of books, plans and documents.

"Reasonable travelling expenses shall be paid to any person summoned in pursuance of the provisions of sub-section (1) ¹⁹ Section 18 regulates the payment of fees, remuneration or expenses and it states that "any fees, remuneration or expenses payable under this Act shall be paid out of moneys appropriated by parliament for the purpose."

Section 15 permits evidence to be taken by commission. If by reason of the distance at which any person whose evidence is desired, resides from the place where his evidence is required, or if, for any other cause the commissioners deem it advisable, they may issue a commission to any public officer or person therein named, empowering him to take such evidence and report the same to the commissioner.

The Inquiries Act also defines some omissions and/or acts as offences.

Under Section 17, if any person:-

- (a) **who has been summoned to** :
attend as a witness or produce any
book, plan or document -
- (i) fails, without sufficient cause, to
attend at the time and place mentioned
in the summons served on him;

- (ii) attends but leaves the commission without the permission of the commissioners, or a public officer or person empowered under Section 15, as the case may be;
- (iii) refuses to be sworn or having been sworn, refuses without sufficient cause, to answer or to answer fully and satisfactorily to the best of his knowledge and belief all questions put to him by or with the concurrence of the commissioners, or by a public officer or person empowered under Section 15; or
- (iv) refuses or omits, without sufficient cause, to produce any books, plans or documents in his possession or under his control and mentioned or referred to in the summons served on him;
- (b) refuses or omits, without sufficient cause, to -
 - (i) produce any books, plans or documents to an authorised officer acting under Section 16;

- (ii) permit an authorised officer acting under Section 16 to examine, make extracts from or copies of any books, plans or documents;
- (iii) explain any entry in or marking of any book, plan or document to an authorised officer acting under Section 16;

he shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred kwacha or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

Section 2 (4) states that every commission shall be published in the gazette by statutory instrument.

Although the Inquiries Act is comprised of only 18 sections, it has codified all the prerequisites necessary to facilitate the smooth running of commissions of inquiry in Zambia.

FOOT NOTES

1. Mr. Skinner.
2. Former member of parliament for midlands.
3. Republic of Zambia, Hansard No. 10b (Lusaka: Government Printers, 13th June, 1967) W.L.
4. (1972) Z.R.; C.A. 205.
5. Section 2 (3).
6. Republic of Zambia, Hansard No. 10b (Lusaka; Government Printer, 13th June, 1967) W.L.
7. Former member of parliament of Namwala.
8. Republic of Zambia, OP. C.F., W.L.
9. S. 16(4) of Cap. 181.
10. Republic of Zambia, OP. cit W.L.
11. Minister of Legal Affairs and Attorney-General; Former.
12. Republic of Zambia, OP. cit, W.L.
13. S. 9 (2).
14. S. 10 (2).
15. (1984) H.P./1918.
16. S.4.
17. S.7.
18. S. 13(2).
19. S. 14 (2).

- 30 -

CHAPTER II

As has already been stated, 1 commissions of inquiry are appointed to make findings of fact on specific situations and make recommendations upon which government policy or action may be based.

"Public Welfare" and "in the interest of the public" play an important role in the issuing of a commission of inquiry by the President.

Thus the principle objective of any commission of inquiry is to make findings of fact on specific issues and make recommendations.

The actual objectives may differ according to the particular terms of reference assigned to each commission of inquiry, outlining the work expected of it.

It is these terms of reference that make the objectives of commissions of inquiry different. Some placate a volatile political situation², others may relate to the withdrawal of recognition of a chief³ and so forth.

Usually commissions of inquiry are used to hold inquiries into matters of public concern.

This chapter shall therefore, strive to examine a substantial number of commissions of inquiry, with particular regard to their terms of reference, to ascertain exactly what it was that was expected of them. This shall bring to the fore the particular objectives of each individual commission of inquiry. The diverse nature of issues inquired into, should make interesting reading and help underline the usefulness of commissions of inquiry owing to their limitless nature viz-a-viz, things that can form the basis of the issuing of a commission of inquiry.

Agitation for more arable and grazing land, in the Southern Province, has existed since the advent of colonial rule. The alienation of a considerable part of the original tribal areas for european settlements is a grievance which no Tonga will forget.

This agitation has been accentuated by the fact that more and more people from the traditional sector are changing from more subsistence agricultural economy to a cash crop economy.

It is no more coincidence therefore that in a memorandum of declaration of support presented to his Excellency the President by the people of Bwengwa at Chief Choongo's palace on 1st November, 1979 when

he visited Nteme area, the people among other things, asked the President for more land, cattle handling facilities and a reduction in the prices of seeds and fertilizers. His Excellency the President responded by promising to appoint a commission of inquiry into land matters in the Southern Province.

Following that promise made at Nteme, His Excellency appointed a commission on the 13th October, 1980 under the Inquiries Act. The commission was gazetted under statutory Instrument No. 134 of 1980. The initial membership of the commission then was as follows:

Hon. Mr. Justice Ernest Linesi
Sakala - CHAIRMAN

Anthony Dominic Ndalama, Esq-
Commissioner

Kennan Henry Nkwabilo, Esq-
Commissioner

Damodaramphillai Senathirajah,
Esq - Commissioner

Balder Raj Sharma, Esq-
Commissioner

Dr. Sitali Mundia Silangwa
Commissioner

Mr. F.B. Muma was appointed Secretary to the commission. Before the commission could begin its work, two changes were made in its structure. Mr. H.K. Nkwabilo, died on 22nd November, 1980 in a road traffic accident.

Whilst Mr. B.R. Sharma was appointed puisne judge. These circumstances necessitated the appointment of two new members in their place and therefore, by statutory instrument No. 167 of 1980, published in Gazette Notice No. 1960 dated 24th December, 1980, A.N. Beaumont, Esq. and Professor M. P. Mvunga were appointed Commissioners.

The commission's terms of reference were to investigate and report on the following matters in relation to land in the Southern Province:

- (a) The availability of land for use by peasant farmers;
- (b) Methods which may be used to facilitate expeditions acquisition of unutilised or underutilised land;
- (c) The need to alienate for agricultural use certain portions of state land, Trust Land, Reserves, forest land and wildlife reserves and to determine the extent of such alienation;
- (d) The type of settlement which shall be established in respect of any land which is alienated in consequence of the commission's recommendations;
- (e) What, if any, restrictions ought to be applied in relation to the extent or type of economically - viable land units which may be owned or occupied by a single lessee;
- (f) Any other matters which appear to the commission to relate to the foregoing and which in the opinion of the commission ought in the public interest to be inquired into.

Make such recommendations with regard to the matters covered by the first term of reference as the commission may in the light of its findings deem appropriate.

Therefore, the specific objective of this particular commission of inquiry was to inquire into matters pertaining to land in the Southern Province.

In the year 1977, the Mumpanshya Commission⁴ was instituted to principally investigate and report on the allegations of tribalism, nepotism and corruption involving persons exercising authority in Zambia Railways. This Commission raised controversial issues which shall be dealt with later.⁵ The membership of the commission was as follows:

Joshua Mumpanshya Esq, M.P. Minister of State - Chairman. Charles C. Manyemo Esq, Chief Parliament Draftsman- Commissioner. Mr. B.K.L. Mkandah Esq, was appointed Secretary. The objectives of this commission as put forth by its terms of reference were:

Firstly, to investigate and report on the allegations of tribalism, nepotism and corruption involving persons exercising authority in relation to or serving under Zambia Railways.

Secondly, to investigate and report on the allegations of thefts of property in the possession of or belonging to Zambia Railways by persons exercising authority in relation to or serving under Zambia Railways or by any other person.

Thirdly, to establish the facts of and surrounding the dismissal or purported dismissal of Bartholomew Mwale from his post of service under Zambia Railways.

Fourthly, to inquire into any other matters which appear to the commission ought, in the public interest, to be inquired into.

Lastly, make such recommendations with regard to the foregoing matters as the commission may, in the light of its findings, deem appropriate.

Allegations of tribalism, reports of theft of property in Zambia Railways aroused public concern, and the President in order to allay public anxiety saw it fit to issue a commission whose objective was to inquire into these matters.

In 1975, it was deemed expedient to cause an inquiry to be made into the question of the withdrawal of the recognition accorded under the chiefs Act to Dickson Mutale Chitabanta as Senior Nkula of the Bemba people of the Chinsali District in the Northern Province. By statutory Instrument No. 27 of 1975, His Excellency the President suspended the recognition until such a time as an inquiry had been completed and the President had made a decision on the question.

The sole commissioner was:

Davison Nyambe Muttendango Esq., Director,
Contingency Planning, Cabinet office.

The objectives of the commission were -

- (1) To inquire into the standing, among the people in his area, of Dickson Mutale Chitabanta, as Senior Chief Nkula, and in particular whether or not he has ceased to be entitled under African customary law to hold the office in respect of which recognition was accorded.
- (2) Inquire whether or not the said Dickson Mutale Chitabanta has been found to have been disloyal or disrespectful to government, whether he so acted on his own or jointly with others or in response to external influence, and where this is the case, identify the significance and source of the said influence.

- (3) Inquire whether or not the said Dickson Mutale Chitabanta is or has been loyal or respectful to government and if not the reason or reasons prompting the same.
- (4) Make specific recommendations, giving supporting grounds for the same, whether withdrawal of the recognition accorded to the said Dickson Mutale Chitabanta is necessary in the interest of peace, order and good government.

In 1971, there were allegations by opposition party leaders that some senior government officials, some of them ministers, had either misappropriated or fraudulently obtained money from the Southern and Central Provinces "African Farming Improvement Funds."

In the light of these allegations, the President issued a commission of inquiry.⁶ The membership of the commission, took the following form:

Mr. Justice Brian Andre Doyle- Chairman

Mr. Justice Samuel Woolf Magnus-Commissioner.

Mr. Frank Myhan was appointed Secretary of the said commission.

The objectives of this commission was to-

- A. (1) Inquire into the allegations made by Justin Chimba M.P. and John Chisato M.P., that there was sufficient evidence for the Director of Public Prosecutions to prosecute all ministers and other government officials namely

Messrs. Dingiswayo Banda, J.H. Monga, N. Tembo, H.G. Habanyama, L. Mwanakombo, O.C. Lundwe and C.G. Ngambi, who are alleged to have stolen or misappropriated money from the Central and Southern Province African Farming Funds.

- (2) Inquire into the allegations made by Justin Chimba, M.P., and John Chisato, M.P., that the Director of Public Prosecutions did not institute criminal proceedings against the above-named persons for theft and other criminal offences because of tribalism.
- (B) Inquire into the allegations made by Justin Chimba, M.P. and John Chisato, M.P. that-
 - (a) a Senior Government Minister committed the offence of rape.
 - (b) that government paid certain moneys to the complainant in order to pervert the course of justice.
 - (c) the Senior Government Minister was not prosecuted on the grounds of tribalism.
- (C) Inquire into the allegation by John Chisato M.P., that the non-prosecution of persons involved in the oath-taking rumour was a perversion of justice.

In 1972 one-party commission, partially served to pre-empt any major political problems by rushing through the introduction of the one-Party state over a ten month period. This commission was constituted under statutory instrument No. 46 of 1972.

There were a large number of commissioners, namely- His Honour Mainza Chona, Vice-President of the Republic - Chairman. The Honourable Humphrey Mulemba, M.P., Minister of Mines and Mining Development - Vice-Chairman.

The Honourable Firzpatrick Chuula, M.P. Minister of Legal Affairs and Attorney-General- Commissioner. The Honourable Clement Mumba Mwananshiku, M.P. Minister of State and Member of the Central Committee of U.N.I.P. - Commissioner.

Daniel Muchiwa Lisulo, Esq., Legal Practitioner and Member of the Central Committee of the U.N.I.P. - Commissioner.

Frank Macharious Chitambala Esq., Member of the Central Committee of the U.N.I.P.- Commissioner. Timothy Kandeke, Esq., District Governor - Commissioner.

Harry Mwaanga Nkumbula, M.P. President, A.N.C. Commissioner.

Nalumino Mundia, M.P., Deputy President, A.N.C. Commissioner.

Lavu Mulimba, Esq., Deputy President, Z.C.T.U. Commissioner.

David Phiri, Esq., Director, Anglo American Corporation Limited - Commissioner.

Daniel Katungu Esq., President of the Zambia National Council for Commerce and Industry - Commissioner.

Lieutenant - Colonel Benjamin Ndabila Mibenge, Chief of Staff, Zambia Army. - Commissioner.

Kasuka Mutukwa, Esq., Lecturer in Political Science at the University of Zambia - Commissioner.

His Lordship Bishop Elias Mutale, Bishop of Luapula - Commissioner.

Reverend Jackson Mwape, President of United Church of Zambia - Commissioner.

Valerian Lavu, Esq., Permanent Secretary, Ministry of Education. Commissioner.

Mrs. Lily Monze, Editor of Parliamentary Debates - Commissioner.

Paramount Chief Undi, President of the House of Chiefs - Commissioner.

Chief Mukumbi, Vice-President of the House of Chiefs - Commissioner.

The Secretary was Calvin Maka Sikazwe - Commissioner.

The objectives of this large commission were wide and varied. Its terms of reference were-
To:

1. Consider the changes in -
 - (a) The constitution of the Republic of Zambia.
 - (b) The practices and procedures of the Government of the Republic; and

- (c) The constitution of the United National Independence Party (U.N.I.P.) necessary to bring about and establish one-Party Participatory Democracy in Zambia.
2. Consider all matters incidental to or connected with the aforesaid matters in general and in particular the following matters:
- (a) The nature of the Presidency, methods of election including the important question of whether or not a Presidential candidate shall be eligible for re-election, and if so, after how many terms.
 - (b) The nature and structure of government in general including the relationship between cabinet, parliament and the Central Committee of the Party.
 - (c) The nature and structure of parliament and its relationship to, for example, the National Council of the Party.
 - (d) The relationship between various political and administrative, elected and appointed bodies ranging from village productivity and village/section committees to the cabinet and the Central Committee of the Party.

- (e) The code of leadership for Parliamentarians and other leaders in order to qualify for various positions in which supreme power normally vested in the people, is exercised by them indirectly on behalf of the people.
- (f) The supremacy of the Party vis-a-vis government administration.
- (g) The amount of freedom of the people to form pressure groups based on tribal loyalties or for particular purposes.
- (h) The role of the labour movement and other specialised organisations in the nation in the formulation of government policies.
- (i) The participation of public servants in politics and government,
- (j) The system of discipline in the Party, Government and Public Service.
- (k) Lastly, the freedom of the candidates to stand for elections at local and national level.

The President then directed that the commissioners shall, in their consideration and recommendation, pay due regard and adhere to the following principles as cardinal, inviolable and built-in safeguards of one-Party Participatory Democracy in Zambia.

1. Zambia shall continue to be a sovereign Republic.
2. Zambia must continue to build a humanist society.
3. All citizens of Zambia shall continue to enjoy complete equality.
4. The supremacy of the rule of law and independence of the judiciary shall continue to be maintained.
5. The fundamental rights and freedoms of the individual shall be protected as now provided under Chapter III of the constitution of the Republic of Zambia.
6. The right of the individual to freely choose leaders and representatives to Parliament and many other democratic institutions, national and local, shall be fully preserved.
7. Supreme power must be vested in the people and everything shall be done to ensure that power is exercised by them directly where possible, and indirectly, through established democratic representative institutions.

There shall, therefore, be complete freedom among the people to participate fully in the running of their affairs at local and national level through institutions under people's own control.

8. Zambia is part and in the front-line of the continent wide revolutionary movement which seeks to liberate Africa and rid the continent of all forms of imperialism, colonialism, racism, and foreign exploitation which have plagued the African people in the past. Zambia's geo-political position demands a strong and purposeful government and a united nation if the Zambian revolution is to succeed. There can therefore, be no room for complacency and for lofty ideas.

9. Zambia is permanently opposed to exploitation of man by man and the people of Zambia will persist relentlessly in their struggle for self reliance and the establishment of protective measures against possible exploitation by foreign and local economic interests. The people of Zambia will continue to fight against the establishment of economic, social, political and cultural classes in order to guarantee the equality of all human peoples.

Thus the Chona Commission altered Zambia's political outlook. The multi-party system was replaced by the one-party system, U.N.I.P., being the only legally recognised party. It is interesting to note that two commissioners declined to take up their appointment. The two were the President and Deputy President of the African National Congress, (A.N.C.), Mr. Harry Mwaanga Nkumbula and Mr. Nalumino Mundia respectively - members of the opposition party.

The Party and its Government were very concerned about the loss of twenty-nine lives as a result of a pontoon accident at Katima-Mulilo near Livingstone. Naturally, in order to placate public anxiety over the wanton loss of lives, the President issued a commission of inquiry;⁷ whose membership took the following form:

Phillimoni Mwansa Kapesebele Esq. - Chairman.

Balder Raj Sharma, Esq. - Commissioner.

Willie Harrington, Esq. - Commissioner.

Mr. Ernest Robert Chirambo was appointed Secretary of the said commission.

The objectives of this commission as enshrined by the terms of reference were:

1. To inquire into the events and circumstances leading to the accident which occurred at Katima-mulilo near Livingstone on the 7th day of September, 1974 in which an omnibus

belonging to Zambezi River Transport, carrying passengers travelling from Senanga to Livingstone via Sesheke plunged into the Zambezi River resulting in the death of twenty-nine or more persons.

2. Establish the facts of and surrounding the said accident.
3. Identify and establish the cause or causes of the said accident.
4. Establish the condition and conduct of the omnibus driver, and the condition of the vehicle in question, immediately before and after the said accident.
5. Establish the manner in which the pontoon at Katima-mulilo was being managed and operated, and the control and safety measures in force at the material time.
6. Make recommendations with regard to the measures or additional measures that ought to be taken to prevent a similar recurrence in future.

In 1970, there was a major mine disaster at Mufulira Mine in which scores of miners perished. This prompted the President to issue a commission of inquiry,⁸ to determine the causes and make recommendations to prevent a recurrence in future.

The membership was as follows:

Doctor Nicolae Mihailovici - Chairman.

Jones Blackson Nyirongo Esq. - Commissioner.

Eric James Langevad, Esq. - Commissioner.

Elias Andrew Kashita - Commissioner.

The Secretary of the said commission was
Mr. Aggrey Newton Tsheko Mulala.

Its terms of reference were brief and to
the point:

1. Inquire into the events and circumstances
at Mufulira Mine prior to and on the 25th
day of September, 1970.
2. Establish the facts as they happened on
the morning of the 25th day of September,
1970, which led to the loss of life.
3. Identify the causes of the events and
facts which led to the said loss of life.
4. Make recommendations on the future workings
at Mufulira mine, and other mines in
Zambia, with a view to avoiding a similar
occurrence.

In 1974, the President appointed a commission
of inquiry to examine the salaries and conditions
of service in the Government, Local Authorities
and the Parastatal Sector.⁹

The composition of this commission was as follows:

John Mupanga Mwanakatwe, M.P.
Legal Practitioner - Chairman.

Jones Blackson Nyirongo Esq., Managing
Director, Indeco - Commissioner.

Kennan Nkwabilo, Esq., Deputy Governor
Bank of Zambia - Commissioner.

The objectives of the commission were:

1. Review the salaries, salary structures and conditions of service of the Zambia Public and Teaching services, the Zambia Police Force and Prisons Service, the Defence Forces and the staffs of Local Authorities, including casual and daily-paid employees and to make recommendations for whatever changes may be necessary, having particular regard to -
 - (a) The effect of the last salary review in 1971 and any anomalies arising therefrom,
 - (b) The rise in the cost of living since the last salary review,
 - (c) The need for stability, efficiency and continuity in the public services,
 - (d) The need for rationalisation and simplification in salary structures and conditions of service,

- (e) The need to provide adequate incentives to particular categories of staff and to attract persons to service in the rural areas,
 - (f) The need to devise salary structures and levels for the public service which are sustainable by the public revenue and consonant with the general economic circumstances of the country;
 - (g) The method of implementation and the date from which the recommendations of the commission should take effect.
2. Investigate and report on the salaries, salary structures and conditions of service of personnel employed by statutory boards and corporations and by companies in which the state has a majority or controlling interest and to make recommendations for whatever changes may be necessary, having particular regard to -
- (a) The need to establish a closer relationship between salaries, salary structures and conditions of service in the public services and those applicable to the staffs of parastatal organisations;
 - (b) The need to achieve consistent policies of remuneration and advancement throughout the public sector;

- (c) The principle of equal pay for all people in different sectors of the economy doing the same work and bearing the same responsibilities;
 - (d) The financial situation of the organisations concerned;
 - (e) The loss of trained and experienced personnel from the civil service to Parastatal organisations and the private sector, and
 - (f) The method of implementation of the recommendations of the commission.
3. Inquire into any other matter which appear to the commission to relate to the foregoing and which in the opinion of the commission ought to in the public interest be inquired into.

The affairs of the Lusaka City Council draw the attention of the President and in 1967, he appointed a commission, to inquire into the same.¹⁰

The membership of the commission was as follows:

The Hon. J.R. Blagden, Esq., OBE
T.D. - Chairman.

K. Bentsi - Enchill, Esq., - Commissioner.

R. N. Boyd, Esq., - Commissioner.

Mr. R. Davidson Esq., was appointed Secretary of the said commission.

The terms of reference were:

1. To inquire into the conduct of its affairs by the City Council of Lusaka (hereinafter called "The Council").
2. Inquire into the manner in which councillors and officers, employees and agents of the Council -
 - (i) have acted in the conduct of the affairs of the Council; and
 - (ii) have acted in their dealings, as private individuals, with the Council.

In order to placate a volatile political situation, which had international implications - The President issued a commission of inquiry " - to delve into the circumstances leading to the death of Herbert Chitepo, a leader in one of the liberation movements in Zimbabwe."

The following were the Commissioners:

Reuben Chitandika Kamanga - Chairman.

Mathias Mainza Chona - Commissioner.

The representative of Botswana - Commissioner.

The representative of The Congo-Commissioner.

The representative of Ivory Coast-Commissioner.

The representative of Libya - Commissioner.

The representative of Malagasy - Commissioner.
The representative of Morocco - Commissioner.
The representative of Mozambique- Commissioner.
The representative of Rwanda - Commissioner.
The representative of Sierra Leone- Commissioner.
The representative of Somalia - Commissioner.
The representative of Tanzania - Commissioner.
The representative of Zaire - Commissioner.

Charles Chishimba Manyema was appointed
Secretary of the said commission.

The outlined terms of reference were to -

1. Inquire into the events and circumstances leading to the death of the late Herbert Chitepo on the 18th March, 1975.
2. Establish the facts of and surrounding the said death.
3. Investigate and establish whether any racist or imperialist agents or counter-revolutionaries or saboteurs were directly responsible for the said death.
4. Investigate and establish the identity and the motive of the person or persons responsible for the said death.
5. Make recommendations with regard to the measures that ought to be taken for the security of persons engaged in any political activities aimed at the attainment of freedom and independence of the people of

Zimbabwe and of any other country in Africa still under colonial or minority rule.

President Kaunda further directed that if the Commissioners in the course of their inquiries became aware of any matter, thing or activity which in their opinion constitutes or is likely to constitute a danger or threat to national security or the security of any person or persons engaged in any political activity aimed at the attainment of freedom and independence of the people of Zimbabwe or of any other country in Africa still under colonial or minority rule, they shall forthwith communicate full information concerning any such matter, thing or activity and their opinion thereon to the minister responsible for home affairs.

The principle aim of this commission of inquiry was to absolve the Zambian government of any involvement in the killing of Mr. Herbert Chitepo. Its aim was realised and Zambia's integrity was upheld.

On 15th July, 1981, His Excellency, the President issued statutory Instrument No. 91 of 1981 and 113 of 1982, under the Inquiries Act,¹²

appointing the following to constitute the commission of inquiry into the affairs of the University of Zambia:

Mr. W.P. Nyirenda	- Chairman
Mr. F.M. Mulikita	- Commissioner
Mr. D.A.R. Phiri	- Commissioner.
Mr. S.D. Nundwe	- Commissioner
Mr. L.J. Mwananshiku	- Commissioner
Dr. E.M. Koloko	- Commissioner
Mrs. L.A.W. Monze	- Commissioner.

Mr. M. Mumbwe was appointed secretary of the said commission.

The objectives of the commission embodied the following:

1. To inquire into:
 - (a) The effectiveness of the administration and administrative structures under the federal organisation of the University, and in particular into:
 - (i) The effectiveness of administrative controls, accountability and supervision;
 - (ii) Discipline and attitudes towards discipline of staff and students; and
 - (iii) The utilisation and supervision of ancilliary staff.

- (b) Students affairs, and in particular:
 - (i) Student/staff relations,
 - (ii) Student/administration relations,
 - (iii) Student union matters,
 - (iv) Student publications, and
 - (v) Any recommendations on how the students can play a more dynamic and useful role in the affairs of the University and in the development of the country.
- (c) The financial affairs of the university, and in particular:
 - (i) The total expenditure of the university during each of the previous seven years, actual cost per student-year, and projected forecasts for the near future;
 - (ii) Utilisation of funds of the university, their control, audit and accountability at each level of disbursement; and
 - (iii) Any unauthorised borrowing or misuse of university funds by staff and students.
- (d) The effective utilisation of property, amenities and facilities of the university and in particular:
 - (i) The allocation and utilisation of, accountability of, audit of and safeguards against loss of property, equipment, materials, furniture, etc,

issued to or for the use of students or staff in relation with their residence, studies, leisure or general use; and

- (ii) The purchase, use, allocation, utilisation and audit of, and accountability for books, reading materials, stationery etc, for use in connection with the classroom, library, bookshop, publications or in any other context.
- (2) Recommend corrective measures where the existing systems with regard to any of the foregoing matters are inadequate, wasteful or otherwise undesirable, or where there are no systems in existence.
- (3) Inquire into, and make recommendations on the desirability or otherwise of setting up an Accreditation Board to review the academic programmes of the university.
- (4) Inquire into, and make recommendations on the salaries, conditions and terms of service of the members of staff of the university of Zambia.
- (5) Make such other inquiries or recommendations in connection with the foregoing matters as in the opinion of the commission are desirable in the public interest.

Numerous and diverse commissions of inquiry have been considered, in respect of their terms of reference, as an illustration of the fact that an inquiry can be made into practically any matter, so long as it is in the public interest or for the public welfare.

Objectives of these commissions of inquiry are to inquire into any matter and make recommendations based on their findings. In this respect, the objectives differ according to the terms of reference prescribed to each particular commission.

FOOTNOTES

1. Ante. Chapter I
2. Statutory Instrument No. 46 of 1972.
3. Statutory Instrument No. 44 of 1975.
4. Statutory Instrument No. 165 of 1977.
5. Post Chapter IV.
6. Statutory Instrument No. 26 of 1971.
7. Statutory Instrument No. 158 of 1974.
8. Statutory Instrument No. 258 of 1970.
9. Statutory Instrument No. 134 of 1974.
10. Statutory Instrument No. 415 of 1967.
11. Statutory Instrument No. 101 of 1975.
12. Cap. 181.

CHAPTER IV

The ensuing chapter is devoted entirely to seem of the problems that commissions of inquiry encounter, in pursuance of the attainment of their objectives as provided for, by their respective terms of reference.

Natuareally, the problems or constraints to be faced by one commission, will differ with the problems inhibiting another commission.

The problem range can vary - some lack transport, in some cases recommendations are not followed or are modified in such a manner that the recommendations are substantially different from the ones originally proposed, and so forth.

The commission of inquiry which probed the causes of strikes at Zambia National Provident Fund (ZNPF) in 1984 recommended the removal of director Mr. Jones Nyirongo and board secretary Mr. Christopher Mundia, who was at the centre of the controversy and unrest.

According to the report released¹ by Mr. Charles Manyema², government had accepted that Comrade Mundia's services be terminated because his attitude made him 'unsuitable for the demands of public office.'

On the replacement of Comrade Nyirongo, the commission of inquiry recommended that "ZNPF needs a leader who, not only Commands the respect and loyalty of the workers and members of his management, but who also has a firm grip of the operations of the organisation with ability to provide leadership which enhances the fulfilment of the organisation's objectives."³

The commission of inquiry was appointed by President Kaunda⁴ in October, 1984, to investigate into and report on events and circumstance which led to the strikes by ZNPF employees from May 3 to May 8 and from October 3 to October 8 that year. The first strike in May 1984, was blamed on Mr. Mundia's move to suspend three workers while the second in October was blamed on management's decision to reinstate Mr. Mundia despite workers' protest.

It was chaired by Lusaka High Court Judge, Florence Mumba and comprised Comrade John Duma as secretary, and Professor Lyson Tembo of the University of Zambia and Comrade Joseph Chileshe of Zambia Consolidated Copper Mines (ZCCM).

Government accepted the commission's recommendations that the ZNPF board secretary should not concern himself with general administration and personnel but should only head the professional secretariat and the legal department.

It also accepted a recommendation that the office of deputy director be restructured to provide for ~~three~~ deputy directors for finance, operations and personnel administration. Before this, the only deputy director was Comrade Samuel Mulozi.

The commission of inquiry found that the strike of May, 1984 was a result of the suspension of three workers - a move workers felt was aimed at weakening their union. The three workers were Mr. Ernest Mwaanga, transport officer, Patrick Mulenga, a driver for charges of forgery and comrade Moono for alleged over-expenditure of K667.84 during his stay at Ndola's New Savoy Hotel between February 27 and 29, 1984.

The commission established that the suspensions were wrong and unfortunate and demonstrated the rampant poor personnel management.- The suspensions occurred within an atmosphere of mistrust between the employees and management. It was also found that in October workers went on strike because they did not accept board secretary, comrade Mundia whom they considered arrogant, insensitive and tyrannical.

The commission established that although management, the board, and the Ministry of Labour and Social Services agreed that Comrade Mundia had a negative attitude, the board decided that he should resume work to allow him to

The commission found no basis in the submission by the late Mr. Mumbuna Mwisiya, Counsel for Mr. Mundia, that his client had been victimized on the basis of tribe.- There was no connection whatsoever between Mr. Mundia's rejection by the workers and the problems faced by other Lozi officers in other institutions cited by Mr. Mwisiya. Mr. Mwisiya died on December, 15, 1986.

The state did in fact accept most of the probe team's measures. But the problem came later on.

The Zambia Union of Financial Institutions and Allied Workers (ZUFIAW) on March 5, 1988 expressed disappointment at the government's alleged failure to implement recommendations of the commission of inquiry into causes of strikes at ZNPF. Comrade Peter Mulenga⁵ said that he was surprised that government which had accepted the recommendations for changes to take place was not stalling.

The government had accepted that services of board secretary comrade Christopher Mundia be terminated and that management set-up be restructured. But no changes had taken place, "we shall only tell that some changes have taken place after comrade Mundia has surrendered the car and three deputy directors have been appointed."⁶ He also said that some top and middle management officials were in suspense because they did not know whether they would be confirmed or not - they have been in acting positions for too long.

It is bad enough that you appoint a commission of inquiry and totally ignore its recommendations, and it is definitely mind-boggling that the government should accept the recommendations and then take their time implementing them, in such an urgent matter as the one at ZNPF.

Another problem that arises out of the ZNPF matter is whether the recommendations rendered have any legal binding force, once accepted.

Former ZNPF board secretary, Mr. Christopher Mundia has sued the company for wrongful dismissal and is claiming damages as well as reinstatement. Mr. Mundia who was dismissed by ZNPF board in March is seeking a declaration that his dismissal was wrongful, null and void. In his writ of summons filed at the Lusaka High Court, Mr. Mundia is asking the court to order his reinstatement at the Fund. He says in support of the action that his services were terminated at the ZNPF board meeting held on February 17, and that he was officially informed of the dismissal in a letter to him dated March 2, 1988.

Mr. Mundia has also applied to the court for an injunction to restrain the Fund from evicting him from the company house. The injunction was granted on May 24 by High Court Commissioner Mr. James Mutale.

The outcome of this case should be interesting but unfortunately at the time of printing this obligatory essay the verdict had not yet been passed.

The Sakala Commission into land matters in the Southern Province had some unique problems from its inception; on 13th October, 1980.

Firstly, two days before the commission started public hearings, one of its members, Mr. H.K. Nkwabilo, died on 22nd November, 1980 in a road traffic accident. Mr. B.R. Sharma, another commissioner, was appointed ~~pusine~~ judge. Thus replacements had to be found.

Also the members of the commission were not sworn in at the same time. The Chairman and four members were sworn in on 22nd October, 1980 by the Honourable Mr. Justice Brian Thomas Gardner, Acting Chief Justice.

Another member of the commission Mr. D. Senathirajah was by then on leave outside Zambia. The Secretary too, Mr. F.B. Mumba, was outside Zambia on study leave and Mr. C.J. Nyirenda, Principal in the Ministry of Lands and Natural Resources temporarily assisted the commission. Mr. Senathirajah and the secretary, who was recalled from study leave were sworn in also by the Honourable Acting Chief Justice, on 24th November, 1980. With these different dates for appointments and swearing in, the commission began its work behind schedule, on 25th November with a

Before the commission started public hearings it was necessary to inform the public about the work of the commission, where it was to conduct its sittings and how and when members of the public could submit their evidence.

In this regard a specific request was made to the office of the member of the Central Committee for the Southern Province to assist the commission in drawing up its itinerary and in publicising its work.

There is evidence that the office of the member of the Central Committee had instructed all District Governors to act on the request. However, in the absence of any response forthcoming from the District Governors, the commission had to draw up its own itinerary and to publicise its own work. This increased the workload of the commission.

The publicity was through notices in the press, announcements on the radio and television, where possible radio announcements were made in the Tonga language. In addition, posters in Tonga were distributed to all the districts in the Southern Province.

The commission commenced public hearings on 25th November, 1980. The final hearing ended on 13th July 1981.

Public hearings were held in the following centres:

LUSAKA: 25th to 27th November - 29th June to
13th July 1981.

LIVINGSTONE: 16th to 20th December 1980.

NAMWALA: 13th January 1981; 15th to
16th June, 1981.

ZIMBA: 28th to 30th January, 1981.

KALOMO: 2nd to 6th February, 1981.

CHOMA: 23rd to 27th February, 1981.

PEMBA: 3rd to 6th March, 1981.

SINAZONGWE: 23rd March, 1981.

MAAMBA: 24th March, 1981.

MUNYUMBWE: 26th March, 1981.

MONZE: 31st March, 3rd April, 1981.
6th to 9th April, 1981.

MAZABUKA: 21st to 24th April, 1981 - 27th to
30th April, 1981, 17th June, 1981.

SIAVONGA: 12th to 13th May, 1981.

ITEZHI: Itezhi: 22nd to 23rd June, 1981.

In common with most commissions of inquiry,
the Sakala commission had a tight schedule and was
pressed for time.

The second sittings in Lusaka were devoted to
hearing evidence from professional and other
expert witnesses. It was also necessary to have a
second hearing in Namwala because in January the
roads were impassable, rendering it difficult for
the commission to visit areas in dispute and for the
witnesses to come to the centre to give evidence.

The commission received oral evidence from a total of 303 witnesses which included witnesses from the Commercial Farmers Bureau (C.F.B.) and its affiliated associations.

The nature of the commission's inquiry entailed a great deal of travelling. The commission did as much travelling as was practically possible. The main constraint was lack of reliable and adequate transport.

Further, because of the urgency of the problem, the commission had to start its work almost immediately and the period of field work coincided with the rainy season. The commission had also intended in its programme to visit one or two neighbouring countries to familiarise itself among other things, with the settlement schemes in those countries. Consequently a request was made to the office of the Prime Minister for authority to undertake the trip. A further request for an aircraft to enable the commission to have a bird's eye view of the province in order to determine the extent of human settlements was also made to the office of the Prime Minister. The commission was informed that 'due to financial stringency' the two requests could not be met. This in a way effected the work of the commission and they had to alter their programme.

Just as in the Sakala Commission, the Mwanakatwe commission into the salaries, salary structures and conditions of service in the public services and the Parastatal sector, was unable to assemble immediately as a team. This was so because one of the members was absent from Zambia on a duty assignment.

Instead of making an independent inquiry, free of external considerations, the Mwanakatwe commission in arriving at the conclusions related to the recommendations took into consideration the state of the economy of the nation. The Party and its government, instead of accepting the recommendations on their merit also took into account the state of the economy and the party policy contained in the "United National Independence Party National Policies for the next decade 1974-84." The party policy on salaries and wages stresses the need to reduce the gap between the incomes of the highly paid workers and those of the lowly paid. In conformity with the above observations, the party and its government had accepted the recommendations with modifications. As a consequence most of the recommendations were modified. This resulted in a serious derogation of the commissions free hand in the matters inquired into.

For example, on the issue of transfers. It was recommended that "the rate of transfers must be reduced. Central, ministerial, provincial and departmental transfer committees are suggested." The government accepted the recommendation that transfers be reduced. However, it was not accepted that central, ministerial, provincial and departmental transfer committees be established as these would not achieve better results than the already established machinery.

On the issue of intranport it was the commission's opinion that vehicle acquisition and control should be reviewed to achieve the maximum possible decentralisation.

The government accepted this recommendation on condition that all vehicle acquisitions are done through the Mechanical Services Branch, in order to have a uniform standard of vehicles and to provide back-up facilities.

Lastly, on disciplinary authority, it was recommended that disciplinary powers should be delegated along the lines proposed. This recommendation was accepted with the proviso that these powers should be vested in the Permanent Secretary only and that such a dismissed officer shall have the right to appeal to the appropriate service commission for redress if he so wishes. It is thus clear that this particular commission was operating in a climate of

It is logical to assume that when a commission concludes its inquiry, its recommendations should be published in full. The inquires Act⁷ only enables a commission to hold proceedings under camera,⁸ if it considers it necessary to do so for the preservation of order and security.

But when the commission appointed to review the salaries, conditions of service of the Zambia Public Service (including the Zambia Police and the Defence Force) presented its report in 1971, the President stated that the government, after careful consideration, had decided not to publish it in full.

The President outlined two reasons for this move.

Firstly, he stated that it deals in part with the country's security forces and it is inadvisable that matters affecting national security should be generally available in Zambia's present circumstances.

Secondly, that the manner in which it is framed makes it extremely difficult for the view of the government to be set out clearly in parallel with the recommendations which it contains.

The government should have simply stated that the proceedings will be conducted in private. By not publishing the report containing the recommendations in full, it raises public suspicion that the government has something to hide.

Also since commissions of inquiries are basically instituted to alleviate public anxiety, by releasing partial reports, it defeats the whole purpose of having fact finding bodies, such as commissions of inquiry.

The commission of inquiry into the affairs of the Lusaka City Council also had some operational problems related to the terms of reference. With the relatively wide terms of reference, the problem was to decide how far inquiries should be pursued. To have delved into every function and activity of the council would have protracted the proceedings almost indefinitely. On the other hand, to stop short at any stage might have operated unfairly by focusing undue attention on certain individuals when further investigation might have disclosed that other individuals had conducted themselves no better.

An interim report on the Mufulira mine disaster was submitted and approved by the cabinet, and was published on the 11th January 1971. It was then expected that a great deal of vital evidence would be revealed as the mud and debris were cleared from underground. For this reason, the commission did not feel competent at that stage to submit a final report, but certain interim conclusions were drawn which it was considered were unlikely to be affected by any further evidence which might have come to light.

Between the 15th November, 1970, and the end of April, 1971, the commission had continued to:

- (a) Hear additional evidence from mine employees and members of the mines department;
- (b) Collect further facts which might be relevant to the inquiry;
- (c) Supervise, in association with the mines department, the safety aspects of the rehabilitation operations;
- (d) Carry out, with the cooperation of the Chief Inspector of mines, an extensive survey of the tailings dams of other mines; and
- (e) Carry out a literature search in Zambia and the United Kingdom for relevant publications and recent mining legislation aimed at preventing such accidents.

Much of the vital evidence which the commission hoped would be revealed during clean-up operations has remained buried as the condition of the mud on the 580-m (1,900ft) level and the sub-levels above was such that its removal would have been dangerous.

As a result of these problems, the commission could not issue a comprehensive and conclusive report.

Lastly, the controversies, as already pointed out,⁹ of the Mumpanshya Zambia Railways Commission of Inquiry are notorious.

The government only grudgingly accepted its findings two years after its report was submitted. Even then, no positive action was taken on the findings. On the contrary, the government even appointed a person who had been discredited in the report as the new General Manager of Zambia Railways.¹⁰

Such action frustrates future commissions, who may be of the view that such blatant disregard of the recommendations, may recur in their particular commission.

These are but just a few of the problems that commissions of inquiry face. Some of the problems are isolated and unique, whilst others are common to most commissions.

But there is no commission in history, in Zambia that is, that has failed to publish a final report; because it was inhibited in its work by numerous constraints. The commission of inquiry into the Mufulira mine disaster had highly technical problems whereby vital evidence was buried under slabs of mud, but they managed to submit a final report, based on conclusions drawn from available evidence.

FOOT NOTES

1. On Thursday 21st January, 1988.
2. Secretary to the Cabinet.
3. See Leading Story entitled
"NYIRONGO, MUNDIA MUST GO - REPORT"
DAILY MAIL, FRIDAY 22ND JANUARY, 1988.
4. In pursuance to S.I. of Cap. 181.
5. ZUFIAM Branch Chairman.
6. See: Story entitled "ZUFIAM STILL WAITING"
Sunday Times of Zambia March 6th 1988.
7. Cap. 181.
8. S. 2 (3) of Cap. 181.
9. Ante. Chapter I.
10. See: the Leading Story entitled:
"MUMPANSHYA REPORT CONTROVERSY DEEPENS" in
The Sunday Times of Zambia. Vol. 8,
No. 605, 23rd August, 1981.

CHAPTER V: CONCLUSION:

Are commissions of inquiry really necessary, in general, in the Zambian context?

What can be said about the efficacy of official fact-finding in the light of what has been discussed in the preceeding four chapters?

Is a commission of inquiry investigation an adequate vehicle for arousing public opinion? Quite obviously it is, especially with the help of modern mass communication. The Sakala commission into land matters in the Southern Province, fully utilised this system and aroused people's participation and interest.

But is that same commission of inquiry investigation an adequate vehicle for discovering the facts about an alleged danger and placing them before the public? Here the answer, based on a perusal of some commissions of inquiry¹ must be no.

Commissions of inquiry should be looked at from the perspective of official fact-finding as a basis for public enlightenment - and hence, if the democratic theory has any merit, as a basis for rational action - some of the commissions of inquiry in Zambia² have fallen short.

The job of a commissioner in short, is what has been traditionally regarded as the historian's job: to find out; in Ranke's classic phrase, 'wie' es eigentlich gewesen' - how it really happened.

Though it is acknowledged that commissioners in Zambia are sworn-in under oath, it must be stressed that they must carry out their work in a objective spirit of inquiry, without rancour and without a thought to gaining present political advantage. If this is the case, would it not be better to use public agencies, armed with the power to compel people to tell what they knew and equipped to test and evaluate what they were told. But again, public agencies are too rigid. One important aspect to the advantage of the continued use of commissions of inquiry, is that, they are by their very nature very flexible.

In wide and general terms, commissions of inquiry have got two major advantages.

Firstly, they are open-ended, in the sense that its scope is limited only by its constitutive authorization, which usually amounts to no limitation at all. That scope or terms of reference are vastly useful in developing testimony as a coherent whole, untrammelled by considerations of relevancy or materiality to a predetermined subject matter.

Secondly, the other great advantage of these inquiries is that they take place, at least in theory, in a non adversary setting. Since winning or losing "the case" is not immediately at stake, witnesses are likely to speak more freely. The witness will be pressed without being bullied or intimidated. He will be allowed to tell his story or present his facts in his own way, without the interruptions that mark a hotly contested trial.

These advantages, while theoretically impressive, are in practice rarely exploited to their full extent; and are in any event more than off-set by several crippling disadvantages.

The commission of inquiry into the salaries, salary structures and conditions of service in the public services and the parastatal sector, was given a rather imposing limitation. They were to take into account the economic climate of the nation-which incidentally was on the decline.

The chief weakness is that these commissions of inquiry are creatures of the executive. They can only be instituted by the President.

As long as they serve as an instrument of politics, a means by which political points are won and lost, its utility as a fact-finding institution in a highly charged context is bound to be shaply limited.

By way of reform, I would strongly recommend that there should be a parliamentary committee charged with the responsibility of informing the President of the necessity of issuing a commission of inquiry. It should not be left to his discretion. Thereafter the recommendations should be tabled before the full National Assembly for debate.

This will ensure that commissions of inquiry in Zambia are totally independent bodies, who owe loyalties to no person or organ.

By way of comparative study, it could prove beneficial to examine two British models, namely the Tribunal of Inquiry and the Royal Commission of Inquiry.

A tribunal of inquiry is constituted upon resolution by both Houses of Parliament, in the words of the enabling statute, "for inquiring into a definite matter described in the resolution as of urgent public importance." It has the powers of a court of law to compel testimony, although it is accorded greater latitude in framing its procedures and in the evidence that it considers.

It is typically chaired by a Justice of the High Court; there are usually two other members, who are likely to be senior members of the bar. The members are appointed, in effect, by the cabinet. The tribunal's proceedings are usually public though it may choose in some instances to hear evidence in private.

It conducts its inquiry in an orderly and expeditious fashion and renders a report that states its findings of fact. That is all. There is no prosecution and no persecution. If individual public servants are found to have betrayed their trust, they resign without waiting to be removed, so general is the acceptance of the tribunal's fact-finding.

This is a far cry from the Zambian situation. The commission of inquiry into the events at Zambia National Provident Fund (ZNPF) is a case in point. The commission recommended that board secretary, Mr. Christopher Mundia must be dismissed. But he has challenged the dismissal in the High Court of Zambia, seeking damages and reinstatement.

The procedure of convening a tribunal of inquiry is rarely resorted to, a fact that may help to explain its effectiveness. From the period 1947 to 1962, it has only been constituted in two instances. The first of these demonstrates the tribunal's success in delving into a highly complex, not to say confused, mass of facts and extracting from them a coherent and orderly account of what happened.

The Tribunal investigated an allegation that there had been an improper disclosure of an impending rise in the Bank of England's interest rate, to the advantage of certain financial concerns.

The affair took place in September 1957. A tribunal consisting of a Justice of the High Court and two senior barristers was appointed in November. The Tribunal sat for twelve days during December, heard 132 witnesses under oath, many of them represented by counsel, took written statements from 236 other persons and issued a report in January 1958, concluding that the allegations were unfounded.

A noteworthy aspect of the tribunal's work was the speed with which it acted. Commissions of inquiry in Zambia on the other hand all seem to take at least two years to present their reports.

For example the commission of inquiry into the affairs of the University of Zambia was appointed on July 15th, 1981 and it only presented its final report on 1st July, 1983 - Does that denote a lack of efficiency? .

Witnesses who gave evidence to the University of Zambia commission of inquiry amounted to 315 in number.

A British model which is more compatible with our commission of inquiry, is the Royal commission of inquiry, which is established to investigate a general situation and supply a basis for making legislative or other official policy.

It is constituted by a command of the crown directing the prospective members to investigate a given subject, which is defined in the terms of reference.

In practice, the crown requests a commission at the insistence of the cabinet or of a particular minister within whose sphere of interest the subject matter falls. Parliament may in theory impede the establishment or functioning of a Royal commission by withholding funds.

The Zambian system, does not have the advantage of such a check.

The members of a Royal Commission are almost always drawn from private life. Depending on how technical the subject of inquiry happens to be, the members may be either experts in the speciality involved or simply prominent members of the community who can be expected to bring common sense and good judgment to bear on any problem confronting them. Ordinarily the commission has a secretary, who is a civil servant, assigned to help it. His function is to generate the production of evidence, to assist the commission in keeping track of the evidence received, and to aid in formulating the report that constitutes the normal end product of the commission's work.

The procedure of a Royal commission is not fixed by law. Ordinarily, the commission takes evidence, in either oral or written form, from anyone who desires to be heard. The commission has no subpoena power, all its witnesses appear voluntarily.

The questioning of witnesses is done informally, without any regard for the rules of evidence or other niceties of the adversary process.

The commissioner's responsibility is simply to do a good job of considering the facts and arriving at a proposed solution.

Royal commissions are as frequent as tribunals of inquiry are rare. There are usually several in being at any given time. Depending on the complexity of the problem confronting it, a Royal Commission may be in existence for a few months or for several years. Once a final report is rendered, the commission, having fulfilled its only function goes out of existence.

Its work product usually consists of two items: a report, which narrates the procedure it employed, lists in detail the facts it has found, and makes recommendations.

I sincerely affirm that commissions of inquiry in Zambia, be modelled on the Royal commission of inquiry subsisting in Britain. Though they are similar in most respects, the recommendations rendered by a Royal commission of inquiry, usually has legislative effect; especially when the report is given wide publicity - it becomes a powerful stimulus to legislative action.

For example the report of the committee on homosexual offences and prostitution, popularly known as the wolfender report drew public attention to a difficult social problem and stimulated intelligent public discussion of that problem. The report was rendered in September, 1957 and occasioned an intense and protracted debate, both within and without parliament, centering on its most controversial recommendation - that homosexual conduct engaged in privately by consenting adults should no longer be treated as a criminal offence. That recommendation has failed to be enacted into law, although other, less controversial changes in the law recommended by the committee did gain enactment.

Usually, in Zambia, little excitement is stimulated by reports by commissions, because there is no platform for debate.

To mind, only two commissions of inquiry have raised any dust. These are the Mumpanshya commission of inquiry into the affairs of Zambia Railways and the commission of inquiry into workers unrest at ZNPF.

It is acknowledged that there are diverging differences between our Presidential system of government and the parliament system adopted in Britain. In Great Britain there is little conflict between the legislative and executive branches of the government, since the executive is simply the functioning voice of the majority party in parliament this makes it materially easier for the British to assign delicate problems of fact-finding to a tribunal of inquiry or a Royal commission, even when the investigation may yield results embarrassing to the government.

The procedures of a fact-finding tribunal should not be prescribed by law, but should be molded to fit the exigencies of the particular occasion. This is one of the advantages of commissions of inquiry in Zambia, making them very flexible instruments of the administrative process.

In Zambia, one of the greatest deficiencies is lack of publicity. Even though every commission shall be published in the Gazette by statutory instrument³, it is not every citizen that has access to these Gazettes.

Commissions of inquiry are issued in some instances to allay public anxiety, but reports of commissions of inquiry are not available to everybody.

But in some instances the mass-media has played an important part in enlightening the populace.

But as fact-finding bodies commissions of inquiry have done a tremendous task. The reports they have advanced have served as the basis for new government policies and decisions.

Generally speaking, commissions of inquiry are a necessary phenomenon in Zambia because of their very nature and the services they provide. Public awareness grows after a report is published and this in turn brings out a government reaction, to study the recommendations objectively.

Charges of corruption in government are always going to be with us, people will continue to die in unnecessary accidents, charges of tribalism will continue; issues of public policy on which disinterested official scrutiny is needed constantly arise.

Many such charges and many such issues can be dealt with satisfactorily enough by existing instruments of inquiry.

But there will always be those that arouse so much controversy and that strike so deeply, that they can only best be inquired into by commissions of inquiry.

When such instances occur, as it surely will again, we should be fortunate to have at the service of the body politic an instrument of inquiry that could enlist the best talents of our society in the aid of public enlightenment.

FOOTNOTES

1. The Kamanga commission of inquiry into the events leading to the death of the late Herbert Chitepo, and the Kapesebele commission of inquiry into the events and circumstances leading to the accident which occurred at Katima-mulilo.
2. Ibid.
3. 5. 2 (4) of Cap. 181.

BIBLIOGRAPHY

1. Parker L.P., Ex Communist Witnesses: Four studies in fact finding.
(California, Stanford University Press, 1962)
2. Inquiries Act, Cap. 181 of the laws of Zambia.
3. Constitution of Zambia, Cap I of the laws of Zambia.
4. Republic of Zambia, Government Reaction to the main recommendations of the commission of inquiry into the Affairs of the University of Zambia, (Lusaka: Government Printers, 1985)
5. Republic of Zambia, Report of the Commission of Inquiry into the salaries, salary structures and conditions of service in the Public Services and the Parastatal Sector, (Lusaka, Government Printers, 1975)
6. Republic of Zambia, Report of the commission of Inquiry appointed to review the salaries, Conditions of Service of the Zambia Police and the Defence Force (Lusaka, Government Printers, 1971).
7. Republic of Zambia, Report of the commission of inquiry into the affairs of the Lusaka City Council (Lusaka, Government Printers 1969.)
8. Republic of Zambia, The Mufulira Mine Disaster final report (Lusaka, Government Printers, 1971).
9. Republic of Zambia, Hansard No. 3 (Lusaka: Government Printers 9th July - 27th August, 1964).

10. Republic of Zambia, Hansard No. 10b
(Lusaka: Government Printers 13th June, 1967).
11. Nkumbula V. Attorney-General (1972)
Z.R. III (H.C.) and (1972) Z.R. 205 C.A.
12. In the matter of application by
Christopher Mundia (1984) H.P./1810.
13. Statutory Instrument No. 165 of 1977.
14. Statutory Instrument No. 44 of 1975.
15. Statutory Instrument No. 101 of 1975.
16. Statutory Instrument No. 26 of 1971.
17. Statutory Instrument No. 134 of 1974.
18. Statutory Instrument No. 150 of 1974.
19. Statutory Instrument No. 415 of 1967.
20. Statutory Instrument No. 250 of 1970.
21. Statutory Instrument No. 46 of 1972.
22. Sunday Times of Zambia, 23rd August, 1981.
23. Sunday Times of Zambia, 6th March, 1988.
24. Daily Mail, 22nd January, 1988.
25. Times of Zambia, 6th April, 1978.
26. Times of Zambia, 12th November, 1979.