

**THE UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

**DIRECTED RESEARCH L410**

**TITLE: CONTROL OF ADMINISTRATIVE ACTIONS: AN INVESTIGATION INTO  
THE EFFICACY OF THE OFFICE OF THE OMBUDSMAN.**

**BY**

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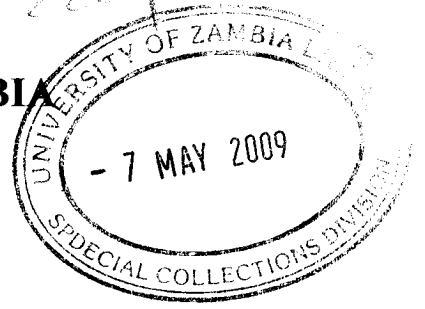
A dissertation submitted to the University of Zambia, School of Law in partial fulfillment of the Requirements for the Award of the Bachelor of Laws (LLB) Degree.

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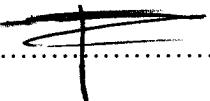


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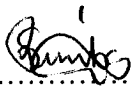
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## **DEDICATION**

For my Late Mum, Maureen Mhone Zimba,  
Dad, Mum Beauty Zimba ,  
My Brothers and Sisters and the Entire Zimba Zonge Family.

## ACKNOWLEDGEMENTS

My thanks are due to many, who have made this research possible and my stay at the University of Zambia.

Firstly and most importantly, I thank the Lord God Almighty, who is always with me and gives me strength and encouragement in all that I do. Thank you Lord, for your wisdom, grace, mercy and love upon my life.

I express my gratitude to my supervisor, Dr Patrick Matibini, for the guidance through the comments made when going through the chapters'. My knowledge of Administrative Law could not be better. Thank you.

My thanks go to my family. Thanks for always been there for me, having faith in me and giving me the support that I needed, at every stage of my education and in the realization of my goals and aspirations. Dad and Mum thank for your love and prayers. My little sisters, Sylvia and Thandy and my younger brothers, Hezron, Nathan, and Timothy, I love you all. My Cousins, Patricia, Joe, Henry, *Bana* Taonga and the Husband, thanks for your support and care.

Thanks to all my friends, you have been great, giving me encouragement through good and hard times. Thanks to all my classmates you have been wonderful and it was great to learn with you all.

Special thanks go to my very special friend Blessed Kumesa. Thank you, for being there for me, whenever, I needed you. Even though we met in first year, it's like we knew each other before Unza. We've grown to be like family, that's why you will always be my little Sis. Thanks for typing part of this paper, willingly having to put away your assignments and studies, just to help me and make this paper a success. Thanks for letting me use your laptop whenever I needed to and for keeping me in your room until third year when I was given my own. I shall forever be great full for your love, help and kindness. I treasure our friendship.

I am equally thankful, to my best friend, Ansberto Ngoyi, for taking keen interest in my work and the many valuable suggestions. Thanks for your support, guidance, and being there for me through good and bad times.

Yiluna, thanks for helping me with some of the materials for this research and allowing me to use the internet in your room, using your laptop. Even though, you like complaining that I exploit you, its part of friendship. Thanks, you are a good friend.

Thanks to my roommates, firstly, Nonde thanks for the encouragement, Hilda, you always reminded me, if I had finished, asking me, have you handed in your chapter? How far have you gone? What has your supervisor said? You always added encouraging words; you will manage to finish. Mubanga, thanks for the encouragement and allowing me to use your laptop.

Thanks to the Staff at the Commission for Investigations. Especially Ms Agnes Chibale, Senior Legal officer, without whose help it would not have been possible for me to have access to the reports of the Commission and the other valuable materials she provided.

I am thankful to the Staff at the Danish Embassy (Lusaka), for their help, who had to work during their holiday just to give me the information I needed.

Finally, my thanks go to all those who assisted me in various ways. Those whose names, I have managed to acknowledge in this paper are by no means represents the full list of friends and relatives to whom I owe my many thanks. Thank you all, for your support.

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the Danish Public Administration Act of

## **ABSTRACT**

“In the public service and the administration of government power, abuse of power is inevitable. Hence the need to check this power so as to keep it within its legal boundaries. More points of contact between government authorities and the citizens inevitably help generate friction and give rise to grievances in increasing numbers. When grievances become complaints they may be pursued through a variety of channels. One such channel is the office of the Ombudsman. In Zambia, it is referred to as the Commission for Investigations. It was established in 1973, for the purpose of safeguarding citizens against abuse or misuse of power. The Ombudsman institution plays a very important role in controlling administrative actions. This is due to the function which the Ombudsman has, of handling complaints from the public and investigating State authorities thereby, being a key player in ensuring transparency, accountability, fighting corruption and ensuring the impartial treatment of individuals. Therefore, it provides a mechanism to watch over and control the actions of public officers, in so doing, prevents official abuse of public office and power. In other words, public servants are to be held accountable for their actions which affect the public. Accordingly, the Ombudsman usually provides public officials with guidance, as to how they themselves and the public administration, in which they serve, can continuously improve relations with individuals. All this is done with the aim of controlling administrative actions, as a result of which citizen’s rights are respected and abuse of authority and office by administrative officers is prevented or lessened. Why the Ombudsman when we already have the judicial courts? The Ombudsman institution is needed, firstly, it is expensive for the citizens to take their cases to the courts, and secondly, it is not possible for the judiciary to focus on the public administration in the same intensive way as an ombudsman. Thus, the ombudsman serves as a complementary body to the judiciary and helps develop standards for good administrative behaviour among the civil servants.”

# 1. CHAPTER ONE

## **1.0. Introduction**

Administrative actions are acts or omissions done by public officers and authorities. These are persons holding government offices or performing government functions. For instance, the civil servants, persons in government ministries and departments. In order for public officers and authorities to effectively carry out their functions, there is need for these officers, to be conferred with discretionary power. The term 'discretion' means that the authority has a right or power to choose between several alternatives in the exercise of their function. That is, able to make a choice between alternative courses of action.<sup>1</sup>

In Zambia, a number of statutes confer powers on administrative authorities and offices to be exercised by them in their discretion. Thus, there must be discretionary power, however, if discretionary power is to be tolerable it must be kept under control.<sup>2</sup> It is the concern of administrative law to see that public authorities can be compelled to perform their duties if they make default. Hence it is important to keep the powers of government within their legal bounds. That is, the powerful engines of authority must be prevented from running amok so as to protect the citizens against their abuse.<sup>3</sup>

'Abuse' it should be made clear carries no necessary innuendo of malice or bad faith. It simply means that in certain instances government departments, agencies, officials may misunderstand their legal position as easily as many other people and the law which they have to administer is frequently complex and uncertain. Abuse is therefore inevitable, and it is all the more necessary

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<sup>1</sup> M.M. Carrow. Background of administrative Law. London: Butterworths. 1948, p.19.

<sup>2</sup> H.W.R Wade and C.F Forsyth. Administrative Law 9<sup>th</sup> Ed. Oxford: At the University Press, 2004. p.5

<sup>3</sup> *ibid*

that the law should provide a check<sup>4</sup>. Furthermore, it must be remembered that wherever there is discretion, there is room for arbitrariness. This is the reason why administrative actions are kept under control so that these administrative authorities could be kept within their limits so that the discretionary powers may not be turned into arbitrary powers.<sup>5</sup>

Therefore, in an effort to prevent or lessen abuse of authority by public officers and authorities, certain mechanisms and institutions have been put in place, designed to keep administrative agencies and officers in check. These mechanisms and rules which have been developed over the years are judicial and non- judicial. Hence in order to correct or prevent such maladministration, the aggrieved or adversely affected persons may seek relief from the courts through judicial review of administrative actions and also through non- judicial mechanisms such as the tribunals and commissions. One such institution is the Commission for Investigation (Office of the Ombudsman) which was introduced in Zambia in the 1973 Constitution.<sup>6</sup> This was in response to demands for an institution other than the courts to control the use of power by public officers. The Commission for Investigation was established for the purpose of safeguarding citizens against abuse or misuse of administrative power. This study will therefore, investigate the effectiveness of the Commission for Investigation in controlling administrative actions.

This chapter gives a general introduction of the study. It basically gives an explanation on the importance of controlling administrative actions, pointing out the various ways in which administrative actions can be controlled. That is, through judicial means by judicial review and non- judicial mechanisms through use of tribunals and commissions.

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<sup>4</sup> H.W.R Wade and C.F. Forsyth Administrative Law. 9<sup>th</sup> ed. Oxford: At the University Press, 2004.p.6

<sup>5</sup> C.K. Takwani. Lectures on Administrative Law. 3<sup>rd</sup> edition. New Delhi: Eastern Book Company, 1998.p.17

<sup>6</sup> G.S. Phiri. 'The Ombudsman in Zambia' Commonwealth Laws Bulletin. Volume 12 Number 1 summary 1986. Published by commonwealth Secretariat at p.243

### 1.1. Importance of Controlling Administrative Actions

During the twentieth century, the philosophy as to the role and function of the state has undergone a radical change. The government functions have multiplied. The traditional theory of '*laissez faire*' has been given up and the old 'police state' has now become a 'welfare state' and because of this radical change in the philosophy as to the role to be played by the state, its functions have increased.<sup>7</sup> Administrative controls over the most common economic activities are now an inseparable part of local, state and national government.<sup>8</sup> It was the duty of government to provide remedies for social and economic evils of many kinds if the state is to care for its citizens from the cradle to the grave, to protect their environment, to educate them at all stages to provide them with employment, training, houses medical services pensions and in the last resort, food, clothing and shelter it needs a huge administrative apparatus.<sup>9</sup>

It must be remembered that, intensive government of modern kind cannot be carried on without a great deal of discretionary power and since the terms of the Acts of Parliament are in practice dictated by the government of the day, this power is often conferred in excessively sweeping language.<sup>10</sup> It is the concern of administrative law, that rules are formulated for restricting the wide powers which Acts of Parliament confers very freely on ministers and other public authorities. The aim is not to allow these powers to be used in ways in which Parliament is not thought to have intended.<sup>11</sup> Hence, through administrative control of the actions of persons performing public functions, that is, public officers and authorities, abuse of discretionary power is prevented and citizens are protected from their abuse and ensure the rule of law is observed.

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<sup>7</sup> C.K.Takwani.Lectures on Administrative Law. 3<sup>rd</sup> edition. New Delhi. Eastern Book Company 1998.p.193.

<sup>8</sup> M.M.Carrow. Background of Administrative Law. London: Butterworths. 1948.p.7

<sup>9</sup> H.W.R.Wade and C.F. Forsyth. Administrative Law.9<sup>th</sup> ed.Oxford at the ?University Press.2004.p.20

<sup>10</sup> Ibid p.21

<sup>11</sup> M.M.Carrow. Background of Administrative Law. London :Butterworths.1948 p.9

In addition, with the increase of power of administrative authorities, it may be necessary to provide guidelines for the just exercise thereof, to prevent abuse of power and to see that it does not become a 'new despotism' and though arbitrary power is inconsistent with the concept of rule of law, discretionary power is not if it is properly exercised.<sup>12</sup> As already stated, the modern welfare state cannot work properly without exercising discretionary powers.

It is important to state that there is need to control governmental power and it must be pointed out that every power in a democratic society is subject to legal limitations and there is no such thing as absolute or unfettered administrative power and it is always possible for every power to be abused. A public body invested with statutory powers must take care not to exceed or abuse its powers. It must act in good faith, and it must act reasonably. Furthermore, a person in whom is vested a discretion must exercise his discretion upon reasonable grounds. It must be pointed out that discretion does not empower a man to do what he likes merely because he is minded to do so. He/she must see to it that in the exercise of the discretion does not do what he/she merely likes, but that which the law requires to be done. In other words, he or she must, by the use of his/her reason, ascertain and follow the cause which reason directs. Thus, the reason why, we control the exercise of discretionary power by these government officers and authorities is to keep the powers within their legal bounds so as to protect the citizens against their abuse.<sup>13</sup> Therefore, controlling administrative actions is important. This is due to the direct impact which administrative decisions have on the lives of the people. And when administrative actions are checked, this ensures governmental accountability and helps keep powers of the government within their legal bounds so as to protect the citizens against their abuse.

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<sup>12</sup> C.K. Takwani. Lectures on Administrative Law. 3<sup>rd</sup> edition. New Delhi. Eastern Book Company 1998.p.49

<sup>13</sup> H.W.R. Wade and C.F. Forsyth. Administrative Law.9<sup>th</sup> ed.Oxford at the University Press.2004.p.5

## **1.2. Rule of Law**

When the Courts or administrative tribunals or commissions are keeping administrative authorities in check, there are nothing more than the practical application of the rule of law. Meaning that the government must have legal warrant for what it does and that if it acts unlawfully the citizen has an effective legal remedy. For in a democratic government, it is expected that the subjects have adequate means for the redress of their grievances.<sup>14</sup> The rule of law and administrative law is the area where this principle is to be seen in its most active operation. The primary meaning of the rule of law is that everything must be done according to law. When applied to the powers of government, this requires that every government authority which does some act, which would otherwise be a wrong such as taking a persons land or which infringes a man's liberty must be able to justify its action as authorised by law.<sup>15</sup>

The government should be conducted within a framework of recognised rules and principles which restrict discretionary power. It can therefore be seen that although in the 21<sup>st</sup> century complete absence of discretionary powers with the administrations is not possible, yet this doctrine of law puts an effective control over the increase of executive and administrative powers and keeps their authorities within their bounds.

## **1.3. Statement of the Problem**

The establishment of various institutions to monitor or control administration actions arose from the need to ensure that public officers and public institutions act in accordance with the law. From the time the Zambian Ombudsman (The Commission for Investigations) was created (34 years ago), the Commission has seen a reasonable increase in the number of cases reported to it. The question is, whether the Commission has been effective in checking maladministration and

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<sup>14</sup> ibid

<sup>15</sup> supra



abuse of power by public officers and offering redress to the injured persons. This study therefore intends to investigate the effectiveness of the Commission for Investigation in controlling administrative actions, thereby help in prevention of abuse of power or authority by public officers.

#### **1.4. Rationale or Purpose of the Study**

The main aim of this research is to investigate the effectiveness of the Zambian Ombudsman in the controlling of administrative actions.

Specific objectives of the study will be:

1. Show why there is need for controlling administrative actions
2. Examine what has been the traditional way of controlling or preventing abuse of public office or maladministration.
3. Show the role which the Ombudsman plays in controlling administrative actions
4. Examine the role of the Ombudsman in investigating cases of abuse of authority by public servants thereby safeguarding citizens against abuse or misuse of administrative discretionary power, by
  - Examining the rationale and the intended purpose, behind the establishment of the Commission for Investigations
  - Investigating how independent the Commission for Investigation is in terms of financial autonomy, appointment and dismissal procedures.
  - Examine the jurisdiction of the Commission

- Examine how its geographical location affects accessibility of the Commission by members of the general public.
- Make recommendations on how the Commission of Investigations can be strengthened.

### **1.5. Research Questions**

1. Why is there need to control administrative actions?
2. What role does the Ombudsman play in controlling administrative actions?
3. How effective has the Commission for Investigations been in controlling administrative actions?

### **1.6. Research Methodology**

This research was a qualitative one. The major method which was applied in carrying out this research study was desk research. In addition, field investigations were undertaken by conducting interviews and through questionnaires. The sources of materials used include; Reports on the performance of the Commission for Investigation, these were supplemented by interviews held with various personnel at the Commission. Among these included an interview with the Senior Legal Officer and one of the Investigations Officers. Other materials consulted include, text books, law journals, statutes (Zambian and foreign), paper presentations, unpublished articles, and the internet.

### **1.7. Significance of the study**

With the increasing need to prevent abuse of power by public authorities, it has become necessary that the operations of institutions put in place to keep the work of administrative agencies and officers within the law are looked into. This is done so as, to see how effective they are and whether they are achieving the objectives for which they were created. It is therefore essential to conduct regular studies such as this one. For, it is only through such

studies that lacunas or shortfalls which affect the operations of the Commission for Investigations can be detected and relevant proposals for reform made to strengthen its operations. Therefore, this study is a contribution to the available literature and it is hoped that the information which will be contained in this study will help in the improvement of the operations of the Commission for Investigation, thereby making it more effective, relevant and be able to effectively monitor government.

### **1.8. Conclusion**

In conclusion, this chapter has basically highlighted the importance of controlling administrative actions and pointing out that, in every State public functions are performed by designated persons and further, the execution of these functions, responsibilities and duties affects in a positive or negative way each and every ordinary citizen. Therefore, every act of governmental power, that is every act which affects the legal rights, duties, liberties of every person must be shown to have legal basis and that if citizens are to have their rights protected, there is need for administrative authorities to act reasonably and in good faith and upon proper grounds. Thus, this discretionary power must be exercised in a reasonable manner and only to effectuate the purpose for which it is conferred.

Therefore, in an effort to prevent abuse of authority by public officers and authorities certain mechanisms and institutions have been put in place, designed to keep administrative agencies and officers in check. These include control by the Courts through the process of judicial review and apart from citizens resorting to Courts and employ the process of judicial review other non-judicial procedures may be used such as through the use of commissions and tribunals. All this is in an effort to ensure the rule of law and prevent abuse of authority by public officers, by monitoring government and be able to hold government accountable for failure to fulfil its legal responsibilities in accordance with the law.

## 2. CHAPTER TWO

### THE OMBUDSMAN INSTITUTION

#### 2.0. Introduction

With the enormous growth in the bureaucratic power exercised by public administrators, it is inevitable that most areas of modern life are influenced directly by government administration. However, administrative entities, like all other bodies which are creations of human beings and which are run by humans, are not perfect in matters of decision making or indeed in their actions.<sup>16</sup> The judicial system and the parliamentary committee system, while intended to provide checks and balances on the operation of government, are not normally accessible to satisfy the day to day needs of ordinary people, who meeting with difficulties in accessing basic services, require a back-up mechanism to check the administrative actions of government institutions.<sup>17</sup> The review framework which provides a more accessible and user friendly service to the public at large and which complements that of the judiciary and Parliament, has been identified world wide as the office of the Ombudsman. That is, to say, Ombudsman system serves to meet the new felt need to resolve, complaints of maladministration, speedy, informally and inexpensive.

Ombudsman is a Scandinavian word meaning Officer or Commissioner. It is derived from the Swedish word "*Ombud*" which means representative or means a person who acts as a spokesman or representative of another person.<sup>18</sup> According to Wade<sup>19</sup>, in its special sense it means a Commissioner who has the duty of investigating and reporting to Parliament on the citizens

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<sup>16</sup>D.C.M. Yardley. Principles of Administrative Law. 2<sup>nd</sup>. edition. London: Butherworths. p.212.

<sup>17</sup>2005, Annual report; on the performance of the Commission for Investigation.

<sup>18</sup> D.C Rowatt. The Ombudsman, Citizen's defender. 1965. Toronto, Canada, at University of Toronto. p.24

<sup>19</sup> Administrative Law. 9<sup>th</sup> edition. Oxford. At the University press, 2004. p.90

complaints against the government. It must be noted that in Zambia the Investigator General reports to the Republican President.<sup>20</sup> It can therefore, be said that, an Ombudsman is an official usually, but not always appointed by the government or by Parliament, who is charged with representing the interests of the public by investigating and addressing complaints reported by individual citizens.<sup>21</sup>

## **2. 1. Historical Background of the Institution of Ombudsman**

The modern use of the term began in Sweden with the Swedish Parliamentary Ombudsman instituted in 1809, to safeguard the rights of citizens by establishing a supervisory agency independent of the executive branch. The concept of Ombudsman was introduced in Sweden by the Swedish king, Charles XII. In 1713, fresh from self-exile in Turkey, Charles XII created the office of Supreme Ombudsman, which soon became the Chancellor of Justice.<sup>22</sup> At all this time the King was staying in Turkey after having been abroad for thirteen years.<sup>23</sup> Due to the absence of the King from home, disorder took root in the Swedish administration. In order to correct this, the King ordained that a new office should be established to be headed by a person with the title of the Highest Ombudsman. That is to say, the King's foremost representative. His main role was to ensure that the officials who acted in the King's name such as tax collectors and other law administrators obeyed the laws and regulations when discharging the representative's duties.<sup>24</sup>

In 1809, when Sweden changed from a monarchy to a representative democracy, a Constitution was drawn up and adopted. The Swedish Parliament, the Riksdag, demanded some changes. In

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<sup>20</sup> Section 20 of Chapter 39 of the Laws of Zambia

<sup>21</sup> Available at: <http://en.wikipedia.org/wiki/ombudsman> origin. accessed on 15/07/2008.

<sup>22</sup> *ibid*

<sup>23</sup> Water Gelhorn. Ombudsman. Citizens Protector in nine countries. 1967. London; Oxford University press. p.144

<sup>24</sup> Claes Eklundh. The Swedish Parliamentary Ombudsman. In K. Hossoom et al (2001). Human Rights Commissions and Offices of the Ombudsman National Experiences. P.140

particular it was argued that parliament needed its own overseer of administrative behaviour since the King had his own man as an overseer over the administration through the Chancellor of Justice, who was in charge of handling and supervising royal officers who disregarded the law. Parliament felt that the Chancellor of Justice was not adequately independent from government to be in a position to protect the citizens sufficiently. Consequently, Parliament felt that it should have its own overseer. It is against all this that the idea of ombudsman or justitieombudsman was established in 1809, it was entirely independent of the King.<sup>25</sup> Consequently, a parallel institution the Parliamentary Ombudsman was later established by the Riksdag, and it was this that the Scandinavian countries subsequently moulded into its contemporary form. The Parliamentary Ombudsman was given the responsibility of ensuring that laws were adhered to by the administrative authorities and ultimately to guarantee civil rights and liberties to the citizens.<sup>26</sup> The King retained the power to appoint the Chancellor of Justice and parliament the power to elect the justitieombudsman. This was done in order to balance the wide power afforded to the king and to give Parliament a means of exercising control over governmental activities. As Parliament's "defender of the law", the Ombudsman main function was to receive and investigate complaints from the people.<sup>27</sup> Unlike the Chancellor of Justice who reported to the King, the Ombudsman was to report to Parliament to which he was accountable.

From what has been outlined above, it is clear that in Sweden the Ombudsman is an officer or delegate of Parliament. The Swedish Ombudsman was, and still is an impartial investigator and was politically independent not only of the executive but also of the legislature. His office which was established by the Constitution was only dependant on the law. Once the Ombudsman begun

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<sup>25</sup> Ibid.p.144

<sup>26</sup> Available at : [http://en.wikipedia.org/wiki/ombudsman\\_origin](http://en.wikipedia.org/wiki/ombudsman_origin).accessed on 15/07/2008.

<sup>27</sup> S.V. Anderson. Ombudsman for American Government.(1968):New Jersey: Prentice Hall.p.8

investigating a case the legislators or the executive could not intervene in any way. The concept of this institution has been taken up by many countries, Zambia inclusive. The institution of Ombudsman differs in structure and functions from one country to another. This is to suit or respond to differing needs and different forms of government. That is to say, has been adapted to national or local requirements. Today, Ombudsman institution under different roles and designations exists in many countries.

## **2.2. The Adoption of the Ombudsman institution in Zambia.**

In Zambia, the institution of Ombudsman is known as the Commission for Investigations. It was established by the 1973 Constitution, which had a provision concerning the establishment of the ombudsman; it was called the Commission for Investigations. This was enshrined in Part IX of the 1973 Constitution and in particular Article 117 of the 1973 Constitution.<sup>28</sup> Given that, the Constitution only provided for the creation of the Commission for Investigations there was need for an enabling Act. The enabling statute was enacted in 1974 by Parliament. It was called the Commission for Investigations Act. It provided for the functions and the powers of the Commission.<sup>29</sup> That is to say, the Act was to provide for the powers, privileges and immunities of the Commission and it contained various provisions to enable the Commission to perform its functions.

The creation of the Commission was in line with what the then Republican President Dr. David Kaunda, had announced concerning the establishment of the office of the Ombudsman, at the sixth General conference of then ruling party, United National Independence Party (hereinafter referred to as UNIP). And in 1972, the President appointed the National Commission on the

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<sup>28</sup> Now Article 90 of Constitution Amendment of 1996 .

<sup>29</sup> P. Matibini. Final Report on the Anti-Corruption Legal Assessment Study. Lusaka: Patmat Legal Consultants and Practitioners, 2004, p56 .

establishment of the One Party Participatory Democracy in Zambia (The Chona Commission). Its duty was to consider and recommend changes to the Republican Constitution and the UNIP Constitution and matters related thereto, necessary to bring about the establishment of the One Party Participatory Democracy.<sup>30</sup> Most of the petitioners who appeared before the Commission called for the establishment of the office of the Ombudsman, with authority to investigate abuse of power in particular corruption in all its forms in the country.<sup>31</sup> This proposal was accepted by the Commission. It concluded that there was need to establish such an office to investigate allegations of corruption and abuse of power. The Chona Commission, recommended that the Republican Constitution should provide for the creation of the office of Ombudsman, called the Investigator General. As regards the qualifications, the Commission recommended that the Investigator General should have the same qualifications as those of a High Court judge. And he/she should be appointed by the President for a term of three years.<sup>32</sup> It has been observed that, the introduction of the institution of the ombudsman was one of the more valuable innovations of the One Party State Constitution and was seen as proof of the country's commitment to democracy. Therefore, following the recommendation concerning the establishment of the office of the Ombudsman, the 1973 Constitution, had a provision regarding the establishment of the Ombudsman which was called the Commission for Investigations.

### **2.3. Jurisdiction and Powers of the Commission**

The Commission for Investigations is the only Commission which redresses grievances from members of the public and employees in the public service, which arise as a result of maladministration. It offers a confidential, free and effective service. This is in line with its

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<sup>30</sup> Statutory Instrument No.46 of 1972

<sup>31</sup> Parliamentary Debates Column 180.23 July 1974

<sup>32</sup> Report of the National Commission on the Establishment of the One Party Participatory Democracy in Zambia. Lusaka: Government printers.1972.p.37



mandate as granted to it under the Act.<sup>33</sup> It is important to note that, the Commission for Investigations has its obligation to see to it that it combats the vices of maladministration and thereby promote the virtues of good governance, democracy and the rule of law. These obligations are reflected in the Commission's Mission Statement and Goal.

The Mission Statement states that, its business is:

*"To ensure fairness and promote social justice in the administration of the public institutions in order to facilitate the efficient and effective delivery of services to the people."*<sup>34</sup>

And the Commission's goal is: *"To ensure compliance to laid down administrative procedures, practices and initiate corrective action in the public institutions in order to enhance effective administration."*<sup>35</sup>

Therefore, the main function of the Commission for Investigation is to investigate complaints or allegations of maladministration brought before it by members of the public or on its own motion. It has the primary duty of safeguarding citizens against abuse or misuse of administrative power, by public officers. Thus, it has authority to investigate any complaint or allegations made against any person in the service of the Republic. That is, civil servants, to whom in the exercise of his office or authority, a complaint or allegation is made against them. The Commission has an obligation to facilitate the speedy redress of the citizen's grievances caused by administrative abuse of power, injustice, or unfairness. Furthermore, the Commission has power to investigate complaints or allegations against members and persons in the service of local authority, and those members and persons in the service of any institution or organisation,

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<sup>33</sup> Annual Report on the Performance of the Commission for Investigations.2005.

<sup>34</sup> 2007:Annual Report on the Performance of the Commission for Investigations.p.11

<sup>35</sup> Ibid.

whether established by or under an Act of Parliament or otherwise, in which the Government holds a majority of shares or exercises financial or administrative control. In addition, the Commission has power to investigate the members and persons in the service of any Commission established by or under the Constitution or any Act of Parliament.<sup>36</sup>

Hence, the Commission has jurisdiction to inquire and may commence investigations into the conduct of any person to whom the Act applies. This may be done whenever directed by the President and also on its own motion, in any case in which, it considers that an allegation of maladministration or abuse of office or authority by any such person ought to be investigated.<sup>37</sup>

What may be observed from the above paragraph is that the Commission for Investigations has power to inquire and report on any matter of individual injustice, administrative abuse of power, corruption, tribalism, nepotism, intimidation and discrimination by any public officer.<sup>38</sup> It is interesting to note that, the Commission has power and jurisdiction which may be exercised notwithstanding any provision in any written law to the effect that an act or omission shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision shall be challenged, reviewed, quashed or called in question.<sup>39</sup>

Thus, the Commission has a wider mandate whose major mandate is to investigate practices of maladministration in the public institutions country wide. Thereby, protecting the rights of the people, against the potential or actual violations, that may result from defective administrative systems or abuse of office or authority. Despite, having wide powers of investigations, the

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<sup>36</sup> Section 3(1) (a) (b) (c) and (d) of Chapter 39 of the Laws of Zambia

<sup>37</sup> Ibid. Section 8 (a)(b)

<sup>38</sup> Simbi V. Mubako. *Zambia's Single-Party Constitution; A Search for Unity and Development*. Zambia Law Journal. 1973. p.79

<sup>39</sup> Section 11 of Chapter 39 of the Laws of Zambia

Commission's jurisdiction is limited. It does not extend to actions done by the Republican President. And further, the Commission does not have authority to question or receive any decision of any court, or of any judicial officer in the exercise of his judicial functions, or any decision of a tribunal established by law for the performance of judicial functions in the exercise of such functions.<sup>40</sup> In addition, the Commission will not conduct any investigations concerning any allegation or grievances where the complainant or the person aggrieved has, or has had at any material time, the right or opportunity of obtaining relief or seeking redress by means of an application or representation to any executive authority. And also were the complaint had an opportunity to make an application, appeal, reference or review to or before a tribunal established by or under any law or proceedings in a court of law.<sup>41</sup>

Nevertheless, the Commission in its discretion may conduct an investigation wherever it is satisfied that, in the particular circumstances of the case, it would be unreasonable to expect the complaint or the person aggrieved to resort or to have resorted to the Courts, or make a representation to an executive authority, tribunal without fear, or undue hardships, expense or delay, in order to obtain the relief they need.<sup>42</sup> The Commission may refuse to conduct, or may decide to discontinue, an investigation where it is satisfied that, the complaint is trivial, frivolous, vexatious or not made in good faith. And further, where the inquiry would be unnecessary, improper or fruitless. The Commission has power to issues summons to witness for the production of documents and the examination of witness under oath. In addition, has power to

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<sup>40</sup> Section 8(2) of Chapter 39 of the Laws of Zambia

<sup>41</sup> Ibid: Section 10

<sup>42</sup> *supra*

issues warrants of arrest for witnesses who deliberately fail to appear before the Commission, fail to produce documents as required and those who give false testimony.<sup>43</sup>

**2.4. Justification and functions of the Ombudsman**

The main objective of the Ombudsman is the safeguarding of the rule of law and the protection of the right and freedom of the individual as laid down in the Constitution especially the bill of rights. It is beneficial to the common man as well as to government. With such an institution in place grievances will be more cheaply and more readily redressable. And more importantly, the administration will be taught to treat the public better and the public to know their rights. The Ombudsman institution provides an independent method of testing the quality of the administrative act or behaviour. In addition, may even assist the public officers and institutions to discharge more efficiently their responsibilities.<sup>44</sup>Therefore, it provides a mechanism to watch over and control the actions of public officers. Ombudsman performs a number of vital functions such as: provides means for obtaining an impartial and independent investigation of complaints against public officers. Since, in the performance of its duties, the Commission investigates allegations of maladministration and inquires fully into the substance of the complaints.<sup>45</sup>The Commission acts in an informal manner. It helps in rising awareness among the ordinary citizens about their rights, thereby enhancing efficient and honest public service.

Furthermore, the Ombudsman institution may help in educating public officers and agencies about the appropriate standards of conduct.<sup>46</sup>That is to say, equally, important is the Commission’s role to help public bodies to improve the services they offer to the public by

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<sup>43</sup> Section (12)(13) of Chapter 39 of the Laws of Zambia

<sup>44</sup> C.K.Takwani. Lectures on Administrative Law. (2006).3<sup>rd</sup> edition. New Delhi: Eastern Book Company.p.189.

<sup>45</sup> D.C.M. Yardley. Principles of Administrative Law.2<sup>nd</sup>.edition.(1986).London:Burtherworths.p.216

<sup>46</sup> UNODC.P.103

pointing out administrative mistakes and unfair practices. In that way guides the administrative officers towards a better way of conducting their business with the public. Therefore, the Ombudsman serves as efficient tool for preventing public abuse of power. As a watchdog institution it plays a corrective and reconciliatory role between the State and the citizens

The functions of the Commission can be summed up as follows;<sup>47</sup>

- i. To redress grievances of maladministration in public institutions in Zambia, in order to ensure and promote fairness and social justice;
- ii. In line with the above, the Commission has an obligation to ensure social; justice and fair treatment is given to the members of the public by government and parastatals administrations;
- iii. To promote public awareness on the existence of the services provided by the Commission. Thereby, educating the public on social injustice and maladministration through emphasis on the services provided by the Commission;
- iv. To monitor administrative practices in public institutions in order to ensure compliance to laid down procedures and ethics; and
- v. To monitor, investigate and make recommendations to government institutions on their operations in order to help improve service delivery to the members of the public in general.

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<sup>47</sup> Annual report.2007.p.12

## **2.5. Conclusion**

In conclusion, this chapter introduced the institution of the Ombudsman. This was achieved by tracing the origin of the institution by looking at the historical background. It has been shown that this institution originated in Sweden where the first Ombudsman was established in the 1809 Swedish Constitution. Under this Constitution, the Ombudsman was appointed by and accountable to Parliament and had the obligation to keep a check on the activities of public officials, who violated the law in the exercise of their administrative authority.

Furthermore, this chapter indicated that the idea about the Ombudsman institution has over time spread throughout the world and has assumed different roles and titles. In Zambia, the Ombudsman institution is referred to as the Commission of Investigations, which was introduced in Zambia through the 1973 Constitution. It is charged with the responsibility of receiving and if need arises investigating into the complaints and allegations made by the members of the public against acts and omissions committed by public officers in the exercise of their public functions. Its jurisdiction, though broad does not extend to the President, private individuals and institutions and Courts of law. Further, this chapter has outlined the justification and functions of the ombudsman institution.

Therefore, what every form of government needs is some regular and smooth running mechanism for feeding back the reactions of its disgruntled citizens, after impartial assessment, and for correcting whatever may have gone wrong. The institution of Ombudsman is a fundamental need in every system. And, if well managed, therefore, plays a crucial role in the maintenance of a system of good governance, in the country as the existence of the office may be used to contribute to a more open, accountable and representative public service.

**3. CHAPTER THREE**

**THE COMMISSION FOR INVESTIGATIONS IN ACTION**

**3.0. Introduction**

The Commission for Investigations is a public institution wholly supported by the government and its services are rendered free of charge. Ninety percent (90%) of the complainants who come to the Commission are poor people. The majority of these are retired public workers, widows and individuals who are owed by public institutions and cannot afford to take the matter to Court.<sup>48</sup> The free services provided by the Commission are recognition by the government that, it has duty to its citizens, to uphold the principles of good governance. The Commission for investigations impartially, objectively and independently investigates complaints or grievances involving administrative decisions and practices of public institutions. The Commission further seeks to give the public particularly those who may have complained, appropriate explanations of decisions from public institutions which affect them.

**3.1. Complaints Procedure**

A person who has a complaint may within two years of occurrence of the incident that give rise to the complaint lodge it with the Commission's secretary. Citizens are free to complain against any public official in Zambia. All complainants sent their grievances to the Commission's office in Lusaka, the only office in the whole country. Any person with an allegation or complaint against a public official may fax/post the complaint or may phone, personally visit the Commission. However, it is always highly recommended that the complaint is put in writing. On receipt of the complaint, the case is registered in a book. Further, all complaints go through screening in order to determine the validity of the complaint and equally to establish whether the

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<sup>48</sup> Annual Report;2007.p.14

Commission has jurisdiction over the case. It is at this stage depending on the nature of the complaint that the Investigator General decides whether, to admit a case, or to refer the complaint to other investigative wings if it found not to be within the Commission's jurisdiction. If the complaint is within the Commission's jurisdiction, investigations into the matter may be instituted and a file opened. The complainant is then informed that their complaint is being investigated. However, if it is not, the complainant is told that their complaint has been declined by the Commission. The Commission is not required to give the reasons why the complaint has been declined. But in practice, reasons are usually given. The proceedings of the Commission are held in camera, no person other than members of the Commission and such officers of the Commission as may be required are in attendance, and there is strict maintenance of confidentiality.<sup>49</sup> The whole mechanism is based upon unrestricted access by the Commission to relevant evidence, information and expertise.

There are various methods which are employed by the Commission in order to resolve the disputes which are received. Some of these methods include, correspondence through letters, summons, having sittings. In the primary stages the Commission relies more on correspondence through letter to both the complainant and the respondents. On the other hand, if there is no co-operation from either of the two parties, the Investigator-General summons the parties concerned in a case to testify orally and through cross-examination. This is done in order to determine on the issues raised fairly and justly, thus observing the rules of natural justice. In most instances the sittings are found to be very effective in resolving the cases. Further, witnesses may be summoned to testify, evidence is given on oath, as in the Courts of law, but there is no strict adherence to the rules of evidence and procedure. The Commission refunds all

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<sup>49</sup> Annual Report 2005.p.13./ Interview: With Miss Agnes Chibale, Senior Legal officer, at the Commission for Investigation. 03/11/2008.



personal expenses incurred by witnesses who are unemployed. Apart from having sittings, the Commission also undertakes provincial tours to help resolve the complaints right from the provinces where they emanate from.<sup>50</sup>

### **3.2. Statistical Presentation of the Performance of the Commission for Investigations.**

Section 22 of the Commission for Investigations Act, requires the Commission for Investigations to submit annual reports to the National Assembly.<sup>51</sup> In line with the above section, the Commission submits reports on its performance during the year. The reports outline, the activities which were undertaken by the Commission, such as the number of complaints that were received, problems encountered, and any other information on the activities of the Commission. Therefore, the annual reports provide vital statistics concerning the operations of the Commission. As a result, they serve as a good source of information for the researcher to investigate the efficacy of the Commission for Investigations in performing its functions.

As it shall soon be demonstrated from the annual reports, the Commission for Investigations receives a good number of cases. Over the years, some of the government institutions with the highest number of complaints against them include the Ministry of Education, Public Service Pensions Fund, the Ministry of Health, Judiciary, Teaching Service Commission, Ministry of Agriculture and Co-operatives, Public Service Management Division, Zambia Police Service, Zambia National Service, Zambia Army, Zambia State Insurance Corporation and Zambia Electricity Supply Corporation<sup>52</sup>. The activities which are undertaken by the Commission are divided into quarters. That is, the year has been divided into four parts. Furthermore, in order to ease the operation of the Commission, the investigations section has been divided into two

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<sup>50</sup> Interview: With Miss Agnes Chibale, Senior Legal officer, at the Commission for Investigation. 03/11/2008

<sup>51</sup> Act No.20 of 1991.Chapter 39 of the Laws of Zambia.

<sup>52</sup> Annual Report;2007.p.40.

regions; the Northern region and the Southern region. The Northern region covers the following provinces, Copperbelt, Central, Luapula, Northern and North-Western provinces. The Southern region covers. Lusaka, Eastern, Western, and Southern provinces.<sup>53</sup> In a year, the Commission receives a number of complaints from different parts of the country. The rate at which the complaints are resolved by the Commission is dependent on the cooperation it gets from the respondent institutions. The tables below provide a summary of cases which were dealt with by the Commission for Investigations over the years.

TABLE 1.1 STATITISCAL PRESENTATION OF THE PERFORMANCE OF THE COMMISSION FOR INVESTIGATIONS From 1<sup>st</sup> January, 2003, to 31<sup>st</sup> December, 2003.(Investigations Section ).

Provinces	Total No. of Complaints Received	Male Complainants	Female Complainants	Anonymous Complainants	Joint Complainants
Lusaka	221	159	47	8	7
Western	1	2	5	2	1
Eastern	64	49	8	3	4
Southern	64	47	10	2	5
Copperbelt	129	108	12	9	0
Central	55	42	8	3	2
Luapula	75	66	5	0	4
Northern	87	74	9	3	1
North-Western	71	63	5	1	2
<b>Grand-Total</b>	<b>859</b>	<b>693</b>	<b>109</b>	<b>31</b>	<b>26</b>

<sup>53</sup> Ibid.

TABLE 1.2 AN ANALYSIS OF CASES HANDLED FROM 1<sup>st</sup> January, 2003, to 31<sup>st</sup>, December 2003. (Investigations Section).

Total No. of Cases Received	Redressed Cases	Discontinued Cases	Declined Cases	Abandoned Cases	Unjustified Cases	Pending Cases
859	83	64	127	2	46	537

SOURCE: THE COMMISSION FOR INVESTIGATIONS ANNUAL REPORT FOR 2003.

According to the 2003 annual report, in 2002 the Commission received one thousand five hundred and thirteen (1513) new complaints these were six hundred and fifty-four (654) more complaints then were received in the year 2003. This represented a 57% drop in the reported cases from 2002 to 2003. However, the drop in the number of complaints received did not mean that cases of maladministration in the various institutions had reduced. This was attributed to non continuation of awareness campaigns that were conducted in previous years. The low case resolution rate was as a result of shortage of investigations officers.<sup>54</sup>

<sup>54</sup> .Annual Report 2003.p.12.

TABLE 2.1 STATISTICAL PRESENTATION OF THE PERFORMANCE OF THE COMMISSION FOR INVESTIGATIONS From 1<sup>st</sup> January, 2005 To 31<sup>st</sup> December, 2005. (Investigations Section ).

Provinces	Total No. of Complaints Received	Male Complainants	Female Complainants	Anonymous Complainants	Joint Complainants
Lusaka	145	105	24	6	10
Western	53	45	6	2	0
Eastern	31	28	2	0	1
Southern	31	23	5	2	1
Copperbelt	71	56	7	1	7
Central	55	44	8	0	3
Luapula	68	55	11	1	7
Northern	51	44	5	1	1
North-Western	49	45	1	-	3
<b>Grand-Total</b>	<b>554</b>	<b>445</b>	<b>69</b>	<b>13</b>	<b>27</b>

TABLE 2.2 AN ANALYSIS OF CASES HANDLED FROM 1<sup>st</sup> January 2005 to 31<sup>st</sup> December, 2005. (Investigations Section).

Total No. of Cases Received	Redressed Cases	Unjustified Cases	Declined Cases	Discontinued Cases	Transferred Cases	Total No. Closed	Pending Cases
554	122	42	53	48	11	283	271

SOURCE: THE COMMISSION FOR INVESTIGATIONS ANNUAL REPORT FOR 2005.

TABLE 3.1 STATISTICAL PRESENTATION OF THE PERFORMANCE OF THE COMMISSION FOR INVESTIGATIONS From 1<sup>st</sup> January, 2006 to 31<sup>st</sup> December, 2006. (Investigations Section ).

Provinces	Total No. of Complaints Received	Male Complainants	Female Complainants	Anonymous Complainants	Joint Complainants
Lusaka	161	125	30	5	1
Western	54	42	9	1	2
Eastern	31	23	7	0	1
Southern	31	27	3	1	0
Copperbelt	73	55	13	5	0
Central	49	38	10	1	0
Luapula	64	57	6	1	0
Northern	52	45	6	1	0
North-Western	49	38	10	0	2
<b>Grand-Total</b>	<b>564</b>	<b>453</b>	<b>90</b>	<b>15</b>	<b>6</b>

TABLE 3.2 AN ANALYSIS OF CASES HANDLED FROM 1<sup>st</sup> January 2006 to 31<sup>st</sup> December, 2006. (Investigations Section).

Total No. of Cases Received	Redressed Cases	Unjustified Cases	Declined Cases	Discontinued Cases	Transferred Cases	Total No. Closed	Pending Cases
564	209	65	48	53	14	389	175

SOURCE: THE COMMISSION FOR INVESTIGATIONS ANNUAL REPORT FOR 2006.

TABLE 4.1 STATISTICAL PRESENTATION OF THE PERFORMANCE OF THE COMMISSION FOR INVESTIGATIONS From 1<sup>st</sup> January, 2007 to 31<sup>st</sup> December, 2007. (Investigations Section ).

Provinces	Total No. of Complaints Received	Male Complainants	Female Complainants	Anonymous Complainants	Joint Complainants
Lusaka	114	84	19	6	6
Western	67	59	7	0	1
Eastern	30	24	6	0	0
Southern	33	30	3	0	0
Copperbelt	66	52	11	2	1
Central	21	11	7	2	1
Luapula	70	66	6	1	1
Northern	70	66	6	0	4
North-Western	42	37	5	0	0
<b>Grand-Total</b>	<b>506</b>	<b>411</b>	<b>71</b>	<b>11</b>	<b>13</b>

TABLE 4.2 AN ANALYSIS OF CASES HANDLED FROM 1<sup>st</sup> January 2007 to 31<sup>st</sup> December, 2007. (Investigations Section).

Total No. of Cases Received	Redressed Cases	Unjustified Cases	Declined Cases	Discontinued Cases	Transferred Cases	Total No. Closed	Pending Cases
506	151	93	18	29	10	306	200

SOURCE: THE COMMISSION FOR INVESTIGATIONS ANNUAL REPORT FOR 2007.

The Commission for Investigations was reconstituted in 2004, with the appointment of two Commissioners and the Investigator- General. From the above reports, the number of cases has

continued to reduce over the years. This can be attributed to either to the fact that public institutions are improving on the services they offer to the public or lack of publicity of the services offered by the Commission.<sup>55</sup> In the researcher's view it is due to lack of publicity.

Having looked at the reports of the Commission, it can firmly be stated that it is not in all instances that the complainant will get their remedy within the shortest possible time. Further, the Commission has not been fully able to monitor the levels of transparency, accountability, and performance in all public institutions. With effective monitoring of public institutions, this would form the basis for the establishment of an integrity index for the public sector in Zambia. However, a question may be posed, as to why this state of affairs for an institution which has a mandate to investigate and if necessary redress any complaints and allegations of maladministration, in the public service within the shortest possible time? In other words, it is supposed to deliver administrative justice to complainants within the shortest period of time? The answer to this question will be given below, as we consider the factors affecting the operations of the Commission for Investigations.

**3.3. FACTORS AFFECTING THE EFFECTIVE OPERATION OF THE COMMISSION.**

**a). Lack of an Independent Office**

From the time the Commission for Investigations was established in 1974. The Commission has been housed in the Old Bank of Zambia building with other government departments, over which the Commission has jurisdiction and power to investigate them when need arises. This arrangement does not conform to international standards which require that the office be independently located.<sup>56</sup> Furthermore, the building is in a dilapidated state. The researcher

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<sup>55</sup> Annual Report, 2005.p.13

<sup>56</sup> .Jes Ellehaug Hansen and Anne Louise Diel. Commission for or Investigations, Zambia. Work Plan 2004-2011.Proposed Draft Work Plan.Drafted 2 July.2008.p.9

personally saw the state of this building during the research. According to Mrs Musamba<sup>57</sup>, the building has inadequate facilities to serve the staff and the public, with no running water, inadequate lighting. The Commission for Investigations is on the third floor, in the back of the building; this makes it difficult for members of the public to easily access the offices. Besides this, the physically challenged members of our society may find it difficult to personally get to the offices. At the time of this research all the elevators in the building were out of order.

It is interesting to note that from the time the Commission was housed here, it has never paid rentals. However, in the year 2005, the Commission received a bill from the Bank of Zambia stating that, the Commission owed them rentals amounting to one hundred and sixty-four million kwacha (K164, 000,000.00). All the other departments housed together with the Commission for Investigations received similar bills. The bill had to be settled at the shortest possible time, failure to which the Commission would have been evicted by the Bank of Zambia. As a result of this new development, the Commission sought for authority from the Secretary to the Cabinet to authorise the Commission to rent offices. The Secretary granted the Commission permission to rent offices, but the Ministry of Finance could not fund this activity as it was not budgeted for.<sup>58</sup> However, it would be more ideal for the Commission to move to ~~an~~ alternative detached offices to enhance the independence of the office. The Commission has up to date not moved to any new offices.

#### **b). Inadequate Financial Resources**

In order for the Commission to carry out its operations, the Commission needs adequate funding. The Commission receives its monthly funding from the government treasury. However, the funds provided are inadequate to implement the planned activities of the Commission. The

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<sup>57</sup> Interview :5/11/2008. Investigations Officer.

<sup>58</sup> Annual Report 2005.p.15



release of the funds at a monthly basis makes it difficult for the Commission to undertake programs over longer periods of time. In the past three years, the Commission received the following respective allocations; 2005: ZMK 1.1 billion, 2006:1 billion; and in 2007:2.1 billion. In the year 2007, the amount allocated to the Commission had improved, however, there is need for more funding.<sup>59</sup>The low funding of the Commission is one of the major factors greatly affecting the operations of the Commission. In comparison to other institutions of good governance, the Commission is severely under funded. Institutions such as the Human Rights Commission and the Anti-Corruption Commission receive over five times more than the Commission for Investigations, with respect to the former institution, and over 100% more funding with respect to the latter organisation.<sup>60</sup>The lack of adequate funds affects the Commission to effectively carry out its operations. The areas of operations which are affected by the lack of funding include, publicity, the Commission is unable to carry to carry out sensitisation programs, and in the transport department there are no adequate vehicles to cater for the operations of the Commission. When the Commission received an increase in funding in 2007, it managed to purchase two new vehicles, however, these are not enough. In the investigations section, the investigations officers who are required to conduct, regular provincial tours cannot do so due to the non-availability of funds.

### **c). Lack of Proper Office Equipment**

The Commission for Investigations has a problem of office equipment. In order for the Commission to carry out its operations, it requires the use of computers, faxes, printers, scanners, and photocopying machines. However, due to limited funds not all offices of the Commission are provided with the necessary equipment. This lends to a slow down of the operations of the

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<sup>59</sup> Interview: With Miss Agnes Chibale, Senior Legal officer, at the Commission for Investigation. 07/11/2008.

<sup>60</sup> Annual Report 2006.p.17

Commission and many officers are not acquainted with how to use some of these machines such as computers. During the research, had an opportunity of going in to some of the offices, for instance, in the Investigations Officer's office, there was only a computer, a telephone, and the printer had a fault for she could not even manage to print out some information which was required for the research. The office had no fax and photocopying machines, for such an office, these equipments are vital. In the year 2007, the Commission with the funding received from the National AIDS Council in conjunction with the Global Funds to facilitate for HIV/AIDS activities, managed to purchase one laptop and one desktop computer.<sup>61</sup> Consequently, this lack of proper equipment not only leads to delay in the concluding cases but also adversely affects the workers morale.

#### **d). Inadequate Personnel**

Another major factor affecting the operations of the Commission is the shortage of staff especially in the investigations section. According, to Miss Agnes Chibale, who is currently the Senior Legal Officer of the Commission, the Commission is supposed to have about forty eight (48) staff members, however, currently the Commission only has thirty (30) members of staff and these are not enough.<sup>62</sup> Further, the quality of the services provided by the Commission is not optimal with the current lack of investigating officers. The Commission only has two (2) investigations officers to cover the country's nine (9) provinces. There is need for about sixteen (16) more investigations officers to help out with the investigations.

In addition, the current structure of the Commission does not entail a mid-management level to facilitate a more efficient decision making process, as a result, making the Commission work less effective. Although, the Act allows the Commission to employ its own staff, any changes in the

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<sup>61</sup> Annual Report,2007.p.16

<sup>62</sup> Interview:07/11/2008.

establishment of the institution are subject to approval by cabinet office. Currently, ninety per cent (90%) of the Commission's personnel are drawn from the civil service. That is, they come on direct transfer from other government departments. This is not a very desirable state of affairs. It may create some conflict of interest in some instances as the members of staff are drawn from departments and ministries which are subject to the jurisdiction of the Commission.<sup>63</sup>

Therefore, it can be said that, the Commission does not have a chance to employ its own staff. This might led to a situation where persons who are not qualified persons for the jobs are brought to the Commission. These may be transferred from the Commission to other government departments, this may take place even in instances where these officers have acquired some experience on the job. Further, due to low salary levels, it has been difficult to attract and retain the necessary qualified and experienced staff. In addition, there is lack of staff development opportunities at the Commission. These have had a great impact on the operations of the Commission, as less skilled staff with the wrong qualifications has to fill out positions and undertaken activities they do not have the right skills for.<sup>64</sup>

#### **e). Lack of Autonomy**

As early pointed out the Commission for Investigations came into existence in 1974. It was set up during the One Party State system, but is now operating in a Multi Party system. Therefore, there is need to revise its enabling Act, most importantly in relation to ensuring its independence and autonomy. The greatest challenge the Commission is experiencing in this respect is that the Commission reports directly to the Head of State (the President, who is the appointing authority

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<sup>63</sup> Jes Ellehauge Hansen and Anne Louise Diel. Commission for or Investigations, Zambia. Work Plan 2004-2011. Proposed Draft Work Plan. Drafted 2 July. 2008. p.10.

<sup>64</sup> Interview: With Miss Agnes Chibale, Senior Legal officer, at the Commission for Investigation. 07/11/2008.

of the Investigator General and the Commissioners) and not the National Assembly. Although, the Commission has never experienced interference from the executive power, there is no guarantee this cannot happen in the future, and therefore poses a threat to its independence. With the current reporting structure there is a risk that Parliament will fail to appreciate the status and importance of the Commission.<sup>65</sup>

#### **f). Lack of Publicity**

The public image of the Commission is as good as it is perceived to be an institution of great integrity. However, the Commission has not been able to ensure adequate publicity and information about its operation and services to the members of the public, due to inadequate funds from the government. Further, it is due to lack of promoting the Commission as part of the governance sector in conjunction with other complaint handling institutions. Another reason is lack of exploration of the potential of cooperating with the civil society organisation. With the lack of publicity and sensitisation programs the majority of the public is not aware of its existence and service. The Commission can not even afford to publish pamphlets, brochures, and posters to give to members of the public. There is no public relations officer at the Commission to disseminate information about its existence, functions and operations.<sup>66</sup> Hence, a drop in the number of cases received by the Commission. The lack of publicity further, contributes to the increasing number of cases being declined by the Commission, since most people are not aware of the nature of complaints handled by the Commission thereby, taking any complaint to it. Therefore, the Commission for Investigations cannot serve its purpose and it's of little value, if the majority of the people it is supposed to serve do not know about its existence. There is need for the Commission to advertise itself, because by doing so, members of the public will know

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<sup>65</sup> Jes Ellehauge Hansen and Anne Louise Diel. Commission for Investigations, Zambia. Work Plan 2004-2011. Proposed Draft Work Plan. Drafted 2 July. 2008. p.7

<sup>66</sup> Interview: With Mrs. Musamba. Investigations officer. On 16/10/2008

where to address their grievances on practices of maladministration for free and gain more knowledge of their rights.

#### **g). Geographical Location**

The Commission for Investigations is only located in Lusaka, which is the capital city of Zambia. This makes it accessible for people within Lusaka, but limiting access by people from outside Lusaka. In Zambia, the population living below the overall poverty line is sixty-four per cent (64%). The majority of the poor in Zambia are located in rural areas where eighty per cent (80%) live below the overall poverty line<sup>67</sup>. Due to high illiteracy levels in rural areas, most of the potential complainants cannot manage to put their complaints in writing, further the cost of buying a postage stamp is too high for them<sup>68</sup>. With the failure by the Commission to carry out provincial tours on a regular basis, this has resulted in not only a few people having access to the commission, but a number of cases of maladministration go unreported. Therefore, in order to increase access to the Commission, there is need, for the Commission to be decentralised, even up to district level. This will enable more people to have access to the Commission. The other factors affecting the operations of the Commission include lack of a suitable leadership to push for additional resources and establish the institution as one of the most prominent and key Constitutional watchdog offices.<sup>69</sup>

### **3.4. ANALYSIS OF THE EFFICACY OF THE COMMISSION**

To start with, it should be stated that, the prerequisite for the establishment and satisfactory operation of an ombudsman institution is the political will and commitment to make it succeed. For without such support, the institution is irrelevant and amounts to nothing more than a front

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<sup>67</sup> Living Conditions Monitoring Survey:2006.

<sup>68</sup> interview: With Mrs. Musamba. Investigations officer. On 16/10/2008

<sup>69</sup> M. Munalula. Government Watchdog Institutions. A position paper for Transparency International .August 2007.p.53.

a facade.<sup>70</sup> Furthermore, the effectiveness of any institution is measured by the ability to adequately implement its objectives. Therefore, for any institution to achieve its objectives, it needs to have the capability to do that which it was established for. This simply means that, all the fundamental elements required for the establishment and certainly the successful operation of an effective office of ombudsman should be in place. Among these include, an independent office, adequate financial resources, accessibility for all members of the public, satisfactory human resource (personnel), adequate investigative powers, effective remedial power and proper infrastructure should be in place. The level at which these factors are available in an institution determines any institution's efficacy.

In the Fifth National Development Plan (hereinafter referred to as FNDP) for Zambia, the Commission for Investigations has been identified as one of the key governance institutions. This is for purpose of achieving the goal of implementation of good governance practices in the public institutions, through transparency and accountability. And further, to establish preventive measures in the form of monitoring and strengthening of good administrative practices in public offices and institutions.<sup>71</sup> Therefore, as an institution of good governance, the ombudsman role is the pursuit of administrative justice in a manner that is, confidential, flexible and highly expedient. According to Justice F. Chomba, "an ombudsman institution is designed to secure for the Complainant a quick remedy referable to his complaint. This goal will always influence the

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<sup>70</sup> J. Hatchard. National Human Rights Institutions in the Commonwealth-Directory. London: Commonwealth Secretariat .1992.p.97

<sup>71</sup> Fifth National Development Plan;2006-2010.Ministry of Finance and National Planning. Lusaka: Zambia. December 2006.p.31

at which an investigation is held.”<sup>72</sup>The Commission for Investigations is supposed to offer public a cheap and quick means of securing justice.

Statistics provided from the annual reports outlined above, indicate that in the recent past the number of complaints received by the Commission have reduced from an average of one thousand cases per annum in the late 90s and early 2000, to about 600 complaints per annum in year 2003. This can be attributed to lack of sensitisation programs. In most instances, the cases take long to be concluded. According to Miss Agnes Chibale, the average length of time in which the Commission is supposed to conclude the cases received is three months. However, it takes the Commission an average of three years to conclude a case. This means that the case may take longer than this as it has happened in the past where a case took over six years to be concluded.<sup>73</sup> This de-motives the complainants, who wish to have their complaints resolved in the shortest possible time. Therefore, the quick remedy that complainants seek from the Commission is rarely available in the majority of cases. The Commission has failed to adequately carry out provincial tours, this disadvantages many poor Zambians in the rural areas who cannot afford to travel to Lusaka to lodge a complaint or even post a letter to the Commission.

It is able to attribute this current state of affairs at the Commission for Investigations, to the many operational difficulties outlined above which affects the Commission, among these include inadequate funding, and less number of staff at the Commission. The Commission has only two investigations officers to handle all over 500 complaints received by the Commission. Thus, the number of cases received is not proportionate, to the number of available investigations officers. As the investigations officers are overwhelmed by the number of cases received. The

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Explanation of the Function of the Commission for Investigations (Ombudsman). Lusaka: Government Printers. p.7

Interview: With Miss Agnes Chibale, Senior Legal officer, at the Commission for Investigation. 07/11/2008.

Commission has not been able to effectively carry out its objectives. The quality of services provided by the Commission is not optimal with the current lack of investigating officers. This inefficiency, arising from its operational inadequacies is beyond its control. This can be attributed to lack of commitment and political will on the part of the government. Despite these many problems, the Commission still strives to redress the complaints received, though, the Commission hopes to improve on the quality of its services. Nevertheless, the Commission in its present form is inefficient and appears to be irrelevant; this is regardless of the Commission's wide investigative powers.

### **3.5. Conclusion.**

In conclusion, this chapter examined the actual operations of the Commission for Investigations. The complaints procedure was outlined. In addition, the performance of the Commission was examined by looking at its annual reports. Further, the many factors affecting the Commission were considered. These problems have made it extremely difficult for the Commission to effectively carry out its mandate. The time taken for cases to be redressed is long. This has been attributed to the shortage of officers in the investigations section. Due to lack of sensitisation programmes, the majority of the public are not aware of the services offered by the Commission. Therefore, from all that has been considered in this chapter, it can be said that the Commission has not been effective, in controlling administrative actions. The Commission has greater potential of serving the public better with increased capacity, in terms of staffing and funding. There is need for commitment and political will on the part of government, if the performance of the Commission for Investigations is to improve.



**A COMPARATIVE ANALYSIS BETWEEN THE ZAMBIAN AND DANISH OMBUDSMAN****4.0. Introduction**

Over the years, the original Swedish ombudsman institution has been subject to many modifications in order to make the ombudsman fit into specific legal, sociological and economic contexts. In 1955, aided by the historical moment, defined by rising post World War II, concerns with democracy, human rights and the social role of the State, Denmark created what was eventually to become the internationally emulated model of Parliamentary Ombudsmanship. The decision to have this institution in Denmark was taken during the deliberations about a new Constitution in 1953.<sup>74</sup> It was argued at the time that, the expansion of the public sector, had reached a level where it was necessary to have more safeguards for the proper exercise of the State's civil and military competences. Therefore, in 1953, as part of a general Constitutional revision, the Danish Constitution was amended to include a section reading, "legal provision shall be made for the appointment by Parliament of one or two persons who shall not be a Member of Parliament to supervise the civil and military administration of the State."<sup>75</sup> The 1954 law was to a considerable extent a copy of Swedish ombudsman law, but practice meant from the very beginning that the investigating role and not the prosecuting role became the sole function. The Danish ombudsman began to operate in 1955, and Denmark became the third country in the world to introduce an Ombudsman in modern times.<sup>76</sup> The Danish Ombudsman Act has been amended over the years, so as to have a continuous development of the Ombudsman institution as a result of changes in the Danish State and society. This is done with

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<sup>74</sup> The Danish Ombudsman Act.No.203 of 1954.

<sup>75</sup> Section 53 of the 1954 Danish Constitution.

<sup>76</sup> Jan-Erik Lane. The Ombudsman in Denmark and Norway. University of Pennsylvania Law Review.1960.p.143.

the aim of making the institution more effective, considering the developments in the interaction between citizens and the State

#### **4.1. Appointment of the Danish Ombudsman**

The Ombudsman Act,<sup>77</sup> which regulates the institution, provides that the Folketinget (Parliament) elects the Ombudsman, after every general election and when a vacancy occurs. In Denmark general elections are held at least every four years. However, Parliament may decide that the person holding the office of Ombudsman before the elections continues to do so. For instance, Dr. Hans Gammeltoft-Hansen served as the Danish Parliamentary Ombudsman for 21 years.<sup>78</sup> The person elected, cannot be a Member of Parliament or a local authority, but must be a law graduate. Further, the Ombudsman is to be independent of Parliament in the discharge of his/her functions.<sup>79</sup> However, Parliament has the right to express a lack of confidence in the Ombudsman and dismiss him or her. In Denmark, the Ombudsman has to retire at the end of the month in which he attains the age of 70.<sup>80</sup> Therefore, what can be said is that, the Ombudsman is elected by Parliament to control the executive. Parliament determines the salary of the Ombudsman. The Ombudsman is entitled to severance pay and pension under provisions corresponding to those of Sections 3-7 of the Remuneration and Pension of Ministers Act.<sup>81</sup> In the opinion of many the Ombudsman is more the citizens' Ombudsman than that of Danish Parliament, although, the Ombudsman works in close cooperation with the law committee of Parliament. Further, it has been observed that in the Danish model, the Ombudsman is

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<sup>77</sup> Act No. 473 of 12 June 1996

<sup>78</sup> Available at: [www.ambhani-um.dk/en/menu/.../News](http://www.ambhani-um.dk/en/menu/.../News). Accessed 22 December 2008.

<sup>79</sup> The Danish Ombudsman Act No. 473 OF 12 June 1996. Chapter 1 Article (1), (2), (3) and (10).

<sup>80</sup> Ibid. Article (3), and (4)

<sup>81</sup> The Danish Ombudsman Act No. 473 OF 12 June 1996. Article 5 .

independent in carrying out his duties and reports his findings to the authorities, Parliament and the public. In the performance of his task, he/she investigates allegations of maladministration. He inquires fully into the substance of the complaint, and has access to the relevant departmental files, but acts in an informal manner.<sup>82</sup> The office is an integral part of the governmental structure in Denmark.

#### 4.2. Organisation of the Ombudsman Office

In Denmark, the freedom of the Ombudsman to organise or reorganise his office is very broad. The Ombudsman can decide on the structure and *modus operandi* of the institution. And over the years, it has gradually changed as a result of the growing number of cases, staff and obligations. Parliament decides on the number of staff, but the Ombudsman hires his staff, and they remain employed after the election of a new Ombudsman. In short, the Act empowers the Ombudsman to engage and dismiss his own staff. Further, the Ombudsman may order that one of his staff members shall carry out his functions temporarily. The Ombudsman is obliged to observe secrecy in any matter coming to his knowledge in the performance of his functions, provided that secrecy is necessary *ipso facto*. The staff members of the Ombudsman are also bound by the same obligation.<sup>83</sup> The Danish Ombudsman Act does not specify that the Ombudsman should be assisted by a Deputy Ombudsman. However, the situation became increasingly critical during the 1980s and 1990s as the number of cases grew from 1,651 in 1986 to 3,423 in 1999. Therefore, during the phase of preparing the amendment of the Ombudsman Act in 1997, the Ombudsman asked Parliament to accept a Deputy Ombudsman. Parliament refused, but in practice, and with Parliament's knowledge and informal acceptance, the Ombudsman in Denmark is *de facto*

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<sup>82</sup> Henry J. Abraham. 'The Danish Ombudsman', *The Annals of the American Academy of political and social sciences*,: volume 377. Number 155-61. (1968).

<sup>83</sup> Chapter 8: Articles 26 to 30. On Staff, organisation, and competence.

assisted by a Deputy Ombudsman appointed by the Ombudsman.<sup>84</sup> For the past four to five years, the number of people employed in the Danish Ombudsman office ranges from seventy-four in 2002 to 81 in 2007. For the year 2002, there were 74 employees, among these included 13 senior administrators, 24 investigation officers, 17 administrative staff members and 12 law students.<sup>85</sup> The expenditure incident to the office of Ombudsman is charged to the budget of Parliament. It must be pointed out that the organisational structure of the office is as follows, at the top there is the Ombudsman, then comes the director general, after whom the registry, reception and housekeeping follows. The office is divided into five divisions. Below is a Table showing the Divisions in the Danish Ombudsman office.

TABLE: 1.1. Organisation.

Division	General Division	1 <sup>st</sup> Division	2 <sup>nd</sup> Division	3 <sup>rd</sup> Division (Inspections)	4 <sup>th</sup> Division (Local Authorities.)	5 <sup>th</sup> Division
Main Areas	-Annual Reports, - International projects, General Administrative issues  -Own initiative projects, The office's human resource, financial and other internal matters.	-Company Registration  -Patients complaints.  -Foreign affairs	Employment service  -social security  -social institutions	-Inspections; Prisons/Remanded substitutions.  -police waiting rooms.  -Psychiatric hospitals.	-Municipal law issues  -Elections and registration of individuals  -Traffic and roads	Housing benefits.  industrial injuries  -Taxes and dues

SOURCE: Annual Report for 2005 to the Danish Parliament.

<sup>84</sup> Jens Olsen. Some Experiences in the field of Assistance and cooperation between Ombudsmen.Denmark.2006.p.3.

<sup>85</sup> Annual Report for 2002 to the Danish parliament.p.5

Thus, the Danish Ombudsman unlike its Zambian counterpart is an officer of Parliament. However, both have the same primary duty, which is to safeguard citizens against abuse and misuse of administrative power by the executive arm of government. Therefore, it can be said that, just like in Zambia, in Denmark, the Ombudsman, provides a check on government activity in the interests of the citizens. She/he oversees the investigations of complaints of improper government activity against the citizens. However, the difference which comes out from what has been outlined above is that in Denmark, apart from the Ombudsman being appointed by Parliament, he/she has been given power expressly to hire and dismiss his staff. Which power is lacking in the Zambian model. As explained in chapter three this has affected the operations of the Commission for Investigations.

**4.3. The jurisdiction of the Danish Ombudsman and lodging a complaint**

The Danish Ombudsman's authority extends to all parts of the public administration, except the courts of justice.<sup>86</sup>He/she looks into matters concerning how decisions have been made (process), what the decisions were and how the officials behaved during the decision making process. According to the Act<sup>87</sup>, any person may lodge a complaint with the Ombudsman, against the authorities over which the Ombudsman has jurisdiction. Further, any person deprived of his personal liberty shall be entitled to address written communications to the Ombudsman in a sealed envelope. It must be pointed out that just like in Zambia, in Denmark, for ordinary citizens the Ombudsman is a cheap first instance of remedy, when a citizen feels something is

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<sup>86</sup> The Danish Ombudsman Act No. 473 OF 12 June 1996.Chapter 2,Article 7(1), (2) .

<sup>87</sup> Ibid: Article 13 (1).

wrong in his/her contact with the public administrators. Since it costs nothing to complain, the citizens only have to comply with very simple formal requirements. These are;<sup>88</sup>

(1) The decision complained of must be final. As any complaint against a decision which may be appealed to another administrative authority cannot be lodged with the Ombudsman, until that authority has made a decision on the matter,

(2) The complaint must be in written form and signed,

(3) The complainant must state his name,

(3) The complaint must be lodged within twelve months of the commission of the act complained of.

The time period in which to lodge a complaint in Denmark is one year, in Zambia it is two years.

#### **4.5. Investigating complaints**

There are three possible ways of handing a complaint, (i) dismissal of the complaint as irrelevant, (ii) may decide to do nothing as there is little hope for a remedy and (iii) investigation of the issue asking the authority concerned to explain their decision. Thus the Ombudsman determines whether a complaint offers sufficient grounds for investigation.<sup>89</sup>

When an investigation is initiated by the Ombudsman following a complaint from a citizen, then the authority concerned is informed about the complaint and is obliged to comment. It must be stated that, authorities who fall within the jurisdiction of the Ombudsman are under an obligation to furnish the Ombudsman, with such information and to produce such documents as he/she may demand. Thus, the Ombudsman may demand written statements from authorities which fall

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<sup>88</sup> Article 13 (2)(3) and (4).

<sup>89</sup> Article 16 (1).

thin his jurisdiction.<sup>90</sup> Thereafter, the citizen concerned is given an opportunity to comment on the authority's statement. It is only after this has been done that, the Ombudsman takes his/her stance. Consequently, the Ombudsman does not express criticism, or make commendations until the authority or person concerned has had an opportunity to make a statement. Hence, the authority to which the Ombudsman writes has to cooperate with the Ombudsman. The Danish Ombudsman works all the time by means of written communication. He/she may subpoena persons to give evidence in court on any matter of importance to his investigations.

In addition, the Ombudsman may on his own initiative conduct general investigations of case processing by various authorities. That is, has the right to start looking into cases by own initiative.<sup>91</sup> The Ombudsman may inspect any institution or firm and any place of employment which falls within the jurisdiction of the Ombudsman. In particular, the Danish Ombudsman has the right to make inspections concerning prisons and psychiatric hospitals where individuals stay involuntarily. These inspections often result in a written report.

In each case that the office takes up results in a statement by the Ombudsman, who takes the decision himself/herself on the basis of an investigation done by the personnel of the office. This statement is communicated in written form to the agency or the municipality concerned and sometimes to a minister or Parliament. Such a statement is either a criticism of a practice which the agency or municipality should correct or a critique of a rule which then should be changed by the ministry or Folketinget (Parliament). In Denmark, such statements can be used in court cases, where a citizen demands compensation for negligence or maltreatment. The close contact

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<sup>90</sup> Articles 19 and 20

<sup>91</sup> Section 17

between the Ombudsman and the law committee of Parliament, virtually guarantees that the statements of the Ombudsman will be observed by the agencies and the ministries .This is further made possible especially by the fact that, Danish governments tend to be minority cabinets.

After carrying out the investigations, a report is made upon the investigations and findings. This is published in the national newspapers and is given wide coverage. This is in line with the provisions of the Act which states that; “The Ombudsman shall submit an annual report on his work to the Folketinget. This report shall be printed and published.”<sup>92</sup> It must be remembered that in Denmark, the ideal of establishing an Ombudsman institution was closely connected with the wish that the Ombudsman, who was to monitor the executive power on behalf of Parliament, should submit a public report on his activities. The Ombudsman is responsible to Parliament and the general public in carrying out his duties and the report provides an insight into the Ombudsman’s activities and the results of the work of his office.<sup>93</sup> The Ombudsman has no power to order anything specific to be done to remedy any maladministration which he/she may have found. The basic role of the Ombudsman in the Danish model is to inform Parliament and the responsible minister, should the Ombudsman learn of major errors or derelictions. It is then up to the political authorities or the agencies themselves to take action, either suggesting changes in legislation or changing procedures for handling matters or reversing the decision by another decision at a higher level. However, the Ombudsman has often been able to achieve positive results behind the scenes. This has been assisted by the maintenance of friendly relations between the Ombudsman and the administration and the law committee of Parliament.

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<sup>92</sup> Article 13 (1)

<sup>93</sup> Annual Report for 2005 to the Danish parliament.



4.5. Case Statistics

Case processing time in Denmark is much shorter compared to Zambia. Usually, complainants receive a preliminary reply from the office within 10 working days after receipt of the complaint. In addition, complaints received but are rejected by the Ombudsman, are closed within ten days of receipt of the complaint. The average processing time for cases that were rejected is 34.5 days. For the complaints that are subjected to a full investigation. In most of these cases the complainant and the authorities involved are notified within ten days that an investigation would be undertaken. The average case processing time for cases subjected to a full investigation is 5.1 months (156 days).<sup>94</sup> Every complaint lodged with the Ombudsman not only has been adjudicated, but has been adjudicated promptly, courteously and efficaciously. Approximately 90 per cent of all cases are dismissed after due consideration, with the remaining 10 per cent treated on their merits.

TABLE: 1.1. Number of Complaints Received and Investigated over the years. From 1993, to 2005.

Year	1993	'94	'95	'96	'97	'98	'99	2000	'01	'02	'03	'04	05
Number of complaints received	2943	2937	3030	2914	3524	3630	3423	3498	3689	3695	4298	4093	4266

SOUCRE: Annual Report for 2005 to the Danish Parliament.

The number of cases received has continued to increase. From 1000 cases a year, to almost 2000 cases a year in the 1970s. This number was double in the early 1980s to increase sharply in the

<sup>94</sup> Annual Report for 2005.p.23

late 1980s and 1990s doubling to almost 3000 cases. Today the Danish Ombudsman has about over 4000 cases to look into.

#### 4.7. Overview

The success of the Danish model has been attributed to its attractive combination of easily identifiable basic features. It has traditionally been a core function of the Danish Ombudsman to constantly be pleading for securing and developing fundamental rights for the individual, when the executive makes decisions that affects the individual in a negative way. Since the mid-1970s, the Danish Ombudsman has systematically contributed to the development of principles for good administrative behaviour. One of the reasons why this effort became possible and successful was the already existing and historically evolved basic conception of good governance within the public administration itself. It goes without saying that in such a historic context, Ombudsmen find their work much easier than in a context where the concept of good governance must continually be developed and reiterated in relation to reluctant authorities and public servants.<sup>95</sup>

From the Danish model, it can be said that, the Ombudsman therefore, not only has the important specific task of ensuring respect for human rights in individual cases, but also have a general responsibility in contributing to the rebuilding of trust and confidence in government, nurturing and empowerment of civil society. Further, the Danish experience is a prima example of how an Ombudsman can proactively contribute to the development of legal rules. Legal rules contained in the Danish Public Administration Act of 1985, are essentially codified rules that had been formulated in the decisions and recommendations issued by the Danish Ombudsman.<sup>96</sup> It was felt

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<sup>95</sup> Jens Olsen. Some Experiences in the field of Assistance and cooperation between Ombudsmen. Denmark.2006.p.5

<sup>96</sup> Speech by the European Ombudsman.Proffesor. P.Nikiforos Diamondouros. "The Role of the Ombudsman in future Europe and the Mandates of Ombudsmen in future Europe."To the 9<sup>th</sup> Round Table meeting of European ombudsman and Council of the Europe Commissioners for Human Rights. 31<sup>st</sup> March,2007.

that the Act<sup>97</sup> will contribute to the development of administrative culture based on flexible principles of good administration and capable of enhancing the capacity of public administration to adhere to best practice and to render high quality services to the user. This Act basically put into law the standards and principles developed by the Ombudsman and the Courts through the findings in individual cases over more than thirty years. Therefore, the Public Administration Act in Denmark is as a result of the work of the Ombudsman. This is a powerful tool as a defence for the citizens against misuse of powers in the public administration.

Hence, the Ombudsman might be very useful in times of administrative reforms where development is fast and development of the executive is necessary. Further, the work of the Ombudsman may be important in minimising friction between citizens and the State in modern times of constant transition.

#### **4.8. Conclusion**

In conclusion, this chapter looked at the Danish Ombudsman. It has been shown that, in Denmark, the Ombudsman institution was established in 1955. And that in Denmark unlike in Zambia, the Ombudsman is elected by Parliament and is accountable to it and the people. The Ombudsman is to be independent of Parliament in the discharge of his/her functions. The recommendations after carrying out the investigations are made to parliament, the authorities concerned and sometimes to the minister. The Ombudsman submits annual reports to Parliament. These reports are even published in the media such as newspapers. Thereby, making them public documents, where any member of the public is able to read about the work which the Ombudsman and his/her office perform in a given year. This is different from the situation in Zambia, as shown in chapter three, after investigations, recommendations are made to the

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<sup>97</sup> Public Administration Act of 1985

Republican President. Despite, the Commission for Investigations being required by the Act<sup>98</sup> to submit annual reports on its performance, in the past few years the Commission has failed to do so as most of its reports are in draft form. Finally, the Ombudsman tries to ensure that, the executive power keeps within the boundaries of the rules and principles that govern the exercise of that power. Thereby, ensuring that the rights of individuals and developing the standards and norms of public administration.

It will be a good step to take, for Zambia to adopt some of the practices in the Danish Ombudsman model. Such as, the Ombudsman to be appointed by Parliament, the Ombudsman to have the express power to employ his/her own staff. These among many more will be addressed in the next chapter, in which the conclusions and the recommendations will be addressed.

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<sup>98</sup> Ombudsman Act, Chapter 39 of the Laws of Zambia.

**CONCLUSIONS AND RECOMMENDATIONS****5.0. CONCLUSIONS**

The institution of the Ombudsman is a very important institution in the government structure. It forms an integral part of the machinery of justice in the State. This is due to the role which this office plays. The Ombudsman makes an effort to ensure the rule of law and prevent abuse of public office. This is done by monitoring government and being able to hold government accountable for failure to fulfil its legal responsibilities in accordance with the law. It must be remembered that the Ombudsman office has the entire public sector under its domain with few exceptions such as the courts of law. The Ombudsman tries to ensure that the public business is conducted fairly and justly. It further, seeks to ensure that there is legality in the administrative process. Thus, helps to improve the administrative process. The government from the reports of the Ombudsman is able to assess the various individual officials in these public offices, and this can serve as a guide for further appointments and development of administrative practice.

**5.1. Summary of the Chapters**

This paper contains five chapters. Each of these contains information supporting the title of this research; "*Control of Administration Actions: An Investigation into the Efficacy of the Office of the Ombudsman.*"

*Chapter one* gave a general introduction and formed the foundation of the study. It addressed the importance of controlling administrative actions, pointing out the various ways in which these could be controlled. It was shown that in every State public functions are performed by designated persons and further, the execution of these functions, responsibilities and duties affects in a positive or negative way each and every citizen. Therefore, every act of

governmental power which affects the legal rights, duties, liberties of every person must be shown to have legal basis. In addition, if citizens are to have their rights protected, there is need for administrative authorities to act reasonably and in good faith and upon proper grounds. Therefore, in an effort to prevent abuse by public officers and authorities certain mechanisms and institutions have been put in place to keep administrative agencies and officers in check. One such non-judicial mechanism is the Ombudsman institution (Commission for Investigations).

*Chapter two* introduced the Ombudsman institution. This was done by tracing the origin of the institution. It was shown that this institution originated in Sweden, where the first Ombudsman was established in 1809. The idea about the Ombudsman has over the years spread throughout the world and has assumed different titles. This chapter further showed that, in Zambia, it was adopted in 1973 and it is referred to as the Commission for Investigations. The organisational structure, its jurisdiction, mission statement, goal and functions of the Commission were considered in this chapter. The justification for having this institution was addressed. Ombudsman institution provides an independent method of testing the quality of the administrative act or behaviour.

*Chapter three* looked in detail at the Commission for Investigations. It examined the actual operations of the Commission. The complaints procedure was outlined. The performance of the Commission was examined by looking at its annual reports, interviews were conducted by interviewing some of the staff at the Commission. In this chapter, it was shown that the Commission strives to live up to its mission statement and goal. However, as shown there are many factors which make it difficult for the Commission to carry out its functions effectively. Among these include lack of adequate funding. The amount of funding given to the Commission for Investigations is far much lower than that given to the Anti Corruption Commission and the Human Rights Commission. Lack of adequate personnel, for instance in the investigations

section, there are only two investigations officers who are supposed to handle all the complaints coming to the Commission from all the parts of the country. The required number is to have sixteen more employed in that capacity. It was shown that, due to the many factors identified as affecting the Commission's operations. The Commission for Investigations has not been very effective in controlling administrative actions. Over the years the numbers of cases reported to Commission, by the members of the public has continued to decline instead of increasing, this has been attributed to lack of awareness campaigns on the existence and functions of the Commission.

*In chapter four*, a comparative study between the Zambian Ombudsman and the Danish Ombudsman was undertaken. The similarities and differences with the Zambian model were shown. This was done, with the aim of learning from the experiences of the Danish Ombudsman which was established in 1955.

## **5.2. RECOMMENDATIONS**

In order to overcome the many factors which are affecting the operations of the Commission for investigations, as indicated in chapter three of this paper. The following are the recommendations which must be put into effect, so as to greatly increase the effectiveness of the Commission. It must be pointed out that, the on going Constitutional Review Process through the National Constitution Conference (NCC) is of great importance to many institutions. Among these being the Commission for Investigation. The NCC provides an opportunity for the Commission to lobby for the necessary amendments to the Act governing its operations. Further, it provides a forum to lobby for the Commission to have a status as an independent and autonomous governance institution. It is interesting to note that, as shown in chapters two and three of this paper, the office of the Investigator-General has remained in the same structural

shape in which it was in 1973. This has been to the detriment of quality of performance, hence the need for the amendments.

The following are the recommendations which should be implemented in order to overcome the factors identified in chapter three as affecting the effectiveness of the Commission for Investigations;

### **5.3. Provision of Adequate Financial Resources**

As shown in chapter three, the major problem affecting the operations of the Commission is lack of adequate funds to enable it implement the planned activities. The Commission receives its funds on a monthly basis; this has greatly hindered its activities, as the Commission sometimes fails to run its long-term programs as funds are at times delayed. In order to solve the many factors affecting its operations as indicated in chapter three, there is need for more funding to the Commission. Thus, funding should be increased, if the Commission is to effectively carry out its functions promptly. Further, the Commission should take more control of its budget. Its annual budget should be paid out by Parliament from the consolidated fund. This will help the Commission to be continually funded, and enhance financial autonomy.

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### **5.4. An Independent Office**

There is need for an independent office for the Commission of Investigations. Therefore, the office should be moved from where it is currently housed (that is the old Bank of Zambia Building) to better premises. Furthermore, the offices should be supplied with better office furniture, IT equipment including a sufficient number of computers, printers, scanners, a case management system, a local area network and access to the internet. Further, in order to increase accessibility for all members of the public, the Commission should have a decentralised system of operations by opening regional offices.



### **5.5. Increase the Independence and Autonomy of the Commission**

In order to enhance the independence and autonomy of the Commission, the Ombudsman should act on behalf of Parliament when exercising the supervisory task. In line with this, the Ombudsman should not be appointed by the Republican President as is the case now, as this may compromise its independence and impartiality. Instead, the Investigator General and the Commissioners should be nominated and appointed by the National Assembly in consultation with the Judicial Service Commission. This will mean that; will have a Parliamentary Ombudsman as is the case in Denmark. This will greatly reduce suspicions of the executive compromising the autonomy and independence (impartiality) of the Ombudsman. This will enhance the autonomy and independence of the Ombudsman's office. A similar recommendation was made to the Mungomba Constitutional Review Commission. It is the author's hope that this will be implemented by the NCC.

### **5.6. The Commission should employ its own staff.**

In terms of human resource there is need to develop a satisfied and competent staff. This can be done by empowering the Commission to employ its own staff, providing further training and development of the existing staff at the Commission. By so doing, the problem of staff members being brought from other government departments and transferred from the Commission at any time will be avoided. The number of investigations officers should be increased from two to sixteen officers. It must be pointed out that, one cannot organise an institution, far less reorganise an institution without taking into consideration the people working there and their individual needs. Therefore, in order to retain and attract employees, the Commission should develop policy for its staff. This is an element that must be taken into consideration when organising a well functioning institution. Hence, the Commission should efficiently manage and develop human resource, provide continued technical and professional staff training.

### **5.7. Use of Information Technology**

There is need for the Commission to establish and maintain an effective and efficient information management system. This would eventually improve the techniques of case and record management. In this regard, the Commission should learn the use of Information Technology (IT). Thus, there is need for an IT system. An upgraded IT system forms an integral part of daily case and management routines capable of supporting the needs of the institution in terms of statistics, annual reports, retrieval of precedent cases and systematic searches. Of course IT equipment cannot process or finish the cases but IT can be a better and more secure way of keeping track of the growing number of cases. At the same time, IT solutions can improve the capacity and quality of the work of individual legal officers and investigation officials by making it easier to find information and prepare and process the cases.

### **5.8. Create a Planning Unit**

There is need to establish a planning unit, which will head research and development, develop strategic plans and provide working guidance for the Commission. Furthermore, this will help in developing policies and legal framework which will guide the operations of the Commission. Thereby, increase efficiency and effectiveness of the Commission's operations.

### **5.9. Increase Public Awareness**

In order to solve the problem of lack of publicity and few members of the public being aware of its existence and services offered. The Commission should design programs for increasing awareness about its functions. This can be done by printing brochures placing adverts in the media, posters, revive radio and television programs, introduce publication of newsletters. This will help the general public be aware of its existence and functions. Thereby, enabling the public to address their grievances of maladministration committed against them in their contact with public officers for free and gain more knowledge of their rights. As is the case in Denmark, the

reports of the Commission should be made public documents, by having them published in the media. Therefore, the press should have access to information on investigations conducted by the office of the Ombudsman. In addition, there is need to encourage submission of annual reports to the National Assembly on a continuous basis, so as to assess the Commission's performance.

#### **5.10. Embark on Exchange Programs**

The Commission should maintain and establish regular contacts with other Ombudsman institutions at regional and international levels. This should be done with the purpose of sharing experiences and knowledge to improve the Commission's operations. In this regard, study tours are a useful tool in the process of exchanging experiences on routines and case handling. The study tours can also focus on similarities and differences in management. This is crucial in relation to attracting and retaining human resources. Study tours can be part of a deliberate strategy to attract and retain qualified staff.

When the above recommendations are put in place, this will help in restoring public confidence in areas where maladministration, errors and omissions have eroded this confidence. This will make the Commissions for Investigations to be more efficient and effective. In so doing, enhancing and maintaining the institution's credibility among the population, as an effective means of access to justice and its role in securing fundamental rights and administrative justice. Hence, the Commission will effectively play its corrective and reconciliatory role between the State and the citizens as a result of which the gap between the rulers and the ruled will be reduced. It must be mentioned that in this way, the Commission for Investigation shall truly complement a number of other institutions which aim at protecting the rights of citizens, promote good governance, transparency and accountability in the public service, thereby, protecting citizens against abuse of power.

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