
By

Ismail B. Siame

26112655

A directed research essay submitted to the University of Zambia Law Faculty in Partial fulfillment of the requirements for the Award of the Bachelor of Laws (LLB) Degree.

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Declaration

I, Ismail B. Siame, do hereby declare that this Directed Research Essay is my authentic work and to the best of my knowledge, information and belief, no similar piece of work has previously been produced at the University of Zambia or any other Institution for the award of Bachelor of Laws Degree. All other works in this essay have been duly acknowledged. No part of this work may be reproduced or copied in any manner without the prior authorization in writing of the author.

Signature

Date

09-04-10
THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

I Recommend that the Directed Research Essay under my supervision by:

Ismail B. Siame

26112655

Entitled:

A Critical Analysis of the effectiveness and efficiency of the Zambian Human Rights Commission in the Promotion and Protection of Human Rights in Zambia

Be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements pertaining to format as laid down in the regulations governing Directed Research Essays.

Mr. Palan Mulonda
(Supervisor)

Date
Abstract

This essay sets out to examine the effectiveness and efficiency of the Human Rights Commission in the promotion and protection of human rights in Zambia. Chapter one considers the historical background of the concept of human rights. It focuses on the protection of human rights in the pre-colonial era and the colonial era. This chapter demonstrates that the illiteracy of the vast majority of people in the pre-colonial period led to their ignorance of their rights. Consequently, they could not claim their rights. On the other hand, the colonial period was highly characterised by racism, hatred, cruelty and discrimination. Therefore, it was extremely difficult for Africans to enjoy their rights under such harsh circumstances.

Chapter two considers the promotion and protection of human rights before and after the establishment of the Human Rights Commission. Examined is the question whether the one party state was compatible with the effective protection of human rights. Chapter three evaluates the degree to which national human rights institutions are successful in carrying out their mandate to promote human rights and protect the rights of citizens. The chapter assesses how national human rights institutions acquire legitimacy and a reputation for effectiveness. Ultimately, the chapter considers the effectiveness of the Zambian Human Rights Commission in the promotion and protection of Human Rights as compared to Human Rights Commissions in other Jurisdictions like South Africa, Kenya, Tanzania and Rwanda.

Lastly, Chapter five considers the achievements of the Zambian Human Rights Commission. The Chapter demonstrates that since its inception, the Human Rights Commission has been quite successful in achieving most of its core objectives. This is evident from the reports published annually which show that the commission has been frequenting prisons and other places of detention with a view to inspecting conditions of prisoners held in such places. Further, the Chapter shows that the commission has engaged itself in a number of sensitization and education programs with a view to educating people on their rights and freedoms, and finally, it shows that the commission carries out investigations on human rights abuses and violations with a view to recommending appropriate punishment for the perpetrators.
Dedication

To my mum and dad and all those whom I have regarded as my parents during my academic life. Certainly, I have spent a great deal of my time; a great deal of my life, trying only to succeed in academics. This, however, may have come at a great personal loss. It may have come at a great endurance, especially to those who love me (my family). They too have made sacrifices; they too have endured great pain to support me, especially when I needed them the most. Therefore, it is altogether fitting and proper that I dedicate a part of this work to them. But, in a larger sense, I cannot dedicate; I cannot consecrate; neither can I measure to any degree what they've done for me. For this, I shall remain forever indebted to them.
Acknowledgements

All praises are due to Allah, the Beneficent, the Merciful; the All-Omnipotent, the All-Sublime; Lord of the Worlds, Master of the Day of Judgment; Originator of the Heavens and the Earth and all that is in between. He Who saw me without life, and breathed the spirit of life into my chest and spine giving me strength to accomplish all that I have accomplished thus far. Guide us all, onto the straight path.

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Sosala Kayela v. William Jacobus Botes (1945-1948) NLR 183

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Resident Doctors Association of Zambia and 54 others v. The Attorney General. SCZ Judgment No. 12 of 2003 (unreported)
Table of Contents

Research Topic--------------------------------------------------------------- i
Supervisor’s Approval-------------------------------------------------------- ii
Declaration--------------------------------------------------------------- iii
Dedication--------------------------------------------------------------- iv
Abstract-------------------------------------------------------------- v
Acknowledgements-------------------------------------------------- vi
Table of Statutes------------------------------------------------------ viii
Table of Cases----------------------------------------------------- ix

CHAPTER 1. General Introduction: Background of the concept of Human Rights

1.1 Problem Statement----------------------------------------------------- 2
1.2 Objectives of the Research--------------------------------------------- 3
1.3 Rationale and Justification of the Research--------------------------- 4
1.4 Concept of human rights during the pre-colonial period---------------- 5
1.5 Human rights in the colonial period-------------------------------------- 6
1.6 The bill of rights--------------------------------------------------- 10

CHAPTER 2 Protection and Promotion Human rights Before and after the Establishment of
the Human Rights Commission

2.1 Introduction----------------------------------------------------- 14
2.2 human rights before the establishment of the Human Rights Commission--- 15
2.3 human rights under the one party system of government--------------------- 19
2.4 establishment of the Human Rights Commission--------------------------- 26
2.5 human rights after the establishment of the Human Rights Commission--- 28
CHAPTER 3 The Effectiveness of the Zambian Human Rights Commission

3.1 Effectiveness of the Zambian Human Rights Commission--------------------------32
3.2 Human Rights Commissions in other Jurisdictions-------------------------------34

CHAPTER 4 Achievements of the Zambian Human Rights Commission

4.1 Introduction---------------------------------------------------------------43
4.2 Human rights education and sensitization-----------------------------------43
4.3 Prison visitation----------------------------------------------------------44
4.4 Investigations-------------------------------------------------------------50

CHAPTER 5 Conclusion and Recommendations

5.0 Conclusions---------------------------------------------------------------53
5.1 Recommendations----------------------------------------------------------55

Bibliography-----------------------------------------------------------------57
CHAPTER ONE

BACKGROUND OF THE CONCEPT OF HUMAN RIGHTS

1.1 INTRODUCTION

Human rights have been intricately tied to the laws, customs and religions throughout the ages. They have been constantly evolving throughout human history. In this sense, human rights refer to the basic rights and freedoms to which all humans are entitled.\(^1\) Indeed, the idea of human worth and dignity has always existed in all human societies. The works of philosophers, storytellers, sages, prophets and poets from different nations and civilizations, going back to ancient times attest to this fact. Henceforth, the struggle for human rights has a long and chequered history.

From the outset, emphasis must be placed on the fact that human rights are rights inherent in mankind’s nature; also, the concept of human rights transcends all human societies back to antiquity; and their existence did not come about with the establishment of human rights organisations or institutions such as the Human Rights Commission but they are inherent in mankind’s nature.

Historically, human rights in Zambia date as far back as the Pre-colonial period. The importance of the study of human rights situation during the pre-colonial period cannot be overemphasised considering the fact that, initially, there had been debates as to whether Africans had human rights before the Europeans came; as to whether Africans were at par with whites in the

enjoyment of rights; ultimately, as to whether Africans were ‘humans’ capable of possessing rights.

There was no much dispute on whether human rights were inherent in mankind’s nature, but the dispute was on whether Africans could be classified as humans. Despite all this confusion, one thing stands out clearly, and that is, the fact that formulation and enforcement of human rights during the pre-colonial period was very different from the way human rights are formulated and enforced today.

Hence, this chapter will discuss the historical background of the concept of human rights in Zambia. Considered will be the pre-colonial era and the colonial era. Ultimately, a commentary shall be made on the bill of rights. But, firstly, we begin with the statement of the problem followed by objectives of the study. Thereafter, human rights in the pre-colonial and colonial periods shall be considered.

1.2 PROBLEM STATEMENT

Indeed considerable literature has been written on domestic protection of human rights in Zambia. Notwithstanding this fact, most of the literature centers on securing human rights by entrenching them in the constitution. However, the massive violations of Human rights in the One Party State confirm that human rights are not secured by the constitutional guarantee alone.

It cannot be doubted that individual rights and freedoms can effectively be protected by establishing public institutions vested with power to protect human rights. Thus, in 1997 a Human Rights Commission came into being following the enactment of the Human Rights
Commission Act number 39 of 1996. The amended 1996 Republican Constitution provides for the establishment of a Human Rights Commission under article 125\(^2\).

The writer's humble research reviewed that considering the fact that the Commission has now been in existence for only 12 years, no one has analysed its efficacy with a critical eye and indeed with an enquiring mind. Clearly, the Commission is not an administrative agency. A question is therefore posed as to whether it also serves (or would serve) as an administrative agency and whether this would improve its efficiency.

Accordingly, it is the objective of this study to critically analyse the effectiveness and efficiency of the commission in promoting and protecting Human Rights in Zambia. It must also be mentioned that this research emanates against the backdrop that the limitations of the Commission are partly due to weaknesses in its founding statute (the Human Rights Commission Act number 39 of 1996). With this statement of the problem in mind, the objectives of the study shall now be considered.

1.3 OBJECTIVES OF THE RESEARCH

The ultimate objective of this study is to critically analyse the effectiveness of the Human Rights Commission in promoting and protecting Human Rights in Zambia. The following are the specific objectives of the study:

---

\(^2\) Chapter 1 of the Laws of Zambia
i. To give a comprehensive historical background of the concept of human rights in the pre-colonial era, in the colonial era and in the post-colonial era to the establishment of the Human Rights Commission (Chapter 1).

ii. To give a brief critique of the adequacy of the Bill of Rights in the protection of fundamental rights and how the Human Rights Commission would come in to ensure that guaranteed rights are well protected (Chapter 1).

iii. To highlight the extent to which the Human Rights Commission has been realistic in its attempts to realise its core objectives which include promoting and protecting human rights in Zambia (Chapter 2).

iv. To highlight the factors which have contributed to the ineffectiveness of the Zambian Human Rights Commission (Chapter 3).

v. To give a comparative study of the Zambian Human Right Commission with Human Rights Commissions in other countries such as Kenya, Uganda, Tanzania, South Africa and Ireland (Chapter 3).

vi. Finally, to consider whether protection of Human Rights in Zambia is a reality or a mere fallacy with special regard to the role of the Human Rights Commission (Chapter 4).

1.4 RATIONALE AND JUSTIFICATION OF THE RESEARCH

The study is pertinent and timely considering how Human Rights Law has developed in Zambia. The concept of Human Rights in the Pre-colonial era and during the colonial era has prompted the writer to deem it necessary to consider whether there has been any change in the manner in which human rights are guaranteed and protected in Zambia today. Are these ‘natural rights’ or ‘God-given rights’ given the necessary attention which they deserve in the modern democracy
existing in Zambia today? To what extent are ‘human rights,’ as guaranteed in statutes and textbooks, in fact, the ‘living law’ or the ‘law in action’ in Zambia? Such and many other similar questions prompted the writer to undertake the task at hand. Humbly, he considers such questions to be the raison d’être of the study.

Further, the study is justified on the basis that the Human Rights Commission has been in existence for only twelve years and there is an absolute need for decentralization and increased awareness. The study aims at making useful suggestions and recommendations to that effect. Human rights in the pre-colonial and colonial periods shall now be considered.

1.5 HUMAN RIGHTS IN THE PRE-COLONIAL AND COLONIAL PERIODS

Historical books indicate that during the colonial period, human rights were widely abused. The abuses were so wide that one could correctly say that the idea of human worth and dignity was not respected by the colonial masters. Nonetheless, it was the Europeans who formulated human rights into a presentable form and instituted systems of implementation. However, this is not to say that they invented human rights.

1.5.1 PRE-COLONIAL PERIOD

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

Additionally, we may make mention of the fact that even primitive societies had some form of government. Hence, people had a right to participate in the traditional government. They would meet to discuss issues that concerned the village as a whole. Arguably, the right to participate in the affairs of government cannot be exercised without the right to freedom of speech and expression. There existed in this era the freedom to protest against what the king said or did or suggested to do.

One form of protest which was resorted to in serious issues was whereby women stripped themselves naked. The foregoing brief of human rights during the pre colonial period serves as an illustration to the idea that human rights existed and were enforced even then, though there were no legal documents and established institutions to govern their protection and promotion. The situation in the colonial period was slightly different as demonstrated below.

1.5.2 COLONIAL PERIOD

This period was highly characterised by racism, hatred, cruelty and discrimination. These vices remained major problems perpetrated by settlers and the colonial administration in general. Such
state of affairs led one reverend Mushindo, a victim of the BSA Company, describe the situation in the following graphic and sad detail:

The people were treated like slaves, and very often they would not be allowed to enter native (or district) commissioners' offices with their shoes on. The African Messengers who were the administration's employees also treated their own people with callousness as the white officials.

When tax defaulters were apprehended, they were more often than not, confined in a hut in which a big fire was made, producing a lot of smoke, while the door was closed. This was one form of punishment for the defaulters. While on tour, a white official sometimes rode a bicycle while an African attendant ran after him to carry the bicycle at points where the official was unable to ride it. Also, he had to carry his master's provisions for the day. Any remains of such provisions, were given to the officials dog, and not to the attendant, however hungry the latter may have been.³

A further vindication of the hypocrisy of racist settlers is discrimination, based on colour. It was the official policy to segregate. For purposes of illustration, apartheid South Africa represents the most refined colour bar method devised, where each major town/city has a corresponding squatter settlement inhabited by non-whites who were meant to provide cheap labour. Changes in demographics forced the racist regime to cope up with the concept of Bantustans which were the 'official countries' of native South Africans. It is important to note that although Bantustans did not have international acceptance, friends of the racist regime accepted travel documents from these creations of the apartheid machinery.

Acknowledgements

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Table of Cases--------------------------------------------------------------- ix

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CHAPTER 3 The Effectiveness of the Zambian Human Rights Commission

3.1 Effectiveness of the Zambian Human Rights Commission..........................32
3.2 Human Rights Commissions in other Jurisdictions-----------------------------34

CHAPTER 4 Achievements of the Zambian Human Rights Commission

4.1 Introduction----------------------------------------------------------------43
4.2 Human rights education and sensitization-----------------------------------43
4.3 Prison visitation-----------------------------------------------------------44
4.4 Investigations-------------------------------------------------------------50

CHAPTER 5 Conclusion and Recommendations

5.0 Conclusions-----------------------------------------------------------------53
5.1 Recommendations-----------------------------------------------------------55

Bibliography-------------------------------------------------------------------57
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\[1\] Anyangwe, C. Introduction to Human Rights and International Humanitarian law. (Lusaka: UNZA Press(2004)) p21
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1.5 HUMAN RIGHTS IN THE PRE-COLONIAL AND COLONIAL PERIODS

Historical books indicate that during the colonial period, human rights were widely abused. The abuses were so wide that one could correctly say that the idea of human worth and dignity was not respected by the colonial masters. Nonetheless, it was the Europeans who formulated human rights into a presentable form and instituted systems of implementation. However, this is not to say that they invented human rights.

1.5.1 PRE-COLONIAL PERIOD

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

Additionally, we may make mention of the fact that even primitive societies had some form of government. Hence, people had a right to participate in the traditional government. They would meet to discuss issues that concerned the village as a whole. Arguably, the right to participate in the affairs of government cannot be exercised without the right to freedom of speech and expression. There existed in this era the freedom to protest against what the king said or did or suggested to do.

One form of protest which was resorted to in serious issues was whereby women stripped themselves naked. The foregoing brief of human rights during the pre colonial period serves as an illustration to the idea that human rights existed and were enforced even then, though there were no legal documents and established institutions to govern their protection and promotion. The situation in the colonial period was slightly different as demonstrated below.

1.5.2 COLONIAL PERIOD

This period was highly characterised by racism, hatred, cruelty and discrimination. These vices remained major problems perpetrated by settlers and the colonial administration in general. Such
state of affairs led one reverend Mushindo, a victim of the BSA Company, describe the situation in the following graphic and sad detail:

The people were treated like slaves, and very often they would not be allowed to enter native (or district) commissioners’ offices with their shoes on. The African Messengers who were the administration’s employees also treated their own people with callousness as the white officials.

When tax defaulters were apprehended, they were more often than not, confined in a hut in which a big fire was made, producing a lot of smoke, while the door was closed. This was one form of punishment for the defaulters. While on tour, a white official sometimes rode a bicycle while an African attendant ran after him to carry the bicycle at points where the official was unable to ride it. Also, he had to carry his master’s provisions for the day. Any remains of such provisions, were given to the officials dog, and not to the attendant, however hungry the latter may have been.3

A further vindication of the hypocrisy of racist settlers is discrimination, based on colour. It was the official policy to segregate. For purposes of illustration, apartheid South Africa represents the most refined colour bar method devised, where each major town/city has a corresponding squatter settlement inhabited by non-whites who were meant to provide cheap labour. Changes in demographics forced the racist regime to cope up with the concept of Bantustans which were the ‘official countries’ of native South Africans. It is important to note that although Bantustans did not have international acceptance, friends of the racist regime accepted travel documents from these creations of the apartheid machinery.

3 H.S. Meebelo Reaction to Colonialism: A prelude to the politics of Independence in Northern Zambia (Manchester: Manchester United Press, (1971)) p.94
Quite clearly, one is able to discern a pattern of double standards, as it relates to human rights, which is the very reason why the human rights struggle has become so fickle. Nelson Mandela remains a perfect example of a man jailed for life, for a right cause, but which was only a preserve of the whites. But that aside, the same whites called him a terrorist, banished him in prison for 27 years and now treat him with reveling respect. Whether this is pretence or convenience, is beyond the scope of this discussion. But whatever it is, it represents the highest form of hypocrisy.

There was an impressive resistance against colonial subjugation. This fact is a clear indication that human rights are universal and more important is the fact that the intrusiveness of the white settlers had never been welcome. Rights are inherent, inalienable, indivisible and any person who feels injured, will to the extent of possibility claim their rights. The independence struggle was about expressing this feeling in a concrete manner. The maltreatment of blacks was so vicious that it aroused a clear sense of belonging and unity among the oppressed. The struggle witnessed in northern Rhodesia and most Africa in particular, was violent and matched the violence that the colonialists had unleashed on indigenous people.

To the extent that the resistance could no longer be contained, and took its own course, confirms the fallacy of associating human rights with the west. The struggle for independence was about dignity and self-determination. Though called something else, it was a human rights struggle, with a local dimension, and corresponding with the preamble of the universal declaration of human rights.

We now need to deal with the misplaced assumption that human rights are a western import. As the wording goes, the emphasis is on human. For purposes of emphasis and from a conceptual
stand point, we quote from an *Afronet/Interights publication* that looks at the universality of human rights:

the basic concept of human rights as a claim to which all people are entitled as of right by virtue of their humanity firmly locates those rights and there implementation in the social and political realm of human affairs. Whatever these rights are, their implementation will necessarily require collective and sustained efforts that require the allocation of resources over an extended period of time. The realization of human rights also presupposes the existence of an authority that can mediate in case of conflict and adjudicate the competing demands of claimants of rights. Therefore the basic concept of human rights can only be realized through some form of wide scale political organisation that is capable and willing to undertake these functions.\(^4\)

In the context of this chapter, it cannot by any measure be canvassed that the colonial regime was in a position to adjudicate over competing interests. As a matter of fact the crisis brought about by the passfield memorandum, demonstrates the point very well.

At this point, it is worth to mention that the misplaced argument is that human rights are a western concept. If that were the case, what then would be the classification of the nationalist struggle in Zambia and Africa as a Whole? If anything, what the postulation of origin succeeds to do is to cast doubt and probably pour scorn on the deliberations that led to the morally powerful Universal Declaration of Human Rights.

As we have seen above, at the time of negotiations for the Declaration, blatant Human rights violations affected Africans and black people without exception implying that at the time, the definition of *human*, was restricted to the white race and quite frankly, if that were to be the case,

a terrible absurdity would have been created, out of what is sometimes referred to as superiority complex, with absolutely no value to humanity. A critique on the Bill of Rights shall now be given

1.6 A CRITIQUE ON THE BILL OF RIGHTS

This section is especially relevant to the study at hand so as to show the extent to which human rights are guaranteed and protected under the constitution. The section shall reveal the adequacy of the bill of rights as a tool for human rights protection in Zambia.

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

Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.\(^5\)

This was done to ensure the proclamation of Human Rights by colonial powers in territories they were colonizing. In discussing the origin of the Bill of Rights in African countries, the universal declaration of Human Rights is of great importance. This document is of special relevance to any discussion on Human Rights within the context of any African commonwealth country with a Bill of Rights.

\(^5\) The Universal Declaration of Human Rights (1948) Art. 2(4)
The document had an impact in arousing the human rights consciousness among Africans. The European Convention on fundamental Rights and Freedoms of 1950 was itself inspired by the Universal Declaration of Human Rights of 1948. Thus, when Britain was bound to apply rights embodied in the convention to its colonies. Britain was able to extend certain basic human rights in the Bill of Rights from such instruments. The convention provided that: 'the high contracting parties shall secure within their jurisdiction the rights and freedoms defined in s. 1 of this Convention'.

Thus, as a high contracting party, Britain was bound to secure within its colonies the rights and freedoms provided as these colonies were under its jurisdiction. Whether Britain had fulfilled its obligations in that regard, is yet to be seen.

However, it is worth to note that the 1991 Zambian constitution as amended in 1996 has a bill of rights whose origins can be traced to the 1963 self-government constitution. The centrality of the constitution in Zambia is given, but an examination of the Zambian constitution from cover to cover reveals many worrying Articles shrouded with serious contradictions. While there is an entrenched bill of rights, Article 25 specifically provides for wide derogations.

Anyangwe observes that, "constitutions, constitutionalism and democracy provide the legal and political setting conducive to a better protection and promotion of Human rights. Only constitutional and democratic states are likely to offer the best framework for human rights protection." The Zambian constitution guarantees a broad range of rights in part III, yet a close examination of the constitutions and practice from 1964, represents a "zero option" scenario as a

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6 The European Convention of Human Rights, Art. 1
result of Zambia’s geo-political situation, occasioned in part by the liberation of Southern Africa. It may actually be argued that although the spirit of protecting human rights is viable in the constitutions, there are fundamental gaps which may be attributable to the existing constitutional design.

The Directive Principles of State policy in Part IX of the 1991 constitution, for instance, reflect a clear lack of commitment to human resource, as the lofty provisions are neither justifiable nor useful in deepening a human rights culture. The foundation of the Bill of Rights in the Zambian constitutions (past and present), raises problems of legacy, but, that is a reality which must be factored in understanding Zambia’s human rights record.

There is abundant evidence that torture in Zambia, thrives during detentions and such is facilitated by Article 26, which stipulates the length of any detention (sic). Again detention cases such as Chipango, Re Puta, Re Kapwepwe, clearly show how vulnerable human rights are, when articles 30 and 31, declaring a state of emergency, as and when the president is satisfied that such a measure is necessary.

On the surface of it, Article 28 gives the impression of adequate prospects of enforcement, yet Article 28(1) is defective because it refers to clause (5) which is non-existent and it is not possible to envisage what limitation it was meant to impose. Besides, there is an in-built limitation which permits abuse to take place provided it is lawful.

Article 29, is clearly in violation of the charter of the United Nations as it expressly accommodates the act of war, which the United Nations frowns upon. As a general observation, the constitution is at variance with practice. Clearly, even the leadership looks at the document as
a blueprint for manipulation as evidenced by the instability in the constitutional order rather than a source of regulation of society.

Two of the most violent and controversial pieces of legislation are the *Public Order Act Cap 113* and *Emergency Powers Act, Cap 109*. Controversies continue unabated. The Zambian constitutional order has remained unstable from independence. The country has amended the constitution more than four (4) times. Currently, The National Constitutional Conference (NCC) sits on a regular basis in an attempt to adopt a new constitution. It cannot be doubted that such processes present serious mishaps in the constitutional order of any country, especially Zambia with its young democracy.

**1.7 CONCLUSION**

In conclusion, it can be stated that the illiteracy of the vast majority of people in the pre-colonial period led to their ignorance of their rights. Consequently, they could not claim their rights. On the other hand, the colonial period was highly characterised by racism, hatred, cruelty and discrimination. And so, it was extremely difficult for Africans to enjoy their rights under such harsh circumstances. Human rights were widely abused by colonial masters who could not appreciate the idea of human worth and dignity. Lastly, the foregoing chapter has demonstrated that the Bills of Rights formulated over the years have fallen far short from being adequate guarantees of Human Rights. The current Bill of Rights leaves much to be desired.
CHAPTER TWO

PROTECTION AND PROMOTION OF HUMAN RIGHTS BEFORE AND AFTER THE ESTATEMENT OF THE HUMAN RIGHTS COMMISSION

2.1 INTRODUCTION

In this chapter I critically analyze the promotion and protection of human rights before and after the establishment of the Human Rights Commission. I examine the question whether the one party state is compatible with the effective protection of human rights. I reach a conclusion, similar to that reached by Professor Chanda,\(^8\) that human rights are more vulnerable in a one party state than in a multiparty state. This is so for many reasons which include the following:

First, there are few effective checks on the executive because of its overwhelming power over the other organs. Second, since all the members of parliament belong to one party, they can, with ease, pass any legislation they want including amending the Bill of Rights in any way they see fit. One Party States are invariably characterised by the total subordination of the legislature to the executive, which in turn is dominated by an all-powerful president who has autocratic powers.

Third, the absence of strong independent organisations, such as opposition parties and interest groups, means that the government’s infringements of human rights will go unchallenged.

Fourth, one party regimes are characterised by the absence of an independent press which could expose and criticize violations of human rights to the public. This is because most, if not all, of the print and electronic media are under government control or influence.


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Fifth, one party state is essentially undemocratic and is maintained through repression. There is an absence of critical public opinion, which in western societies plays an important role in checking abuse of power by the government. Lastly, the judiciary which is considered a sentinel of justice and liberty in democratic societies, fails to protect human rights in a one party state because of intimidation as well as the fact that it has no natural allies (i.e. A free press, critical public opinion, opposition parties etc.) that could support it in the event of a showdown with the executive.

This chapter shall confine its discussion on the impact of the one party state on political rights. Thereafter, the essay shall consider the establishment of the Human Rights Commission and protection of human rights after its establishment. Finally, the essay shall consider the protection of human rights in the multiparty democracy.

2.2 HUMAN RIGHTS BEFORE THE ESTABLISHMENT OF THE HUMAN RIGHTS COMMISSION

History shows that human rights were much more widely abused before the establishment of the Human rights commission than after its establishment. This was so, especially during the one party rule were detention cases were rampant. Indeed, emergency powers in the one party state led to serious violations of human rights. A declaration of public emergency under Article 30\(^9\) or a declaration relating to threatened emergency under Article 31\(^{10}\) could activate either of the two

\(^9\) The Constitution of Zambia, Cap 1 of the Laws of Zambia
\(^{10}\) The Constitution of Zambia, Cap 1 of the Laws of Zambia
statutes; *The Emergency Powers Act*\(^{11}\) or *Public Security Regulations* \(^{12}\) (now called The Preservation of Public Security Act)\(^{13}\)

The former comes into operation when a full state of emergency is declared\(^{14}\) while the latter is invoked when a semi-emergency is declared.\(^{15}\) Both statutes empower the president to make regulations for the preservation of public security. Undoubtedly, the purpose of the regulations made pursuant to the emergency statutes is the preservation of public security. What amounts to ‘public security’ is not clear and it seems the meaning of public security was misinterpreted during the one party rule and this led to serious violations of human rights. This misinterpretation shall be briefly demonstrated below to show how human rights were violated.

### 2.2.1 THE MEANING OF PUBLIC SECURITY

Unfortunately, the two statutes do not give a precise definition of the expression “public security.” They merely give a description of activities which are embraced therein. S.2 of the Preservation of Public Security Act provides that the expression "public security" includes:

- the securing of the safety of persons and property, the maintenance of supplies and services essential to the life of the community, the prevention and suppression of violence, intimidation, disorder and crime, the prevention and suppression of mutiny, rebellion and concerted defiance of, and disobedience to, the law and lawful authority, and the maintenance of the administration of justice.

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\(^{11}\) Cap 108 of the Laws of Zambia  
\(^{12}\) Cap. 106 of the Laws of Zambia  
\(^{13}\) Cap 112 of the Laws of Zambia  
\(^{14}\) S.3(1) of Cap 108  
\(^{15}\) S.3(1) of Cap 106
Silungwe C.J., (as he then was), in dismissing the petition held, *inter alia*, that the definition contained in S.2 is not "exhaustive" but merely "illustrative." This is because the phrase "public security" is immediately followed by the word "includes."

According to professor Chanda, a more enlightened definition of "public security" was given by judge Cullinan in *Kaira v. The Attorney General*. In this case, the applicant was detained for having allegedly externalized K500,000 and for an alleged attempted externalization of a further K150,000. President Kaunda subsequently told the press in an interview that he had ordered the detention of the applicant because he had unlawfully paid K200,000 by ROP (1970) Ltd, a state owned company.

The applicant contended, *inter alia*, that his detention was invalid as the grounds for his detention were not relevant to the preservation of public security. Judge Cullinan observed that the meaning of 'public security' under S.2 of the Preservation of Public Security Act involved the suppression of particular acts which could well amount to crimes but he was of the view that the only reasonable construction he could place on the definition is that "crime" relates to all crimes envisaged by S.2 of the Preservation of Public Security Act. He observed that a person cannot be detained simply because he has committed a criminal offence. He then observed that the Preservation of Public Security Act was a product of pre-independence legislation and was enacted primarily to prevent civil unrest.

Judge Cullinan well-reasoned judgment was cited with approval by Moodley J in *Chiluba v. Attorney General* and a similar approach was taken by judge Musumali in *Abduolaye Ndiaye*

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19 [1980] ZR 65
20 [1981]HN 713(unreported)
v. Attorney General. It was against this background that the Supreme Court decided the Rao case.

Thus, the above cases show how human rights can be violated in an emergency or semi-emergency situation. Without proper safeguards; without proper interpretation/construction of statutory provisions, human rights can seriously be violated. At this point, it is now essential to show that certain political rights cannot coexist with a *de jure* One Party Democracy.

#### 2.2.2 HUMAN RIGHTS UNDER THE ONE PARTY SYSTEM OF GOVERNMENT

The method adopted in establishing the one party state was a violation of human rights in itself. President Kaunda, using his discretionary powers appointed a commission of inquiry. The commission was chaired by Mainza Chona; hence it was called the *Chona Commission*. It was mandated not to collect views on whether or not people wanted a One Party State but on what course the One Party System of government was to take. This in itself suppressed people’s freedom of opinion and right of participation in the political process.

President Kaunda decided on behalf of all the people of Zambia that they wanted a One Party State instead of leaving it to them to decide. The introduction of a one party state was merely imposed on the people, thus undermining their opinions and suppressing their right to participate in government affairs. The very idea of a One Party Participatory democracy impacted negatively on the fundamental rights and freedoms notwithstanding the fact that they were entrenched in the One Party Constitution.

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21 [1987]HN /168(unreported)
22 ibid
Indeed, the guaranteed rights and freedoms under the Bill of Rights are not capable of existing within a One Party State. It is obvious that the adoption of a One Party State would impinge on the enjoyment of certain rights and freedoms. Professor Nwabueze\(^2\) stated that, ‘a bill of rights cannot co-exist with a \(de jure\) One Party State without serious modifications and qualifications.

It is true that though the bill of rights was retained by the One Party State, it was widely and injuriously modified. The One party system negatively affected almost all the guaranteed rights directly or indirectly. The rights which were affected directly and severely were freedom of expression, freedom of assembly and association and freedom against discrimination on political ground.\(^3\) The Impact of the one party state on the protection of these rights shall now be demonstrated.

\textbf{2.2.2.1 Freedom of Assembly and Association}

The imposition of a one party rule inevitably leads to a severe limitation of the right to assemble freely and associate with other persons and in particular to form political associations. Only the ruling party is allowed to exist by law. Indeed, the one party constitution made it unlawful for anyone: 

\begin{quote}
\textit{to form or attempt to form any political party or organization other than the party, or to belong to, assemble or associate with, or express opinion or do any other thing in sympathy with, such political party or organization.}\(^4\)
\end{quote}

The desire to centralize all the power and to eliminate all centers of alternative power in a one party state is manifested in attempts to bring all organizations under the control of the party.

\(^4\) One Party Constitution. Art. 4(2)
Therefore, every effort is made to incorporate all associations into the party and those that refuse to cede their independence to the party are subjected to harassment and even proscription.26

It is apparent that the right to associate and to assemble for political purposes could only be exercised within the context of the party. Although membership of the party was voluntary, only about 5% of the Zambian people belonged to it despite numerous vigorous membership recruitment campaigns.27 This suggests that the majority of the people did not subscribe to its aims and objectives notwithstanding the enormous prerequisites appended to party membership.28

2.2.2.2 Discrimination on the ground of political opinion

The one party state inevitably involves discrimination against people who do not belong to the one and only party. In fact, all non-party members are completely excluded from participating in the political process. Thus, only UNIP members could contest presidential and parliamentary elections29 as well as district council elections. All the important policy making organs in the country, such as the party congress (supreme policy-making organ of the party which met every 5 years) and the national council excluded non-members of UNIP. As professor Zimba aptly puts it:

"...the entire governmental activities under the one party state revolve around the president. He is the real and ultimate authority upon which the entire executive, legislature and adjudicative functions of the state rests...in a one party state of

27 Times of Zambia, Dec 3, 1977 p1
28 The rights of a party member were laid down in Article 15 of the UNIP constitution. These included the right to elect or to be elected or appointed to the leadership in the organs of the party, government or state and the right to request the party at all levels up to and including the general conference to consider any questions or petitions.
29 One Party Constitution, Art.38(2)(b) & 67(c)
the Zambia model, it can fairly be said that the president is in himself the
government and the entirety of the state; authority is consummated in him..."³⁰

2.2.2.3 Freedom of expression

Freedom of expression is, undoubtedly, essential for the operation of any free democratic
society. Professor Fredrick⁳¹ has said that freedom of expression is, 'primarily concerned with a
citizen's right to political self-expression, effective participation in political life and hence
constitutive of democracy itself..." It means that people in a country are free to discuss issues of
concern to them without fear of reprisals from the government. Democracy requires that all
conflicting viewpoints should compete in the market place of ideas so that the best ideas will
emerge. Accountability of the rulers to the ruled is accomplished were the ruled are free to
criticize the rulers for their shortcomings.

It is worth to bear in mind the definition of democracy as defined by Abraham Lincoln which is
the government of the people, by the people and for the people. Now, for this assertion to come
ture, people's views and opinions should be respected. For the government to be said to be for
the people and of the people, people's rights and freedoms should be fully and freely exercised.
Thus, people should discuss political and social issues freely and they should provide critical
opinions without fear of being victimized.

For all these issues to be attained, freedom of expression should be highly respected. However,
in a one party state, freedom of expression is inevitably curtailed. It was not fully realized in a
one Party State for obvious reasons. People could not openly criticize the party and its

³⁰ Zimba, L. Role of the Party in Government under the One Party Constitution of Zambia: Impact of the
³¹ Fredrick, C. Constitutional government and democracy: Theory and Practice in Europe and America.
(Boston: Little, Brown and company, (1946) p.46
government. Though Dr. Kaunda called this period as one party participatory democracy, the very idea of a democratic society was non-existent. In a democratic society, people should be free to express their views.

The expression extended even to parliament. In an ideal democracy parliament plays an important role in protecting human rights by checking the abuse of power by the executive. However, that was not the case with the parliament that existed during the period under review. During this period, members of parliament were ideally elected at the mercy of the president. With this kind of situation obtaining, it was not possible for parliament to criticize abuse of power by insubordination.

Indeed, human rights were widely abused in the one party participatory democracy. At this point, cases shall now be cited to illustrate the human rights situation within the multiparty system before the establishment of the Human Rights Commission to show whether there has been any change in the way human rights are protected.

2.2.3 PROTECTION OF HUMAN RIGHTS IN THE MULTI PARTY DEMOCRACY

Undoubtedly, human rights have always been subject to abuse in all ages and in all societies. However, human rights under multiparty democracy, especially political rights, have not been as vulnerable as they were in the one party system of government under the Kaunda regime. Most of the civil and political rights can now be enjoyed to a greater degree due to amendments made to the Republican Constitution allowing for reintroduction of multipartism in 1991. The following cases illustrate to some extent, protection of fundamental rights and freedom in multiparty democracy.

To begin with, the case of Edith Zewelani Nawakwi v. The Attorney General\textsuperscript{33} illustrates unfair discrimination.

In this case, the applicant, an unmarried mother, applied for declarations that the names of her two children should be included on her passport without the need to obtain the consent of the putative father. The court found as a fact, inter alia, that on a previous application the applicant obtained the particulars of her children entered on her passport by firstly swearing an affidavit stating she was the mother of a particular child born out of wedlock. When subsequently she applied for the renewal of the passport she was told by the passport office of the need to swear an affidavit in similar terms to the affidavit sworn initially. She refused to do so because, she said, the procedure was discriminatory, wasted time and incurred unnecessary cost and she applied to the Court for the declaration. The applicant argued that the need to swear the affidavit as a single mother offended various articles of the Constitution. The respondent put the point in cross-examination that because the applicant had been issued with a passport she applied for she had no cause of action which related to her children. It was held that, where a child is not able to sue in its own right the adult mother has legal standing as a petitioner on the child's behalf. It was further held that the mother of an illegitimate child has as much authority over the affairs of her child as the father. Either the father or mother of such a child can have the child included on their passport.

Further, freedom from discrimination in multiparty democracy can be illustrated by the case of Arthur Lubinda Wina & 6 others v. Attorney General,\textsuperscript{34}

In this case, the President of Zambia had, at a news conference, issued a directive that certain Government owned newspapers were not to provide coverage to or accept advertisements from the Movement for Multi-Party Democracy. The petitioners applied for on order quashing and setting aside the directive as it violated their rights in terms of arts. 22 and 25 of the Constitution of Zambia. The Court held that the President was a creation of the Constitution and that he had issued his directive as the Head of State. His order telling the editors of the newspapers what to and what not to publish affected the activities of the petitioners and gave them the legal basis to bring the application. From the evidence before the Court it was held that the newspapers in question were Government controlled papers. The Court commented that, had they not been,

\textsuperscript{33} (1990 - 1992) Z.R. 112 (H.C.)

\textsuperscript{34} [1990-1992]Z.R. 95 (H.C)
then their management would have been at liberty to determine what they published. As the newspapers were Government papers, the directive was discriminatory and unconstitutional unless it fell within one of the permitted derogations of the right against discrimination. In finding that none of the derogations applied the Court found that the directive was not reasonably justified in a democratic society, which allowed for differences in people’s political views. The directive further hindered the petitioners in the enjoyment of their freedom of expression as they were prevented from publishing their opinions through Government newspapers. The directive was accordingly quashed.

A further illustration can be given by the case of Sara Longwe v. Intercontinental hotel.\(^{35}\)

In this case, the applicant, a female, was refused to enter part of the hotel building (generally accessed by the public) without a male escort pursuant to a hotel regulation which required female customers to enter with male escorts. The applicant contended that the hotel regulation requiring her to enter the hotel building with a male escort was discriminatory in that the same provision did not apply to male customers. The court ruled in her favour stating that the hotel regulation was an infringement on her constitutional right to freedom from discrimination.

The case of Christine Mulundika & 7ors v. The People\(^{36}\) can also be considered in this regard. In this case, the applicants had engaged themselves in a public assembly contrary to sections 5 & 7 of the Public Order Act which required them to get a police permit prior to the event. They were arrested on that basis. The court, however, stated that sections 5 & 7 of the Public Order Act were in direct conflict with Articles 20 & 21 of the Republican Constitution which guaranteed freedom of expression and freedom of assembly and association respectively. The court accordingly quashed the said provisions for unconstitutionality.

However, it should also be noted that human rights are not guaranteed in absolute terms. Most of the guaranteed rights are subject to various limitations. To illustrate this, the case of Fred Mmembe, Bright Mwape and ors v. The People\(^{37}\) is helpful.

\(^{35}\) [1999] S.C Judgment no. of 1999(unreported)
\(^{36}\) [1996] 2 LRC 175 at page 190.
\(^{37}\) S.C.Z. Judgment No. 4 of 1996
In this case, the appellants had been charged in a magistrate's court with contraventions of s 69 of the Penal Code in that they had allegedly defamed the President. They requested the magistrate to refer the matter to the High Court in order to determine the constitutionality of s.69 of cap.146. The High Court heard argument on the issue as to whether s 69 contravened arts 20 and 23 of the Constitution and ruled that they did not. On appeal it was submitted on behalf of the appellants that the criminal provision offended against the right to freedom of expression in art 20 and was discriminatory and thus in breach of s.23 of the constitution. Ngulube C, J (as he then was) stated, inter alia, that no one could seriously dispute that side by side with the freedom of speech was the equally very important public interest in the maintenance of the public character of public men for the proper conduct of public affairs which requires that they be protected from destructive attacks upon their honour and character. When the public person was the head of state the public interest was even more self-evident. Further, it was stated that there was nothing in art 20 which immunized defamation: a law met the test of being reasonably required if it had as its aim at least one of the interests or purposes listed in art 20(3).

2.3 ESTABLISHMENT OF THE HUMAN RIGHTS COMMISSION

In 1992, professor Chanda\textsuperscript{38} made a suggestion to the effect that,

‘...given the rampant human rights abuses that have occurred in Zambia since independence and the failure of the majority of victims of such violations to obtain redress for various reasons, a Permanent Human rights Commission be created.’

Indeed, the massive violation of human rights in the one party state confirms that human rights are not secured by the constitutional guarantee alone. Individual rights and freedoms can effectively be protected by establishing public institutions vested with the power to protect human rights. Such institutions should remain independent of the executive branch of the government.

Given Zambia's poor human rights record as evidenced by Second Republic, the Chiluba government sought to create an institution to hear individual claims of the abuse and

maladministration of justice. Thus, in May 1993, the Munyama Human Rights Commission, an ad hoc commission, named after its chairman Bruce Munyama, was appointed by president Chiluba. It was mandated to investigate and establish violations of human rights during the second republic years (1972-1991) and after 31st December, 1991 when Zambia reverted to a multi-party state.

The commission went round the country collecting submissions. The evidence received confirmed that people's rights were violated. The commission submitted a report to the president in September 1995. The report exposed the existence of secret detention centers throughout the country were human rights abuses took place in both the second and third republics. Thus, among other things, the Munyama human rights commission recommended the establishment of a Human Rights Commission. In response to this recommendation, the government, in 1996 announced its intention to establish a Human Rights Commission.

The Human Rights Commission came into being in 1997 following the enactment of the Human Rights Commission Act no.39 of 1996. The amended 1996 constitution provided for the establishment of a Human rights commission. Article 125(1) provides that; 'there is hereby established a Human Rights Commission'. The Commission is an autonomous body in accordance with Article 125(2) of Cap 1.

Further, Article 126 states that the functions, powers, composition, funding and administrative procedures, including the employment of staff, of the Human Rights Commission shall be prescribed by or under an Act of Parliament.

30 ibid
The reintroduction of a multiparty state coupled with the establishment of a human rights commission was seen as a step in a direction of making a haven of human rights.

2.4 HUMAN RIGHTS AFTER THE ESTABLISHMENT OF THE HUMAN RIGHTS COMMISSION

Zambia’s transition from one party state to a multiparty state and the subsequent establishment of the human rights commission came with the expectation of a new democratic state based on respect for human rights. Democratic states themselves should be those that violate human rights least and protect them best. After its establishment the commission was active and showed commendable initiatives.

Before its establishment most people did not know their rights. Thus the commission saw it fit to start up programmes on community awareness of human rights. There were human rights awareness programmes on radio both in English and local languages. The human rights commission managed to train law enforcement officers in the area of human rights. Thus, even to date training law enforcement officers at Lilayi cannot graduate if they do not pass the human rights component. However, despite the establishment of the human rights commission and its campaign against abuse of human rights, violations of human rights still continued.

Presidents Chiluba, Mwanawasa and Banda made statements in the past of commitments to the principles of freedom of expression. However the state has continued to criminalize freedom of expression by bringing criminal charges against newspaper reporters and editors. Though an independent media existed, the government’s harassment of the media curtailed (and has continued to curtail) the freedom of expression and this can be equated to the government
controlled media of the second republic. Editor-in-Chief Fred Mmembe and other editorial staff of the post newspaper spent weeks in detention.\textsuperscript{42}

The Zambian parliament made an unprecedented decision to find them in contempt and sentence them in absentia for publishing an article that criticized a speech made by the vice president and other ministers. They were released as a result of a High Court judgment by Justice Kabazo Chanda who ruled that parliament was wrong to put them on trial and sentence them in absentia.

The right of peaceful assembly is guaranteed in the Bill of Rights and regulated by the Public Order Act (Public Order (Amendment) Act, no. 1 of 1996) however, this Act has widely been used against the opposition parties and civil society groups. The case of Resident Doctors Association of Zambia and 54 others v. The Attorney General\textsuperscript{43} serves to illustrate the violation of the freedom of assembly and association by the police. In this case, justice Chitengi held that:

\begin{quote}
Any person wishing to hold a public meeting, procession or demonstration does not require to obtain a permit from the police for such an event and the police have no power to refuse any person from holding a meeting, or procession or demonstration at all. This is an appeal by the Petitioners against the decision of the court below, which decided that they had breached section 6(7) of the Public Order Act (hereinafter referred to as the Act), which prohibited the holding of public meetings, processions, or demonstrations, where the Police notify the conveners, that they cannot adequately police such events: and the denial by the court to award them damages after having found that the Police had violated the Act.
\end{quote}

The foregoing discussion illustrates that even after the establishment of the human rights commission, human rights abuses were perpetrated. The abuse of human rights in this era reflected, to some extent, the human rights situation of the one party rule, in that they were both characterized by massive violation of human rights by the executive branch of government especially detention without trial and torture.

\textsuperscript{43} [1997] HP 817 (unreported)
The government’s human rights record remained poor. Although there were some improvements in some areas, serious problems remained and new ones emerged. For instance, this time there were less political killings by the government or its agents but by law enforcement officers who committed numerous unlawful killings and inhuman treatments, though the constitution prohibits such practices. This can be illustrated by severe inhuman treatments perpetrated by police officers against the suspects of the October 28, 1997 coup attempt. On October 29, president Chiluba declared a state of emergency as provided for under s. 30 of the constitution.

Under the state of emergency the president of the Zambia Democratic Congress Party, Dean Mung’omba was detained. The police interrogators allegedly suspended him from a metal bar by his handcuffed hands and rope-tied legs.

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

2.5 CONCLUSION

In conclusion, it can be stated that although the Bill of Rights under the independence constitution was reproduced almost verbatim in the one party constitution not all rights could operate without serious modification. In addition, this chapter has demonstrated that human rights were much more abused in a one party state than in a multi party state. This was due to the dictatorial tendencies of the then government in power. Further, the essay has demonstrated that whilst entrenchment of human rights in the Republican Constitution is important, they cannot be

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44 Articles 12 and 15 of Cap 1
45 http://www.amnesty.org/library/index/Misrule of law: Human Rights in a State of Emergence/ENGEFR
effectively secured in this manner alone. Other effective measures ought to be put in place. The essay has shown that one of the most effective measures is the establishment of the Human Rights Commission.

The next chapter shall therefore analyze the effectiveness of the Zambian Human Rights Commission in protecting human rights. Considered also, is the protection of Human Rights in other jurisdictions.
CHAPTER THREE

EFFECTIVENESS AND EFFICIENCY OF THE ZAMBIAN HUMAN RIGHTS COMMISSION

3.0 INTRODUCTION

Undoubtedly, effective domestic protection of human rights ensures democracy and ultimately the rule of law. Accordingly, this chapter examines the degree to which national human rights institutions are successful in carrying out their mandate to promote human rights and protect the rights of citizens. Additionally, the chapter assesses how national human rights institutions acquire legitimacy and a reputation for effectiveness.

Further, the essay makes a comparative study between the Zambian Human Rights Commission and Human Rights Commissions in other countries such as Tanzania, Kenya, Rwanda, South Africa and Ireland. Ultimately, a conclusion is made to the effect that the Zambian Human Rights Commission leaves much to be desired in its domestic protection and promotion of human rights.

3.1 EFFECTIVENESS OF THE ZAMBIAN HUMAN RIGHTS COMMISSION

The powers and functions of the Zambian Human Rights Commission are provided for in sections 9 and 10 of the Human Rights Commission Act (No.39 of 1996). These are to:

- Investigate human rights violations;
- Investigate any maladministration of justice;
- Propose effective measures to prevent human rights abuse;
➢ Visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the persons held in such places and make recommendation to redress existing problems;
➢ Establish a continuing programme of research, education information, and rehabilitation of victims of human rights abuse to enhance the respect for and protection of human rights; and
➢ Do all such things as are incidental or conducive to the attainment of the functions of the commission.

The human rights commission investigates complaints of abuse of human rights either on its own initiative or after receiving a complaint or allegation. On conclusions of investigations, the commission has power to recommend the punishment of any officer found to have perpetrated abuse of human rights. It can also recommend the release of a person from detention, payment of compensation to a victim of human rights abuse, that an aggrieved person seeks redress from a court of law and such other action as it considers necessary to remedy the infringement of a right.

It must be emphasized that the Commission is not as effective as it is supposed to be. The ineffectiveness is largely due to inadequacies in its founding statute. Below are some of the weaknesses of the Human Rights Commission.

WEAKNESSSES OF THE COMMISSION

The Human Rights Commission has a number of weaknesses. While section 3 of the human rights commission Act provides that in the performance of its duty, the human rights commission shall not be subject to the direction or control of any person or authority, in practice, this is compromised in that the commission operates as if it were an ordinary government department.

For instance, its budget is submitted to parliament through the executive.
In addition, the Human Rights Commission does not have legal personality; hence it cannot own property, sue or be sued in its own name. This lack of legal personality means that the Institution has to depend on government ministries in respect of such matters. In Countries such as Uganda, Australia, The Island of Fiji, New Zealand and the Kingdom of Nepal, Legislation establishing national human rights institutions vest legal personality in such institutions.\(^{46}\)

While the Human Rights Commission can investigate maladministration of justice, it lacks powers to issue coercive orders to remedy human rights violations and to prosecute. The criteria for appointment and composition of commissioners are not defined. Thus, it is not broadly representative of the various interest groups in society. Also, the Human Rights Commission Act does not specify the qualifications of the commissioners, apart from chairperson and vice-chairperson, who are required to be persons who have held or are qualified to hold high judicial office. This could result in the appointment of persons who are not conversant with human rights issues.

Further provisions relating to the term of office of commissioners are inadequate. The Act does not specify whether the commissioners are full-time or part-time. It also does not limit the terms of office that a commissioner may serve.

### 3.2 HUMAN RIGHTS PROTECTION IN OTHER JURISDICTIONS

#### 3.2.1 GENERAL\(^{47}\)

Human rights institutions are now recognised worldwide as important mechanisms for ensuring that human rights and freedoms embodied in the constitution are realized. The Universal

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Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights require member states to take measures which ensure that people's rights are protected through institutions that are specifically mandated to promote people's rights, advise the relevant authorities and provide effective remedies for violations of human rights.

The 1993 World Conference on Human Rights encouraged the establishment of national human rights institutions. The World conference also reaffirmed the importance of the role played by national human rights institutions for the promotion and protection of human rights. It also placed emphasis on the role played by these institutions, particularly in advising competent authorities, in remediating human rights violations, in disseminating human rights information and in educating the public about human rights.

Two fundamental characteristics of national human rights institutions are independence and impartiality, which are necessary in order for them to effectively monitor good governance and human rights. Other essential characteristics include broad representation and mandate. Principles relating to the status of national institutions for the promotion and protection of human rights adopted by the UN General Assembly under resolution 48/134 of 20 December 1993 state that human rights shall be given as broad a mandate as possible which shall be clearly set forth in the constitution or legislative text, specifying its composition and its sphere of competence.

In comparative terms, a number of countries in Africa have established human rights institutions. Some examples are the Uganda Human Rights Commission, the Senegalese Human Rights Committee and the South African Human Rights Commission.
3.2.2 PROTECTION OF HUMAN RIGHTS IN SOUTH AFRICA

In South Africa, the constitution makes provision for institutions supporting human rights and constitutional democracy such as the Public Protector, the Commission for the Promotion and Protection of the Cultural, Religious and Linguistic Communities, Commission for Gender Equality and Broadcasting Authority and the Human Rights Commission.

The Public Protector, who is appointed by the president upon recommendation of Parliament, is mandated by Parliament to investigate any misconduct in state affairs or public administration in any sphere of government. The Public Protector is answerable to Parliament and can only be removed by a resolution of the National Assembly. The Commission for Gender is mandated to promote respect for equality and to protect, develop and attain gender equality. It is composed of members appointed by the president on recommendation of the national assembly.

The Commission for the Promotion and Protection of the Cultural, Religious and Linguistic Communities is mandated to promote respect for the rights of cultural, religious and linguistic communities.

The Broadcasting Authority was established mainly to regulate and ensure that broadcasting promotes public interest, fairness and diversified views of all the South African people. Lastly, the South African Human Rights Commission is the national institution established to entrench constitutional democracy. It is committed to promote respect for, observance of and the protection of human rights for everyone without fear or favour. In accordance with the South African Constitution and the Human Rights Commission Act of 1994, the tasks of the Human Rights Commission are to:
➢ Develop an awareness of human rights among the people of South Africa.
➢ Make recommendations to the state to improve the carrying out of human rights.
➢ Undertake studies and report to Parliament on matters relating to human rights.
➢ Investigate complaints of violations of human rights and seek appropriate relief.

The Commission works with government, civil society and individuals, both in South Africa and internationally, acting as both a watchdog and a visible route through which people can access their rights.48

3.3.3 THE TANZANIAN COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE

The Commission for Human Rights and Good Governance (CHRGG) was established in 2001 by Articles 129-131 of the 1977 Constitution of the United Republic of Tanzania and the CHRGG Act, Chapter 391 of 2001.49 The CHRGG plays the dual role of an ombudsman and a human rights commission.50 Although this legislation authorised it to operate in both the mainland and Zanzibar, Zanzibar authorities prevented it from doing so until a parliamentary amendment was enacted. In May 2006, Union government authorities and Zanzibar officials agreed that the quasi governmental CHRGG would be permitted to operate in Zanzibar.

MANDATE OF THE COMMISSION

The CHRGG has a very broad mandate of promoting awareness of human rights and investigating violations. The institution is modeled along the Ghana Commission on Human

48 www.nhri.net/NationalData1st.asp?MODE=1&ID=1
49 http://www.chrgg.go.tz/
50 ibid
Rights and Administrative Justice. Since its creation, the commission has been active in a number of protective functions:

- First, it receives and investigates complaints and/or allegations of human rights violations and contravention of principles of administrative justice. It also conducts public hearings on the same and proposes compensations where appropriate.
- Second, it initiates proceedings on its own.
- Third, it handles individual complaints concerning the violation of human rights generally, with vested rights to investigate, conduct hearings and settle disputes. It also has the right to decide not to proceed with a complaint.
- Fourth, it promotes and advises by educating the public on human rights and good governance issues, carrying out research on human rights and good governance, and monitoring compliance with human rights standards and good governance principles.
- Fifth, it advises the government and other public organs and private sector institutions on specific issues relating to human rights and administrative justice.
- Sixth, it offers mediation and conciliation through alternative conflict resolution.

The commission is led by a judge and composed of nine other commissioners, not all of whom are lawyers. The commission has employed lawyers, economists, political scientists and sociologists. Despite its broad mandate, the commission remained underfunded, understaffed and overburdened by a caseload of unresolved complaints. Comparatively, though, this Commission seems to be doing far much better than the Zambian Human Rights Commission in terms of human rights protection and promotion due to its broad mandate. The Kenya National Commission on Human Rights shall now be considered.
### 3.3.4 THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

The Kenya National Commission on Human Rights (the Commission) is an autonomous National Human Rights Institution established by a Kenyan Act of Parliament in 2002.\(^{51}\) Its core mandate is to act as a watchdog over the Government in order to further the protection and promotion of human rights in Kenya. This is in line with the United Nations’ encouragement to Governments to create National Human Rights Institutions as a strategy towards better protection and promotion of human rights.

In line with government planning cycle, the Kenya National Commission on Human Rights (KNCHR) has developed a Strategic Plan for the period 2009-2013 which was officially launched on 28th January 2010 at the Kenyatta International Conference center. Among its achievements, is the adoption of a number of made by the Kenya National Commission on Human Rights to strengthen the Harmonized Draft Constitution. The Commission’s proposals were made in fulfillment of its mandate as the State’s principal human rights agency with mandates and expertise to advise on human rights issues in the country.

Further, the Kenya National Commission on Human Rights has recently been nominated to represent the African region on the new Working Group on Business and Human Rights of the International Coordinating Committee of National Human Rights Institutions (ICC).\(^{52}\) Additionally, the Commission has played a major role in the administration and access to justice.

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\(^{51}\) [http://www.knchr.org/kenyan](http://www.knchr.org/kenyan)

\(^{52}\) [http://www.knchr.org/kenyan](http://www.knchr.org/kenyan)
Recently, the Commission hosted the biggest event of the world's National Human Rights Institutions (NHRIs), the 9th NHRIs Conference, whose theme was Administration and Access to Justice, held in Nairobi from October 21-24, 2008. The National Human Rights of Rwanda shall now be considered.

3.3.5 THE NATIONAL HUMAN RIGHTS COMMISSION OF RWANDA

The mandate of this Commission is stated briefly and in general terms in Article 3 of law no. 04/99 of Rwanda: "To investigate and follow-up on human rights violations committed by anyone on the Rwandan territory, especially State organs and individuals under the cover of State organs as well as any national organizations working in Rwanda."

The National Human Rights Commission (NHRC) of Rwanda is to find solutions to the violation of children's rights with emphasis on orphans whose parents' property was being taken by their relatives and children pushed to the streets, Rwandan Human Rights Commission reported.

The report quoted President of the commission Gasana Ndoba as saying that the commission had achieved a lot in the past two and half years of its existence, including following up some human rights violation acts like illegal arrests and educating Rwandans on matters regarding their rights especially on the issue of property. It seems essential now to consider protection of human rights in developed nations as well. To this effect, the Irish Human Rights Commission shall be considered.

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53 ibid
3.3.6 THE IRISH HUMAN RIGHTS COMMISSION (IHRC)

The Irish Human Rights Commission has 15 members, appointed by the Government for a period of 5 years. The first Commission served from July 2001 to June 2006. A new Commission was appointed on 31st August 2006 and their term commenced on 2nd October 2006. The current President, Dr. Maurice Manning, assumed office on 1 August, 2002. In accordance with the Human Rights Commission Acts 2000 and 2001, not less than 7 of the members of the Commission are female and not less than 7 are male.

In its mission statement, the protection and promotion of human rights is regarded as the core value of the IHRC. In pursuit of this commitment, the Commission will work to ensure the protection of civil, political, economic, social and cultural rights in recognition of the universal, indivisible, interdependent and inter-related nature of all human rights.

Further, it is also worth to mention that the IHRC launched its 2008 Annual Report on 9 July 2009, where Dr Maurice Manning, President of the IHRC stated at the launch that the fallout from this economic recession was having the greatest impact on vulnerable people who often need the most protection. Therefore it was more important than ever to have a strong, effective and independent Human Rights Commission. The IHRC experienced a 32 % cut in its resources since 2008. This has seriously hampered it in performing its statutory functions.\(^{54}\)

A key role of the Commission is to examine proposed legislation to see that it complies with the rights protected in the Constitution and under international human rights law. The IHRC is

\(^{54}\) unesdoc.unesco.org/images/0012/001233/123368E
concerned that once a Bill has been published there should be enough time to debate it in Oireachtas (equivalent to Zambian National Assembly).

For instance, at the launch, Dr Maurice Manning called on the Government for more time to debate the Criminal Justice (Amendment) 2009 (as the issue was then in contention) as many serious flaws had been identified in it. Rushed law is often bad law, and that will not help victims of crime in the long run.

4.0 CONCLUSION

It can therefore be concluded that the Zambian Human Rights Commission, in accordance with its founding statute (s. 13 of the Human Rights Commission Act) can only make recommendations. This serves to illustrate that the commission is still a weak institution as it is unable to effect change on more serious government abuses of human rights. The limitations on the commission are largely due to weaknesses in its founding statute; the Human Rights Commission Act.

On the other hand, Human rights institutions in other jurisdictions such as Kenya, Tanzania, Rwanda, South Africa, India and Ireland, seem to be doing far much better than the Zambian Human Rights Commission. This is so because in most of these commissions, their powers and functions have been stipulated under the constitution itself unlike in Zambia where the powers and functions are stipulated under an Act of Parliament. Further, the Zambian Human Rights Commission lacks legal personality. Recommendations shall be made to that effect.
CHAPTER FOUR

ACHIEVEMENTS OF THE HUMAN RIGHTS COMMISSION

4.0 INTRODUCTION

Indeed, the Zambian Human Rights Commission is now, beyond doubt, valued as an essential partner in the task of protecting and promoting human rights at the national level. In this chapter, the essay focuses on the specific achievements of the Human Rights Commission since its inception in 1997. The essay shall also sparingly look at the factors impacting on the protection and enjoyment of human rights in Zambia. Ultimately, a conclusion shall be drawn to show that the Human Rights Commission has been quite effective despite the weaknesses in its founding statute and the fact that it has remained underfunded, understaffed and overburdened by a caseload of unresolved complaints.

4.1 ACHIEVEMENTS OF THE COMMISSION

4.1.1 HUMAN RIGHTS EDUCATION AND SENSITIZATION

The Human Rights Commission has a mandate to carry out educational and sensitization activities under section 9(a) of the Human Rights Commission Act. To this effect, the Human Rights Commission has, since 2000 conducted Human rights education and sensitization for the Law Enforcement Agencies to acquaint officers on human rights standards; the Educational Authorities on awareness of the rights of the child; and members of the public on concepts covering human rights and other issues that affect people's daily lives, ranging from gender-based violence and police brutality to poor conditions of service as well as freedom of assembly and association.55

55 The Human Rights Commission Strategic Plan of 2007-2011 p.25
The Office of the President (OP), the Zambia Wildlife Authority (ZAWA), and the Immigration and Customs Departments have also participated in the human rights education and sensitization activities.

For instance, as part of its mandate to give information and education to all people on their rights, the Human Rights Commission decided to fully participate in sensitizing potential voters on their rights as they related to elections in the run up to the 2006 presidential, parliamentary and local government elections.\textsuperscript{56}

Further, with funding from the United Nations Development Programme, the Information, Education and Training department undertook sensitization through open air theatrical and dance performances in all the eight districts of the Eastern Province, namely Nyimba, Petauke, Katete, Chadiza, Mambwe, Lundazi, Chama and Chipata.\textsuperscript{57} In the Western Province, Senanga, Kalabo, Mongu and Kaoma were covered while in the Northern Province, Mungwi, Kasama, Mpolungu, Mbala, Mpika, Isoka, Chinsali and Nakonde were covered. These trips proved to be extremely beneficial especially to the local people of the areas visited.\textsuperscript{58}

\textbf{4.1.2 PRISON VISITATION}\textsuperscript{59}

The other achievement of the Human Rights Commission is prison visitation. Since 2000, the HRC has visited several prisons across the country bringing to light the devastating status of these places. The following are some of the prisons visited according to annual reports published by the Commission;

\begin{footnotesize}
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\textsuperscript{56} www.hrc.org.zm
\textsuperscript{57} Annual state of human rights in Zambia, 2008 report p24.
\textsuperscript{58} ibid
\textsuperscript{59} Annual state of human rights in Zambia, 2008 report p25.
\end{footnotesize}
Mpima Remand Prison

Mpima Remand Prison was constructed in 1958. It was built for a population not exceeding 210 inmates. According to the Human Rights Annual Report of 2008, on 30 August, 2005, the lock up inmate population was 303. This figure means Mpima Remand Prison was overcrowded by 44% of the recommended capacity then. The following are some more observations of the Commission;

➢ The sewer system was completely broken down. Waste matter floated all over around the sleeping quarters in small ponds. This posed a health risk to both the remandees and the prison warders living in proximity to Mpima Remand Prison.

➢ 78 remandees were illegally being kept in prison. Their remand warrants had expired. The Commission considered this as not only a violation of the law, but also gross negligence on the part of the detaining authorities. Warrants are supposed to be valid throughout the stay of each individual inmate.

➢ Tuberculosis (TB) patients were not isolated from the rest of the inmate population. This situation, coupled with the problem of congestion, created favourable conditions for easy transmission of the disease from one inmate to the other.

➢ The windows for all the dormitories had no shutters. In these conditions, inmates have to face the wrath of the weather at every turn of the season. In the rainy season inmates cluster together in the middle of the dormitory to avoid being soaked.

➢ There were no cups and plates. Some inmates cut plastic containers to make some semblance of a bowl to use for their meals.
Food was inadequate both in quality and quantity. Inmates only had one "combined meal" of beans and nshima. The nshima came in porridge form and inmates have to wait for this porridge to solidify into "nshima."  

Mkushi State Prison

Mkushi State Prison was established in 1959. The prison was congested at the time of the Commission's visit on 2 September 2005. One cell had 90 instead of the recommended 50 inmates. Another cell had 17 inmates instead of the recommended 8. The prison had a total of 135 prisoners. The Commission observed the following:

➢ The prison was understaffed and without staff accommodation, with only 27 officers accommodated. The rest were accommodated either in Council houses or by individual landlords who often harassed and threatened to evict them for not paying rentals on time.

➢ All windows had their shatters ripped off thereby providing no cover or protection to prisoners from rain and wind.

➢ The prison had no serious health problems with inmates. The District Health Board Doctor visited the prison every Wednesday and Friday to attend to sick prisoners.

➢ The Commission observed that there was no food shortage at the prison since enough was produced from the Open Air Prison in 2004. This was supplemented by supplies from the Ministry of Home Affairs. There were enough stocks of mealie meal, kapenta and beans. The normal diet for the inmates consisted of nshima with either kapenta or beans and sometimes vegetables.

➢ Blankets and mattresses were inadequate, worn out and in very bad state.

➢ The kitchen was made of wooden poles and not conducive to all weather cooking, particularly in rainy or windy weather. There were no pots, plates and spoons.

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60 www.hrc.org.zm

Toilet facilities were located in the cells and there was no provision for privacy during use of these facilities.62

4.1.3 VISITATION OF DETENTION CENTRES63

This section provides an overview of the conditions that individuals in police custody are subjected to. It must be noted, that when a person is arrested or detained, the only right they are deprived of is their right to liberty; they must enjoy all other rights and the state under whose custody they are held is obligated to ensure enjoyment of these other rights. It is also worth to note that Article 15 of the Constitution,64 which protects individuals from inhuman treatment, also applies to conditions of detention centres.

In addition, Article 10 of the International Covenant of Civil and Political Rights (ICCPR) states that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. It is, thus, expected that detention centres are in a condition that does not subject an individual to inhuman conditions.

[A] Police Cells

Section 26 of the Criminal Procedure Code,65 provides that an individual can be arrested and detained, for committing an offence for which the police can arrest without an order of the Court

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62 www.hrc.org.zm
63 2008 State of Human Rights Report
64 Chapter 1 of the Laws of Zambia
65 Chapter 88 of Laws of Zambia
and without a warrant. Police cells are customarily custodial places for individuals not yet charged with a crime. The Zambia Police (Amendment) Act, 1999, provides for Custody officers, who should normally be an officer in charge. It provides the Custody officers should ensure that:

- a person in police custody is treated in a decent and humane way; a person in police custody who requires medical attention has access to medical facilities;
- police cells or other places used for the custody of persons are in clean and habitable conditions;
- necessary provisions and other facilities used by a person in custody are in hygienic condition;
- record the name, the offence for which the person is arrested and the state and condition of the person; and,
- make such recommendations as to that persons well-being as are necessary, including the requirement for that person to have medical attention.

Following this provision, it is, therefore, mandatory that every person placed in police custody must first be presented to the Custody Officer before detention. The succeeding sections provide observations on conditions of police cells from selected police stations as observed by the Human Rights Commission.66

**Garnerton Police Station**

Garnerton Police Station has no holding cells for suspects. Suspects are held within the single office making up the Station. Violent and dangerous suspects are cuffed around a pole outside to prevent them from escaping.

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66 Annual state of human rights in Zambia, 2007 report p15
Kitwe Central Police Station

The Central Police Station has two (2) cells dedicated to male suspects. There are no female or juvenile cells. Both cells are inhabitable. Lighting is poor in one, and there is no lighting in the other. One of the cells has no toilet, and suspects are only allowed to go to the toilet once a day.  

[B] Remand Prisons

In a criminal matter, a magistrate/judge can remand into custody a person accused of a crime if, after a preliminary hearing, the magistrate judge finds that a there is reason to put the accused on trial. Juveniles are, however, supposed to be held separately from adults. Therefore, remand prison is a custodial place for individuals awaiting trial and or on trial. The Human Rights Commission provides observations from two towns; Chipata and Ndola. The observations show that the prisons in these towns are congested.  

 Ndola Central Remand Prison

Ndola Central Remand Prison has a holding capacity of one hundred and fifty-eight (158), but is holding 284 individuals. This is nearly twice its capacity. The factors attributed to the congestion are chiefly high frequency of court adjournments, inadequate court rooms, disappearances of case records and lack of transport to allow for consistent appearance of individuals before the courts.

 Chipata Central Prison

In Chipata, individuals on remand are held together with convicted prisoners in Chipata Central Prison, as there is no separate remand prison or a separate section for remandees within the
prison. The prison has a design holding capacity of three hundred (300), but is presently holding six hundred and twelve (612) individuals.

The current state of detention centres in Zambia is shocking. They are becoming more and more congested. Undoubtedly, factors contributing to this are many and ought to be addressed promptly in order to secure the prisoners’ and remandees’ rights. Investigations by the Commission shall now be considered as another achievement.

4.1.4 INVESTIGATIONS

The Human Rights Commission has an Investigation and Legal Department (IL) whose function is to investigate cases of human rights violation and abuse. Apart from conducting visits to prisons and other places of detention with a view to inspecting conditions of persons held in such places, it also investigates cases of maladministration of justice, and makes recommendations to the appropriate authorities to redress the problems. The investigations are carried out on the Commission’s own initiative or upon receipt of a complaint. The investigators are trained to be careful, purposeful and systematic in their enquiry. The following are some examples of complaints that have been successfully resolved by the Commission;


Mrs Harriet Kangwa Musenge, a female Constable, complained to the Human Rights Commission for non-promotion during her 18 years of service. She had been appointed to the position of Constable in April 1983 and had never been promoted to any rank despite her loyal and dedicated service. She felt that she had been discriminated against and her human rights had been abused. The Commission investigated this case and made recommendations to the Inspector

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69 2008 STATE OF HUMAN RIGHTS REPORT
General of Police. Subsequently, on 19 October 2001, Mrs. Musenge was promoted and confirmed to the rank of Sub-Inspector effective 24 February 2001. On 31 December 2001 she wrote to the Commission to express her thanks and appreciation.


On 13 July 2001, Mr. Joseph Kangwa Sichula complained to the Human Rights Commission against his former employers, Melissa Super Market in Kabulonga. He stated that he had worked for the company for two years and three months and when it terminated his contract, the Supermarket did not pay him his terminal benefits. The Commission investigated the complaint and made recommendations to the employers. The complainant was subsequently paid his terminal benefits.

**4.2 CONCLUSION**

In conclusion, it can be stated that the essay has shown that since its inception, the Human Rights Commission has achieved most of its objectives. This is evident from the reports published annually which show that the commission has been frequenting prisons and other places of detention with a view to inspecting conditions of persons held in such places; further, the commission has engaged itself in a number of sensitization and education programs with a view to educating people on their rights and freedoms, and finally, the commission carries out investigations on human rights abuses and violations with a view to recommending appropriate punishment for the perpetrators. However, an institution tasked with such a huge responsibility is bound to face challenges. Therefore, the next chapter shall suggest recommendations for the improvement of the commission’s performance.
CHAPTER 5
CONCLUSION AND RECOMMENDATIONS

5.1 CONCLUSION

This essay was set out to examine the effectiveness and efficiency of the Human Rights Commission in the promotion and protection of human rights in Zambia. In chapter one, the historical background of the concept of human rights was discussed. Considered was the protection of human rights in the pre-colonial era and the colonial era. Ultimately, a commentary on the bill of rights was made thus revealing the adequacy or otherwise of the bill of rights as a tool for human rights protection in Zambia.

Further, it was shown in this chapter that, the illiteracy of the vast majority of people in the pre-colonial period led to their ignorance of their rights. Consequently, they could not claim their rights. On the other hand, the colonial period was highly characterised by racism, hatred, cruelty and discrimination. Therefore, it was extremely difficult for Africans to enjoy their rights under such harsh circumstances.

Chapter two considered the promotion and protection of human rights before and after the establishment of the Human Rights Commission. Examined was the question whether the one party state was compatible with the effective protection of human rights. Reached was the conclusion that human rights are more vulnerable in a one party state than in a multiparty state.

Further, Chapter three evaluated the degree to which national human rights institutions are successful in carrying out their mandate to promote human rights and protect the rights of
citizens. The chapter assessed how national human rights institutions acquire legitimacy and a reputation for effectiveness. Ultimately, the chapter considered the effectiveness of the Zambian Human Rights Commission in the promotion and protection of Human Rights as compared to Human Rights Commissions in other Jurisdictions like South Africa, Kenya, Tanzania and Rwanda. Reached was the conclusion that the Commission is a very weak institution which is unable to effect change on more serious government abuses of human rights because it can only make recommendations in accordance with its founding statute (s. 13 of the Human Rights Commission Act).

Lastly, Chapter five considered the achievements of the Human Rights Commission since its inception in 1997. The Chapter demonstrated that that since its inception, the Human Rights Commission has achieved quite a number of things as is evident from the reports published annually which show that the commission has been frequenting prisons and other places of detention with a view to inspecting conditions of persons held in such places.

Further, the Chapter showed that the commission has engaged itself in a number of sensitization and education programs with a view to educating people on their rights and freedoms, and finally, it was shown that the commission carries out investigations on human rights abuses and violations with a view to recommending appropriate punishment for the perpetrators.

Ultimately, the essay has shown that the Human Rights Commission is not a very effective tool for domestic protection and promotion of Human Rights. This is partly due to weaknesses in its founding statute (The Human Rights Commission Act) which gives the Commission limited powers to handle human rights abuses. Appropriate amendments to this Act would ensure effective protection of human rights. Recommendations shall be made to this effect. The
indispensable nature of this commission, however, cannot be doubted. Recommendations shall now be made to this effect.

5.2 RECOMMENDATIONS

Having examined the effectiveness and efficiency of the Human Rights Commission, and based on the conclusions reached above, the essay proposes the following recommendations for purposes of reform:

➢ First, the mandate of the Commission as outlined in the Human Rights Commission Act No.39 of 1996 should include the ability to cite for contempt for failure to comply with the Commission's decisions and to issue binding orders. As such, the Commission will earn more respect from the public.

➢ Second, the functions and powers should be constitutionally entrenched, thus raising the profile of the Commission rather than providing that such functions and powers shall be prescribed by or under an Act of Parliament (Art. 126 of the Constitution of Zambia Chapter 1 of the Laws of Zambia).

➢ Third, the Constitution should also provide that funds appropriated by Parliament should be released in full and that the Commission should not to be under-funded in any financial year thus eliminating inadequacy of resources as a reason for failure to implement its mandate. This will enhance the Commission's efficiency.

➢ Fourth, the Commission should be decentralized so that more people can have access to it. The Commission should have offices in all districts of the country including the remotest of places so that people may become well informed in human rights issues.
➢ Fifth, the Commission should engage more in education and sensitization programmes so that the masses may appreciate their rights.

It is hoped that the reforms, once implemented, will change the face of the Human Rights Commission for the better.
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PHD THESIS


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