THE EFFECTIVENESS OF THE PERMANENT HUMAN RIGHTS COMMISSION IN THE ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS IN ZAMBIA

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Being a paper submitted in the partial fulfillment of the examination requirement for the degree of Bachelor of Laws of the University of Zambia.

February 2008

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I, THEREFORE, take full responsibility for the contents, errors, defects and omissions therein.

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Abstract

As more and more countries take the decision to establish national human rights institutions, the need for guidelines on how such bodies can be created and operated for maximum effectiveness becomes increasingly evident[1]. National institutions are but one component of a complex, multi-level system which has been developed for the promotion and protection of human rights[2].

The international system relies heavily on the support it receives from regional human rights systems such as the African Union (AU) and the European Union (EU). Regional human rights systems play a pivotal role in reinforcing international standards and machinery by providing the means by which human rights concerns can be addressed within the particular social, historical and political context of the region concerned. However, there is a greater need for effective national institutions as there is a problem of implementation of international standards of human rights at national level.

In Zambia the main national human rights institution is the Permanent Human Rights Commission (PHRC) which is established under Article 125 of the Constitution of Zambia[3] and its functions and powers are contained in the Human Rights Commission Act No. 39 of 1996. This is the institution under review and discussion herein.

[1] National Human Rights Institutions: A handbook on the Establishment and Strengthening of National Institutions for the promotion and protection of Human Rights, United Nations New York and Geneva, 1995.
[2] Ibid
[3] Chapter 1 of the Laws of Zambia

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DEDICATION

This work is dedicated to the loving memory of my late father Mr. Gostaff Maliki Chakota.

I also dedicate it to my mother and friend Mrs. Beatrice Chilufya Darko who has been my inspiration throughout my life just by being her hardworking and cheerful self who never stopped believing in me and has shown me that it is possible for a girl to raise standards and be hard working and still be radiant.

TABLE OF STATUTES REFFERED TO

The Human Rights Commission Act No. 39 of 1996

The Constitution of the Republic of Zambia, Chapter 1 of the Laws of Zambia

The Public Order Act, Chapter of the Laws of Zambia

TABLE OF CASES

Kachasu v. Attorney General (1967) Z.R 145

Patel v. Attorney General (1968) Z.R 128

The People v. Bright Mwape and Fred Mmembe HPR/36/94

GLOSSARY

FAO - Food and Agriculture Organisation

PHRC - Permanent Human Rights Commission

UN - United Nations

UNDP - United Nations Development Programme

UNESCO- United Nations Educational, Scientific and Cultural Organisation

UNHCR-United Nations High Commission for Refugees

UNICEF- United National Children's Fund

WHO - World Health Organisation

TABLE OF CONTENTS

Page

Cover Page.....i

Declaration.....ii

Approval.....iii

Abstract.....iv

Acknowledgments.....v

Dedication.....vi

Table of Statutes Referred To.....vii

Table of Cases.....vii

Glossary viii

Table of Contents.....ix

Chapter One

1.1 Introduction.....1

1.2 Statement of the Problem.....2

1.3 Justification of study.....3

1.4 Methodology.....4

1.5 Establishment of the Human Rights Commission.....4

1.6 Scope of Study.....6

1.7 Conclusion.....7

Chapter two

2.1 Introduction.....8
2.2 The History of National Human Rights Institutions.....8
2.3 Legal framework and structure of the PHRC in Zambia.....11
2.4 Relationship between the commission, government and other institutions.....15
2.5 Conclusion.....20

Chapter Three

3.1 Introduction.....21
3.2 Constraints faced by the commission.....21
3.2.1 Staff.....22
3.2.2 Office Accommodation.....26
3.2.3 Transport.....27
3.2.4 Financial Constraints.....28
3.2.5 Legal Constraints.....31
3.2.6 Political Constraints.....32
3.3 Conclusion.....33

Page

Chapter Four

4.1 Introduction.....35
4.2 The elements of an effective human rights institution.....36
4.2.1 Independence.....36
4.2.2 Defined Jurisdiction and Adequate Powers.....38
4.2.3 Accessibility.....39

4.2.4 Cooperation.....40
4.2.5 Operational Efficiency.....40
4.2.6 Accountability.....41
4.3 The Effectiveness of the Commission.....42
4.4Conclusion.....45

Chapter Five

5.1 Conclusion.....46
5.2 Recommendations.....46
Bibliography

CHAPTER ONE

1.1 INTRODUCTION

For almost six decades now after the adoption of the Universal Declaration of Human Rights in 1948, human rights have steadily taken center-stage in virtually all activities and more and more countries take the decision to establish national human rights institutions[1]. Zambia has had a Bill of Rights, though limited to civil and political rights, entrenched in the Republican constitution[2] since independence in 1964. However, it only took its first step of establishing a Human Rights Commission in 1997 to look into issues pertaining to human rights in the country[3].

The Permanent Human Rights Commission (PHRC) is Zambia's main national human rights institution and is established under Article 125 of the constitution, its powers and functions are contained in the Human Rights Commission Act[4]. It is not enough just to have a national human rights institution; a further vital element is that of effectiveness which is essential to the realization and protection of fundamental Human Rights and Freedoms.

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[1] Center for Human Rights, National human right Institutions, United Nations; New York and Geneva 1995.p 1

[2] Part III of the Republican Constitution, Chapter 1 of the Laws of Zambia

[3] Art 125 of the Constitution of the Republic of Zambia,Chapter 1 of the Laws of Zambia

[4]The Human Rights Commission Act 1996 (Act No. 39 of 1996) as quoted in the Permanent Human Rights Commission; National Plan of Action, for human rights (1999-2009)

1.2 STATEMENT OF THE PROBLEM

Strong and effective national institutions can contribute substantially to the realization of Human Rights and Fundamental Freedoms. With the history of national human rights institutions and the hope that the people of the United Nations had in advocating for the establishment of effective national human rights institutions and all the paper work that has since been done, that is to say the conferences, seminars and workshops on the same, it is evident that in practice there are usually difficulties in realizing the standards that are set for such institutions internationally, regionally and more especially nationally despite all the tremendous efforts. This is clear because human rights violations are still rampant[5] and a substantial number of national populations continue to be ignorant of their inherent and inalienable Human Rights and therefore lack the ability to detect infringement of their rights[6] as a direct consequence. The role of national human rights institutions in achieving the realization and full enjoyment of human rights is one that cannot be overlooked. In Zambia the main national human rights institution is the Permanent Human Rights Commission (PHRC). Others include the Commission for Investigations, the Auditor General's Office and the Judiciary. Since the main institution is the Human Rights Commission, it is necessary to assess its effectiveness as this greatly impacts on the efficacy of the other human rights institutions and ultimately the overall Human Rights situation in Zambia. Hence the need for this case study of the Zambian situation.

[5] Zambia Human Rights Report (2001), Afronet
[6] Legality Journal (2004), The University of Zambia Law Association. Pp 47-48

1.3 JUSTIFICATION OF STUDY

This research is necessary and important to the development of the Zambian Jurisprudence with regards to the enforcement of Human Rights in the sense that Zambia like many other countries has a national human rights Institution that strives at improving the status of respect for fundamental human rights and freedoms and therefore knowing just how effective the current Permanent Human Rights Commission (PHRC) is in the implementation of its objectives and mission will help Zambia understand where the shortfalls are and where there is need for improvement as has been suggested in the study. It shows not only the importance of having a national human rights institution but also that of having an efficient and effective one if human rights are to be fully enjoyed and properly claimed in the other human rights institutions like the Judiciary. The rationale behind this study is to elucidate that despite the obvious impediments and problems faced by the commission there is room and need for improvement and changes and hence help in suggesting amendments and improvement in Human Rights Law in Zambia. This will empower the chain of institutions working toward the common goal of according due respect for human rights at the basic individual level as opposed to the international "face keeping" efforts that countries are fond of doing in trying to get international support in inter-state relations.

1.4 METHODOLOGY

Data was collected mostly by way of desk research of both published and unpublished works and was where necessary supplemented by direct interviews with lecturers at The University of Zambia and personnel from the PHRC and other institutions. A tour of the Northern and Eastern Provinces helped in assessing the obtaining human rights situation in rural areas as well as the Commission's response to the matter. Case law and relevant legislation were consulted. Internet sources were employed as well as text books and articles to make the research more informative. All this was to ensure the collection of qualitative and up to date data.

1.5 ESTABLISHMENT OF THE HUMAN RIGHTS COMMISSION

The establishment of a permanent human rights institution was recommended by the Human Rights Commission of Inquiry (also referred to as the *Munyama Commission*), named after its chairperson, a prominent lawyer Bruce Munyama, which was appointed in 1992 to examine the human rights situation in Zambia prior to the re-introduction of a plural political system in 1991. Therefore it can be said that the Munyama Commission was appointed to broadly investigate and report on the human rights situation in the second Republic and after 31st October 1991[7] and growing out of the recommendations of the commission of inquiry was the Permanent Human Rights Commission. The Munyama Commission stated the case for the establishment of a permanent human rights commission in Chapter 6 of its report. The Munyama Commission noted that many

[7] Report of the Munyama Commission of Inquiry 1994

witnesses who testified to the Commission appreciated the appointment of the Commission of Inquiry and expressed the need for the government to establish a permanent institution to safeguard human rights and fundamental freedoms. The idea of a permanent institution for the promotion and protection of human rights had also been recommended by the Mwanakatwe Constitutional Review Commission, which was constituted to spearhead the introduction of constitutional amendments that were effected in 1996. Under this constitution the Permanent Human Rights Commission was established pursuant to article 125(1). The Constitution further lays out other provisions regarding the Commission. Article 125(2) states that the Commission is to be an autonomous body. Article 126 provides that the functions, powers, composition, funding and administrative procedures are to be prescribed in an Act of Parliament.

In 1996, the **Human Rights Commission Act No. 39 of 1996** (HRC Act) was enacted. The Act was billed as a central pillar of the Movement for Multiparty Democracy (MMD)'s efforts of legal reform. President Chiluba appointed the then High Court Judge Lombe Chibesakunda to chair the Human Rights Commission, along with five other commissioners. The HRC Act, *inter alia,* provides for autonomy, appointment and composition, tenure of the commissioners, functions and powers, complaints mechanism and meetings of the Commission.

The commission consists of a Chairperson, Vice-chairperson and not more than five commissioners appointed by the president subject to ratification by the National

Assembly.[8] They hold office for three years subject to renewal. Tenure of office may cease upon resignation or removal for inability to perform the functions of the office, whether arising from infirmity of body or mind, incompetence or for misbehavior.[9]

The commission also has a directorate consisting of a Director, Deputy Director and such other staff, as it may consider necessary for the performance of the Commission's functions. These functions are stipulated in section 9 of the Act and include the investigation of human rights violations and any maladministration of justice, to propose effective measures to prevent human rights abuses, visit prisons and other such places of detention with a view to assessing and inspecting conditions of persons held in such places and make recommendations to redress existing problems and to establish a continuing programme of research, education, information and rehabilitation of victims of human rights abuses to enhance the respect for and protection of human rights.

1.6 SCOPE OF STUDY

The Commission has a plethora of functions and hence venturing into the analysis of each and all of them would result into a voluminous piece of work and this is neither the author's intention nor desire for this dissertation hence the need to limit the scope of this study to only issues concerning the following; Chapter two discusses the history of national human rights institutions, the legal framework and structure of the Commission in Zambia, the relationship between the commission and other institutions including the

[8] Section 5 of the Act No. 39 of 1996
[9] Section 7 of the Act No. 39 of 1996

government. Chapter 3 analyses the constraints (financial, legal and political) faced by the commission as well as the appropriateness of its location in the provinces while Chapter 4 discusses the elements of an effective human rights institution. The study evaluates the effectiveness of the Permanent Human Rights Commission based on these. Chapter 5 has given recommendations and a general conclusion borrowing from the preceding discussions.

1.7 CONCLUSION

In conclusion having discussed the establishment of the commission and the background on which this study is based, it is now expedient to consider in detail the history of the concept of national human rights institutions. It is also vital to establish a clear understanding of the legal framework and structure of the commission in Zambia as well as evaluate the relations of the commission with government and other institutions in a quest to determine just how effective the Permanent Human Rights Commission is in the execution of its duties, functions, powers and mission statement.

CHAPTER TWO

2.1 INTRODUCTION

While appreciating the fact that Zambia as a nation made a big step towards the right direction by establishing the Human Rights Commission, it is essential to acknowledge the truth that the commission is not an island, it cannot effectively execute its mission without the help of other institutions and therefore it is important to evaluate how the commission partners with these stakeholders as we endeavor to ascertain just how effective it is in its operations. It is also pivotal to understand how the United Nations resolved to encourage the establishment of National Human Rights Institutions, further the legal make up of the commission is an important point of examination in trying to have a deeper perception of the workings of the commission

This Chapter discuses the historical evolution of National Human Rights Institutions. The legal framework of the Commission, its structure and evaluates its relationship with government and other institutions.

2.2 THE HISTORY OF NATIONAL HUMAN RIGHTS INSTITUTIONS

Whenever there is a question or issue in the field of human rights, it is always prudent to start from the United Nations (UN). In the Charter of the United Nations, the peoples of the UN declare their determination ***"to save succeeding generations from the scourge of***

war.....to reaffirm faith in fundamental human rights..... and to promote social progress and better standards of life in larger freedom". Accordingly, the Charter proclaims that one of the purposes of the UN is to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion[1]. The international system relies heavily on the support it receives from regional human rights systems such as the African Union (AU) and the European Union (EU)[2]. Regional human rights systems play a key role in reinforcing international standards and machinery by providing the means by which human rights concerns can be addressed within the particular social, historical and political context of the region concerned. However, there is still need for national institutions as there is a problem of implementation of international standards of human rights at national level hence the first International Workshop on National Institutions for the Promotion and Protection of Human Rights was held in Paris from 7th to 9th October 1991.

The question of national human rights institutions was first discussed by the Economic and Social Council (ECOSOC) in 1946, two years before the General Assembly proclaimed the Universal Declaration of Human Rights as ***"a common standard of achievement for all peoples and all nations"***. At its second session, in 1946, ECOSOC invited member states ***"to consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the commission on Human Rights"***. Fourteen years later the matter was raised

[1] Article 1 of the Charter of the United Nations
[2] Anyangwe C. (2004) Introduction to International Human Rights & Humanitarian Law. UNZA Press: Lusaka.

again, in a resolution which recognized the important role national institutions could play in the promotion and the protection of human rights, and which invited Governments to encourage the formation and continuation of such bodies as well as to communicate all relevant information on the subject to the Secretary General[3]

As standard-setting in the field of human rights gained momentum during the 1960s and 1970s, discussions on national institutions became increasingly focused on the ways in which such bodies could assist in the effective implementation of these international standards. In 1978, the Commission on Human Rights decided to organize a seminar in order, inter alia, to draft guidelines for the structure and functioning of national and Local Institutions for the Promotion and Protection of Human Rights which was held in Geneva in September 1978[4]. These guidelines suggested what the functions of national institutions should be and they were subsequently endorsed by the commission on Human Rights and the General Assembly. Throughout the 1980s, the United Nations continued to take an active interest in this topic and a series of reports prepared by the Secretary-General were presented to the General Assembly. It was during this time that a considerable number of national institutions were established- many with the support of the United Nations Centre for Human Rights.

In1990, the Commission on Human Rights called for a workshop to be convened with the participation of national and regional institutions involved in the promotion and protection of human rights. The workshop was to review patterns of cooperation between national

[3] Economic and Social Council resolution 2/9 of 21 June 1946, sect. 5
[4] See ST/HR/SER.A/2 and Add.1

institutions and international organizations, such as the United Nations and its agencies, and to explore ways of increasing the effectiveness of national institutions. Accordingly, the first International Workshop on National Institutions for the Promotion and Protection of Human Rights was held in Paris from 7-9 October 1991. Its conclusions were endorsed by the Commission on Human Rights in resolution 199/54 as the Principles relating to the status of national institutions (the "Paris Principles"), and subsequently by the General Assembly in its resolution 48/134 of 20 December 1993. The principles affirm that national institutions are to be vested with competence to promote and protect human rights and given as broad a mandate as possible, set forth clearly in a constitutional or legislative text.

2.3 LEGAL FRAMEWORK AND STRUCTURE OF THE COMMISSION OF THE PERMANENT HUMAN RIGHTS COMMISSION

It is clear that a good legal framework is of the essence when it comes to the vesting of competence and mandate, in lucid terms, to a national human rights institution. Actual or prospective strength and effectiveness are unswervingly related to the legal mandate of the institution. A national institution which is rendered weak or ineffective by its constitutive law can increase its technical competence, but in the absence of legislative change it will never completely overcome its structural inadequacies.[5]

The Human Rights Commission is a constitutional body established under Article 125 of the Constitution of the Republic of Zambia. The Commission derives its functions and powers from the Human Rights Commission Act No. 39 of 1996 (HRC Act). The HRC

[5] National Human Rights Institutions; A handbook on the Establishment and strengthening of National Institutions for the Promotion of Human Rights, UNITED NATIONS New York and Geneva, 1995.

Act, in section 5(1), provides that the Commission shall consist of a Chairperson, Vice Chairperson and five other Commissioners.

The functions of the Commission, as set out in section 9 of the HRC Act, are as follows: 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 recommendations 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.

Under Section 15 of the HRC Act, the Commission has power to set up committees to which it can delegate its functions as it considers fit. These are:
Access to Justice and Freedom from torture Committee, the Children's Rights Committee, Civil and Political Rights Committee, Economic, Social and Cultural Rights Committee and the Gender Equality Committee[6].

The Commission is empowered by Section 18 of the HRC Act to appoint a Director, Deputy Director and such other staff as it may consider necessary. The Secretariat

[6] Human Rights Commission, Annual Report 2005. P.2

is structured around the core functions of the Commission and necessary support functions as follows[7];

Information, Education and Training Department (IET)

The role of this department is to inform, educate and sensitise members of the public on human rights issues by providing information and education materials, carrying out human rights education and sensitization tours and workshops around the country for both informal and formal sectors in order to enhance the culture of respect for human rights. The department also translates and simplifies domestic and international human rights instruments so as to avail the information to a larger section of the society.

Investigation and Legal Department (IL)

The IL Department's function is to investigate cases of human rights violation and abuse. It also investigates cases of maladministration of justice, conducts visits to prisons and other places of detention with a view to inspecting conditions of persons held in such places, and make 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.

[7] Human Rights Commission 2003, Annual Report

Research and Planning Department (RP)

This department carries out research into identified human rights issues. It carries out surveys on ways and means of reaching the people. The department ensures effective liaison and networking with organizations involved in human rights in order to harmonise efforts, and maintain standards in human rights promotion. It also keeps custody of documentary materials in order to provide information to end-users.

Finance and Accounting Section (FA)

This section handles all fiscal mattes of the Commission

Human Resource and Administration Section (HRA)

This section is responsible for staff recruitment, performance appraisals, staff orientation and everything to do with personnel and administration.

Provincial Offices

Apart from the Head Office in Lusaka the Commission had four provincial offices by 31st December 2005 located in Chipata (Eastern Province), Kasama (Northern Province); Mongu (Western Province) and Ndola (Copperbelt Province). But in 2006 a new one was opened in Livingstone (Southern Province).

2.4 THE RELATIONSHIP BETWEEN THE COMMISSION, GOVERNMENT AND OTHER INSTITUTIONS

The issue of establishing and sustaining links with other institutions and organizations is very pivotal in the achievement of effectiveness by the Commission. This position was emphasized by Mrs. Mary Robinson, the United Nations High Commissioner for Human Rights, who visited the Commission on 11 July 2001 to familiarize herself with the operations of the Commission. At a meeting with the Commission, Mrs. Robinson urged the Commission to work closely with the non-governmental organizations and civil society in the promotion and protection of human rights[8].

The Commission has witnessed continued support from cooperating partners. In this regard, support has come through from the Danish Embassy, Finnish Embassy, Norwegian Embassy, Swedish Embassy and the United Nations Development Programme (UNDP).

The Judiciary

A properly functioning and independent judiciary is the basic structure for the protection of human rights at the national level. Article 28 of the Constitution empowers the High Court to hear and determine applications from persons alleging violations of their rights ensured in Part III. The High Court can, in this respect, make such order, issue writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of any of the provisions of articles 11-26 of the Bill of Rights[9]. Any person

[8] Human Rights Commission 2002, Annual Report

[9] Constitution of the Republic of Zambia, Chapter 1 of the Laws of Zambia

aggrieved by any determination of the High Court may appeal to the Supreme Court provided the High Court has not determined the matter to be frivolous and vexatious. The Industrial Relations Court (IRC) arbitrates in labour matters. Workers who feel aggrieved whether through dismissals or other kinds of disputes can initiate process in the IRC. The IRC has dealt with industrial cases of all types and there is a wealth of case law on industrial relations. Therefore in this it would be very beneficial for the commission to have a good network system with all the courts to aid in the execution of its mission.

The Ombudsman (Commission for Investigations)

The office of ombudsman has become an integral part of public institutions in a number of countries. The Ombudsman (who may be an individual or a group of persons) has the primary function of protecting the rights of individuals who believe they are victims of unjust acts on the part of the public administration. Accordingly, the ombudsman will often act as an impartial mediator between an aggrieved individual and government[10]. The ombudsman receives complaints from members of the public and will investigate these complaints provided they fall within the ombudsman competence. In the process of investigation, the ombudsman may have general access to any public documents relevant to its investigations. Though the ombudsman acts on complaints made, it may commence investigations on its own initiative. In Zambia the Ombudsman is the Investigator General. The powers and functions of the Investigator General are contained in the Commission for Investigations Act. A hand in hand working relationship between the Ombudsman and the Commission is therefore inevitable and hence calls for a formal well set out system of a good collaboration of the two institutions.

[10] UN fact sheet No. 19

Non Governmental Organisations (NGOs)

Non-Governmental organizations are crucial to the promotion and protection of human rights. In Zambia, NGOs such as Foundation For Democratic Process (FODEP), Women and Law in Southern Africa (WLSA), Women in Law and Development In Africa (WILDAF), National Women's Lobby Group (NWLG), AFRONET, Women for Change and many others have, in their respective activities, contributed a lot to human rights awareness. NGOs operate subject to differing mandates each corresponding to its own priorities and methods of action, bringing a range of viewpoints to the human rights movement[11].

NGOs can call on the government to and compel consideration of policies and programmes that have been designed in disregard or violation of human rights. They are, therefore, a vital force in the effective realization of human rights and fundamental freedoms in Zambia. Those that have a proven record of promoting human rights must receive the necessary financial and material support from donors and the general public as well. The Commission thereby makes efforts at sustaining its links with such NGOs and this is a step in the right direction.

Other Stakeholders

To ensure that human rights standards are adequately implemented in Zambia, the Commission cannot work alone and must draw on the cooperation of other players in the

[11] Steiner and Alston, International Human Rights In Context, Claredon Press. 1996

Human Rights field. These other players are both local and international. The realization of human rights by all persons in Zambia without discrimination on any ground will depend on cooperation and networking between the Commission and other stakeholders. These other stakeholders include: the government of the Republic of Zambia, Anti- Corruption Commission, Drug enforcement Commission and the Electoral Commission, the Police Service; International Institutions such as the United Nations and its specialized agencies and bodies including the UNDP, UNICEF, UNESCO, UNHCR, WHO, FAO, and others within the UN system.

All these stakeholders have a mandate to fulfill in the promotion and protection of human rights in Zambia. There is, therefore, need to work out a viable system of networking and collaboration to ensure effective monitoring, supervision and evaluation of the human rights situation in the country.

Government

When looking at government in reference to human rights the view here taken is the political will to uphold human rights, without this will efforts by these institutions in collaboration with the Commission are prone to frustration. Further hindrances may arise from government bureaucracy as a result of which the due process of law may be choked in the doctrine of laches (justice delayed is justice denied). The case of **Kachasu v. Attorney General**[12] an 11 year old girl, a member of the Watch Tower Sect, was suspended from school for refusing to sing the national anthem and to salute the national flag. Despite finding that the petitioner had been hindered in the exercise of her freedom of conscience,

[12] Kachasu v. Attorney- General (1967) Z.R 145

the court, nevertheless, upheld the law under which she had been suspended on the ground that it was reasonably required "in the interests of defence, public safety, and public order". In **Patel v. Attorney General**[13] where the petitioner's property was searched without warrant and seized the court upheld the government action on the ground that the impugned regulations and action were adequately covered by the derogation clauses. In the relatively recent case of **the people v. Bright Mwape and Fred Mmembe**[14] the two petitioners were charged with defamation of the president contrary to section 69 of the Penal Code. They challenged the constitutionality of this section on the ground that it conflicted with the constitutional guarantees of freedom of expression and the press guaranteed in Article 20 of the constitution and freedom from discrimination in Article 23. Although the court agreed with the petitioners that their rights under the constitution had been hindered, it sustained the impugned law on the ground that it was reasonably required in the interests of defence, public safety and public order. The Supreme Court upheld the judgment of the High court. Sadly in third world countries the government tends to be the biggest culprit of human rights violations this problem is heightened by the lack of separation of powers and autonomy of various government agencies.

In its plan of action for 1999-2009, the Commission suggested the remedy of consultative workshops with stakeholders. With government the suggestions included: advising parliament, the Executive and/or the judiciary on human rights issues and to assist these branches of government in promoting and protecting human rights. To bring matters concerning human rights to the relevant ministry, department or official, draw government's attention to situations of human rights violations and for making concrete

[13] (1968) Z.R 128
[14] HPR/36/94

proposals for initiatives to end such violations. It also highlighted overseeing the implantation of international human rights standard and assisting government in fulfilling its reporting obligations under international treaties to which Zambia is a party, and encourage ratification of international treaties not yet ratified; working out mechanisms of implementation which would make the realization of international standards a practical reality.[15] Efforts towards achieving these aims are being made but at snail's pace. It would be a great environment that respects human rights and fundamental freedoms if government, the Commission and all the stakeholders worked well in a set out system that ensures specialization and input from all walks of life.

2.5 CONCLUSION

In conclusion, it can be said that having explained the history of National Human Rights institutions as far back as when the 'Paris Principles' were coined, as well as discussing the legal framework and structure of the Commission, this chapter has shown the importance of a network of relationships between the Commission on one hand and the government and other institutions and stakeholders on the other hand. With this in view it is now essential to look at the constraints that commission faces in the execution of its mission and these include financial, legal, political and other hindrances that the commission faces. This is contained in the next Chapter.

[15] P 56

CHAPTER THREE

3.1 INTRODUCTION

An institution may set out with a determination to reach a certain goal and really be devoted to carrying out its mission until it is faced with problems which hamper its good intentions. When constraints are too overwhelming, they tend to cloud the good works of organizations and negate the efforts of its staff. It is in view of this that this chapter sets out to outline the constraints faced by the commission in the quest to assess just how efficient it is.

3.2 CONSTRAINTS FACED BY THE COMMISSION

From the time the commission was established in 1997 to date, it has faced constraints some of which can be seen as a direct consequence of the fact that the commission was yet to find its feet in practice as it was a new establishment. The Commission faces a number of difficulties in its quest to discharge its mandate. Most of the constraints outlined below have now become recurrent problems for the Commission and have adversely affected its effectiveness and efficiency to address the human rights problems of the public.

3.2.1 STAFF

With regard to staff, since 1997 the Commission has been operating with a skeleton staff. Some departments only had one person even after 4 years of establishing the commission[1], a factor that heavily affects efficiency and productivity. The position now has changed as recruitments have been made even though the problem of inadequate human resources still continues to be faced.[2] Later in the years however, the Commissioners and management attended a Job Description workshop in Siavonga organized by the Management Development Division of Cabinet Office for drawing up job descriptions for all positions in the Commission. This helped the Commission to know exactly what the vacant positions would entail and made it easier to recruit staff. The authorities, nevertheless, by the time of the annual report of 2001, were yet to issue the Treasury Authority which would make it possible to pay staff on the recommended salaries and be able to recruit and fill all the vacant positions.[3] The shortage of staff continued and was so adverse such that in 2003 the Commission did not hold public hearing meetings. This is because there was only one Commissioner at the Commission and, thus, it became impossible to have a quorum[4] as the Human Rights Commission Act[5] provides for a quorum of five Commissioners.

In the same year of 2003, the Investigations and Legal Services Department was in dire need of more Investigations Officers. Those that were working could not cope with the

[1] Human Rights Commission 2001, Annual Report.

[2] Humna Rights Commission 2004, Annual Report.
[3] ibid
[4] Human Rights Commission 2003, Annual Report
[5] Section 14 (5) of Act No. 39 of 1996

great number of complaints the Commission received each day. Although the mobility of investigators had been improved with Finnish support, there were still cases that could not be investigated with the necessary speed because of a shortage of Investigations Officers[6].

The recruitment exercise, which had began with advertisements in late 2002, was suspended following the retirement of the Commissioners in April 2003. The development meant that the Commission continued to operate with skeleton staff throughout the year as has been the case since 1997. The only section that was fully functional by 31 December 2003 was the Finance and Accounting Section, where recruitment had been completed before the Commissioners left.

The Commission, thus, continued to have a critical shortage of essential personnel like lawyers and investigators. The Research and Planning Department and the Information and Education Services Department continued to be one person departments, with only the Heads of Department in place by the end of 2003. Lawyers and investigators are very important personnel that the Commission cannot reasonably exist without as the core of its work has to be carried out by them, so when they are not available, the Commission suffers a great deal

The Commission has therefore never had a full staff compliment since inception in 1997. In 2005, the Commission operated on 30% of its approved staff establishment. Key

[6] Human Rights Commission 2003, Annual Report

departments like the Research and Planning and Information, Education and Training Departments had no members of staff during the first quarter of the year. The heads of department were only recruited in the second quarter of 2005.

Table 1 below indicates the staffing situation as it stood as at 31 December, 2005.

Table 1[7]: Number of Staff as at 31 DECEMBER 2005

	TITLE	APPROVED	ACTUAL
1	Director	1	1
2	Deputy Director	1	1
3	Chief, Information and Education	1	1
4	Chief, Research and Planning	1	1
5	Chief, Investigations and Legal Services	1	1
6	Head, Human Resource & Administration	1	1
7	Head, Finance and Accounting	1	1
8	Principal Legal Counsel	1	1
9	Principal Investigations Officer	1	-
10	Principal Research & Documentation Officer	1	-
11	Principal Planning & Collaboration Officer	1	-
12	Principal Information Officer	1	-
13	Principal Education Officer	1	-
14	Legal Counsel	2	-
15	Senior Investigations Officer	2	2
16	Investigations Officer	7	1
17	Planning & Programme Development Officer	2	-
18	Research and Collaboration Officer	1	-
19	Information Officer	2	-

[7] Human Rights Commission 2005 Annual Report

20	Education & Training Officer	2	-
21	Materials Production Officer	1	-
22	Photographer	1	-
23	Camera Person	1	-
24	Visual Aids Technician	1	-
25	Administrative Officer	1	-
26	Purchasing & Supplies Officer	1	-
27	Human Resources Officer	1	1
28	Personal Assistant	1	1
29	Personal Secretary	1	1
30	Secretary	8	1
31	Stores Officer	1	-
32	Accountant	1	1
33	Internal Auditor	1	1
34	Assistant Accountant	2	2
35	Accounts Assistant	2	2
36	Provincial Co-ordinator	8	-
37	Provincial Education & Information Officer	8	-
38	Senior Investigations Officer (provinces)	8	1
39	Investigations Officer (provinces)	8	-
40	Registry Officer	1	-
41	Librarian	1	-
42	Registry Clerk (Investigations)	3	3
43	Committee Clerk	3	2
44	Registry Clerk (Policy)	2	2
45	Telephonist/Receptionist	1	1
46	Receptionist/Typist (Provinces)	8	1
47	Driver/Mechanic	11	11
48	Classified Daily Employee	4	4
49	Office Orderly/Cleaner (provinces)	8	-

It can be seen from the above that out of the positions that were approved, a substantial number of them still remained unfilled therefore straining other position holders to work outside their contracted terms of employment. This adversely affects the results yielded at the end of the day as there is no specialisation as such, in the sense that a receptionist may be asked to investigate human rights violations and the results may not be as desired, this may lead to inefficiency.

3.2.2 OFFICE ACCOMMODATION

From 1997 office accommodation was not a big problem since there were not many people operating at the newly established commission. The year 2002 saw a number of constraints, the anticipated increase in the staff complement following the granting of treasury authority raised concerns on office accommodation[8]. The current premises occupied by the Commission are limited in space and cannot accommodate more people. In 2003 The Commission continued to experience a critical shortage of office accommodation. The situation gets worse with the recruitment of staff as per approved structure. The Commission needs to be well situated with adequate space to aid its day to day duties and hence the need for better accommodation. When there is no office space, recruitment of new staff is affected and this may result in inefficiency.

[8] Human Rights Commission 2002, Annual Report.

3.2.3 TRANSPORT

From 1997 the commission has also been experiencing the problem of transport and this continued to be a major problem. The Commission could not operate efficiently especially with regards to investigations and sensitisation tours until late in the year 2001 when Finnish Embassy provided funds to repair two vehicles for use by investigators. The problem of transport however, seems to have been a continuing challenge in 2002 despite the help from the stakeholders.

The Commission experienced a critical shortage of transport during the year 2003[9]. This situation negatively affected important activities like investigations and sensitisation. The problem of transport spelt into the year 2004 and continued to seriously hampere the Commission's ability to undertake investigations into alleged human rights violations and to conduct country wide visits and sensitisation activities. Much of the Commission's fleet has aged and vehicles were constantly breaking down[10]. During the year 2005 as in previous years key functions such as investigations were hampered by a serious shortage of transport to take the investigators round. Other areas affected by lack of adequate transport were research and sensitisation activities and day to day operations of the Commission. The Commission's budget for 2005 could not accommodate the purchase of new vehicles to replenish its fleet of pool vehicles[11]. Some relief was, however, provided through the support that cooperating partners gave to the Commission and new vehicles were purchased in 2006.

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[9] Human Rights Commission, 2003 Annual Report
[10] Human Rights Commission, 2004 Annual Report
[11] Human Rights Commission 2005 Annual Report

3.2.4 FINANCIAL CONSTRAINTS

From the time the Commission was established, the problem of inadequate funding continues to be faced. This was reflected in 2001 when only K1, 469,915 was approved to cover all the activities and programmes of the Commission, including personal emoluments. No provision was made for decentralization of the Commission to the provinces, investigations of human rights violations throughout the country and research into human rights issues to provide data for planning and decision making. The Commission as a new institution needed increased budgetary allocation if it was to execute its mandate to meet the expectations of society. A comparison of the years 2002 and 2003 shows a 31% reduction in funding in one year[12]. Inadequate funding has been the source of most of the problems the Commission is facing. For instance, although Treasury Authority was obtained in February 2002, the Commission still failed to recruit qualified personnel due to budgetary constraints – imposed through the Ministry of Finance and National Planning.

Table 2 below shows the trend in the release of funds to the Commission by the treasury over a period of six years. The figures show fluctuations in funding from year to year and from month to month.

[12] Human Rights Commission 2003 Annual Report

Table 2[13]

Month	1997	1998	1999	2000	2001	2002	2003
Jan.	Nil	Nil	64,718,500	16,749,529	59,027,351	79,161,141	203,124,441
Feb.	Nil	25,000,000	53,773,115	487,663,457	77,579,537	74,423,446	125,124,432
March	Nil	211,369,797	44,044,083	87,935,555	119,779,893	500,521,918	373,016,690
April	Nil	Nil	70,889,953	677,038,328	76,559,493	227,946,409	212,655,550
May	200,000,000	31,84,830	44,044,000	156,141,,102	82,730,552	195,016,911	212,655,550
June	81,666,667	120,509,486	180,044,000	76,991,601	92,730,552	427,946,409	165,000,000
July	Nil	132,912,115	51,620,069	569,888,828	81,516,076	965,641,458	188,827,775
Aug.	Nil	27,000,000	51,057,334	65,324,605	76,150,472	827,946,409	200,175,769
Sept.	Nil	120,509,486	30,000,000	56,320,409	282,730,552	163,298,921	548,160,550
Oct.	Nil	30,000,000	30,000,000	21,057,334	557,250,252	295,016,911	213,953,637
Nov.	15,000,000	21,136,677	57,896,167	60,820,133	74,734,437	163,298,921	253,674,268
Dec.	300,000,000	15,943,573	41,569,083	42,614,586	63,298,921	295,016,911	209,337,134
Total	596,666,667	846,225,964	710,713,638	2,852,738,385	1,116.533,625	4,215,235,765	2,905,697,803

It would be good if the funding to the Commission was both standard and consistent or on the increase but never fluctuating as shown above. The operations of the Commission were mainly determined by budgetary allocations received from the treasury. For the year 2004, the approved budget for Recurrent Departmental Charges (RDCs) for the Commission was K1.2 billion. Realistically, the Commission required an estimated K12.9 billion in order to discharge its mandate effectively[14]. Clearly the difference was huge and one can only imagine how many activities had to be compromised in order to work with available funds

[13] Human Rights Commission 2003, Annual Report
[14] Human Rights Commission 2004, Annual Report

As reported in the 2004 Annual Report, the Commission extended its activities to the Copperbelt, Northern and Western Provinces. This meant that the new branches had to be accommodated within the approved budget for 2004. By the end of the year, Mongu and Kasama offices were not operating despite having been officially opened. This calls for more and more money in order to operate, the budget allocations should therefore take all these factors into serious consideration.

In 2004, the staffing situation at the Commission remained below the approved levels during the year. The recruitment exercise, which had been suspended in 2003, remained on hold. The Commission could not get additional budgetary allocation to enable it recruit to full establishment. The Commission required an estimated K12.1 billion to fill its entire establishment. The approved budget for personal emoluments amounted to K2.6 billion, catering only for positions already filled. In this regard, the Commission continued to be heavily understaffed, with only 43 members of staff against an approved establishment of 130. By the end of the year, the Research and Planning and Information, Education and Training Departments had no officers, this problem was later dealt with when the offices were filled in 2005. The investigation of human rights violations in 2004 was exacerbated by the critical shortage of investigation officers. According to the approved staff structure, the Commission requires a total of 15 investigations officers and this continues to be the position at present.

3.2.5 LEGAL CONSTRAINTS

The year 2002 presented a number of constraints and challenges to the Commission. In the aspect of decentralisation, although the Commission received support from the Royal Norwegian Embassy towards its decentralisation programme, progress stalled due to legal technicalities. It was discovered that under the current Human Rights Commission Act, the Commission has no capacity to own real property in its own name. This problem delayed the completion of the transaction to purchase offices in Ndola in the Copperbelt Province.

The Commission has been pressing for the incorporation of all human rights treaties ratified by Zambia into domestic laws. This is one of the main problems that lawyers and citizens in general face in the area of enforcing international human rights standards in the country due to non domestication as Zambia is a dualist country. This has been a challenge that has been faced by the Commission.

Other legal challenges have been lobbying for reform of various Zambian laws that impact negatively on the enjoyment of human rights. The Commission is seeking amendments to the Human Rights Commission Act 39 of 1996 for it to have quasi-judicial powers to enable it make legally binding decisions. The current law where the Commission is only allowed to make recommendations does not afford adequate remedy for people who seek the Commission's services through submission of complaints. Other legislation that requires review, amending or repealing to make it more effective in

protecting human rights include among others the Constitution and the Public Order Act to make the economic, social and cultural rights justiciable and the freedom of assembly and expression freely enjoyable respectively.

3.2.6 POLITICAL CONSTRAINTS

During the year 2001 the human rights situation in Zambia was unsatisfactory due to various factors such as political intolerance, domestic violence, property grabbing, torture and inhuman treatment, child abuse, workers rights and the deplorable condition of prisons and police cells.

Political intolerance is also one factor that has in the past had an impact on the operations of the commission. The year 2001 was an election year and there were a lot of political activities in the country. Being the second and last term for the incumbent President Dr. Fredrick Chiluba, there were initiatives to change the Constitution to allow for a third term. This brought about a lot of acrimony, despondency, near instability and an upsurge of political intolerance in the country. During such periods, the Commission is under immense pressure as it is on the look out for any abuse of rights by politicians and goes around the country sensitizing the people of Zambia on their rights especially in relation to elections. The constraint comes in when there is complete apathy towards all activities during such periods as it is a notorious fact that ordinary citizens who do not experience the benefits of democracy through voting decide to stay away from the polls and all related activities. They then give a deaf ear to the commission and the work of the

Commission is in such and many other ways hampered. In 2006 the political situation was better than that of 2001. Hence the political environment of the election year of 2006 saw fewer human rights violations in comparison with 2001.

3.3 CONCLUSION

The constraints outlined above adversely affected the operations of the Commission, for instance, the Commission generally did not carry out meaningful sensitization activities apart from the beginning of the year 2003 with the law enforcement workshops in Southern Province, which were a carry-over from 2002, and the radio and television programmes arranged as part of the commemoration of the Tenth Anniversary of the Paris Principles in December. Other core activities continued albeit with major difficulties. The low staff levels impacted negatively on the effective implementation of the programmes of the Commission. The critical shortage of staff was aggravated by an even more critical shortage of transport. However, it is good to note that after 2005 there were new motor vehicles that were purchased for the commission in most provinces and this partially did away with the problem of transport

The critical shortage of qualified staff and transport were compounded by very low budgetary allocation. With limited funding, low levels of staff and transport, most of the planned programmes of the Commission remained on the shelves. The investigation of human rights violations was concentrated in Lusaka. Human rights sensitisation

programmes could not be implemented to the expected levels. The lack of adequate funds implied that decentralisation would have to be put on hold for a while. This situation was not only worrying to the Commission but also the cooperating partners who had invested financial and material resources to assist the Commission to decentralise.

Despite the limited human, financial and material resources, however, the Commission took its statutory mandate seriously and discharged it diligently. Having endeavoured to consider the constraints that are faced by the commission in the execution of its mandate, it is now expedient to ascertain the effectiveness of the Commission against the elements of an effective human rights institution as provided by the United Nations. This is discussed in the next chapter.

CHAPTER FOUR

4.1 INTRODUCTION

This whole paper has taken the direction that ultimately leads to the ascertainment of the effectiveness of the Permanent Human Rights Commission. In the first Chapter it endeavored to introduce the concept of the Commission and how it was established. In the second and third chapters, it discussed the history of national human rights institutions, the legal framework of the Zambian Human Rights Commission and how it relates with other institutions and what constraints hamper the execution of its mandate. This Chapter draws on a lot of information that has been provided in the previous chapters in the sense that in order to determine just how effective the commission is, factors such as independence, jurisdiction, cooperation and accessibility will be evaluated and these are linked to previously discussed matters. It shall first outline the elements of an effective functioning human rights commission according to United Nations standards and then proceed to determine as to whether the Zambian human rights commission is effective as will be measured against the above mentioned standards. Lastly it will endeavor to give a few explanations as to why the commission performs in the way it does after which a conclusion will be drawn.

4.2 THE ELEMENTS OF AN EFFECTIVE FUNCTIONING HUMAN RIGHTS INSTITUTION#

The Vienna Declaration and Programme of Action adopted by the 1993 World Conference on Human Rights specifically recognized the right of each state to choose the framework for a national human rights institution which is best suited to its needs. This provision represents a clear acknowledgment of the fact that the great differences which exist between States will necessarily be reflected in the structures which they create to implement international human rights standards. The effectiveness of a national human rights institution can be measured by reference to the extent to which the institution positively affects the human rights situation of individuals and groups in a given society and in so doing the factors below have been devised in order to aid in assessing just how effective an institution is[1].

4.2.1 INDEPENDENCE

An effective national institution will be one which is capable of acting independently of government, of party politics and all other entities and situations which may be in a position to affect its work. At best, however, a national institution will enjoy a measure of qualified independence the implication of which must be considered contextually. Restrictions on independence should not be such as to interfere with the ability of an institution to discharge its responsibilities effectively. Independence is in many ways; one

[1] Center for Human Rights, National human right Institutions, United Nations; New York and Geneva 1995. p.10

is through legal and operational autonomy and this may be achieved by making the institution directly answerable to parliament or to the head of state. Operational autonomy refers to the ability of a national institution to conduct its day to day affairs independently of any other individual, organization, department or authority. An effective national institution will have drafted its own rules of procedure and these rules should not be subject to external modification. Nor should the recommendations, reports or decisions of the institution be subject to review by another authority or entity, except where specified in the founding legislation. The legal authority to compel cooperation of others, particularly government agencies, is another prerequisite for full operational autonomy of a national institution which is vested with the power to investigate complaints[2].

Independence can also be through financial autonomy. A national institution with no control over its finances will be dependent on the government ministry or other body which exercises such control. Where possible, the source and nature of funding for a national institution should be specified in its founding legislation. Regardless of the particular strategy adopted, it will generally be advisable to ensure that the budget of a national institution is not linked to the budget of a government department or ministry. Furthermore, the budget of the institution should be secured so that no official decision or action of the institution will affect its budget allocation. Financial autonomy must be accompanied by adequate, continuing funding[3].

Independence is also seen through appointment and dismissal procedures. Any institution can only ever be as independent as the individuals of which it is composed. Without this,

[2] Ibid p.11
[3] Ibid

independence cannot really be achieved. The terms and conditions applicable to members of national human rights institutions should be specifically set out in the founding legislation. The granting of certain privileges and immunities to members of the institutions is another legal means of securing independence[4]. The members of a national institution should enjoy immunity from civil and criminal proceedings in respect of acts performed in an official capacity

Independence can also be achieved through having a representative composition of the commission which should reflect a degree of sociological and political pluralism; this requires the greatest diversity possible. The representation should as far as possible reflect the social profile of the community within which it operates, an example would be where a commission is composed entirely of men and no women, this clearly would not be representative.

4.2.2 DEFINED JURISDICTION AND ADEQUATE POWERS

For the commission to be effective, it should possess clearly defined subject-matter jurisdiction which should be set out in its founding legislation. Jurisdiction also involves consideration of the precise legislative basis of specific functions; it also involves the question of the categories of individuals or entities on which the institution may focus in the course of its work. Such a defined structure will be very efficient in providing the intended protection to the institution's beneficiaries[5]. In achieving efficiency and effectiveness, the commission will not only need to have defined jurisdiction but also

[4] Ibid. p.11
[5] Ibid p.12

adequate powers. Power in this context is used to mean "the ability of a national institution to perform a certain act or to compel such performance by an individual or other entity."[6] This power has to be enforceable and established by law, the commission must be granted with such powers to permit the effective discharge of its responsibilities. The evaluation of the adequacy of the commission's powers should be made with reference to the functions which it was established to perform.

4.2.3 ACCESSIBILITY

Accessibility is an obvious feature of effectiveness of the commission in that if the beneficiaries can not have easy and ready access to the institution, then the whole purpose of its existence is threatened. Accessibility cannot be achieved solely through structural measures but will be influenced by all aspects of an institution's organization and procedure[7]. In an attempt to improve accessibility of the institution, a few practical matters have to be taken into account and these include firstly the issue of awareness of the institution. Clearly one can not have access to something they know not of. Therefore for the commission to be accessible to the citizens, it has to make efforts at disseminating knowledge of its work and purpose of existence. Secondly, it needs to be actually physically present in the districts and local areas where people can easily and quickly turn to it in times of violations or where human rights sensitization in a particular field is necessary. However, decentralization is usually an expensive venture and an alternative may be recruiting field officers to serve in different regions. Lastly accessibility can be

[6] Ibid p.13
[7] Ibid

achieved through a representative composition of the commission which represents all components of civil society including those whom the institution has been established to serve.

4.2.4 COOPERATION

It is cliché that 'no man is an island', in the same way no institution is an island and help from other individuals and entities is always called upon. In this view, the Paris Principles relating to the status of national institutions provide that these institutions should "cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of promotion and protection of human rights". This principle was included in recognition of the fact that an effective national institution will not function alone but will establish and strengthen cooperative relationships with a wide range of other organizations and groups[8].

4.2.5 OPERATIONAL EFFICIENCY

The commission must take care to ensure that its methods of work are as efficient an effective as possible. Operational efficiency touches all aspects of an institution's procedures, from the recruitment and selection of personnel, to the development of working methods and rules of procedure, to the implementation of regular performance reviews. This kind of efficiency will be achieved when there is sufficient human

[8] Ibid. p8.

resources and adequate, continuing funding. It is unlikely that any institution will operate with excess staff or with a comfortable budget surplus. For this reason, all institutions should endeavor to develop methods of managing scarce resources[9]. The effective management of resources requires a strict setting of priorities and adherence to a fixed and approved budget plan. The commission may also usefully develop contacts in order to obtain external financial and technical support. Additionally, it would be advantageous if the commission establishes its own working methods and rules of procedure. The efficiency, representative nature and impartiality of individual staff members can have a crucial effect on its operation and its public image. The commission should therefore be given power to recruit its own support staff.

4.2.6 ACCOUNTABILITY

The commission can only be as strong as its achievements. Institutional effectiveness requires the development of a system of accountability based on specific, ascertainable goals. In accordance with its legislative basis, a national institution will invariably be legally and financially accountable to the Government and/or parliament. This aspect of accountability is most usually dealt with through reporting obligations. National institutions are generally required to submit detailed reports of their activities to parliament. These institutions should also be directly accountable to its clients, by subjecting all official reports to public scrutiny and comment, and/or by encouraging

[9] Human Development Report, 2007

public debate; this can motivate internal excellence and public awareness of the institution[10].

4.3 THE EFFECTIVENESS OF THE COMMISSION

Having highlighted the basic elements of an effective human rights institution, it is now prudent to determine just how effective the Zambian Human Rights Commission is. This determination will be more focused on the legal as opposed to operational efficiency although all aspects will be evaluated in order to comprehensively and concretely assess the efficiency of this very important institution.

Section 3 of the Human Rights Commission Act[11] gives the commission independence by providing that:

"The commission shall not, in the performance of its duties, be subject to the direction or control of any person or authority."

This provision is good and grants complete operational autonomy to the commission, however with regard to financial independence, it is questionable whether the Act grants financial autonomy to the commission as section 22 provides that:

"(1) The funds of the Commission shall consist of such moneys as may;

(a) be appropriated by Parliament for the purposes of this Act;

(b)be paid to the Commission by way of grants or donations; and

(c) vest in or accrue to the Commission.

(2) The Commission may subject to the approval of the President;

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[10] Ibid p.15

[11] Act No.39 of 1996

(a) accept money by way of grants or donations from any source; and

(b) raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions."

The use of the word ***'may'*** in subsection (1) of the above provision does not oblige Parliament to appropriate money to the Commission but only gives Parliament a privilege in which it may or may not appropriate funds to the Commission. This can greatly hamper the workings of the Commission should there be a time when Parliament exercises this privilege as it would discontinue the flow of the much needed funds.

Subsection (2) of the above provision makes it possible for the Commission to get external funding or raise its own only subject to Presidential approval. These positions negative financial autonomy of the institution as they grant power to other offices. This clearly affects the objective running of the Commission as consideration for the incumbent has to be had in all operations as he/she ultimately has a say in how much money the Commission gets and from whom. The Commission's biggest constraint has been lack of clarity regarding the status of its staff and Commissioners. This has affected funding and the recruitment of staff[12].Under section 26 the Commission has the power to make rules regarding appointment, disciplinary control, termination of appointments, practice and procedure and delegation of its functions or powers. Section 20 grants the Commissioners and staff immunity from civil and criminal liability for works done in their official capacity.

[12] Dr. Mulela Magaret Munalula [for Transparency International] August (2002) Government Watchdog Institutions; A Position Paper. P.30

Section 10 of the Act grants enough powers to the Commission in such a way that it gives locus standi to basically anyone and this is good for the effective capturing of all human rights abuses and violations. This provision is good in the sense that even though it gives subject-matter jurisdiction, it is not restrictive and hence may accommodate a wide variety of problems that the commission may deem to be in their jurisdiction. Under Section12, the Commission is required to conduct all sittings in public with the exception of those it thinks have to be carried out in camera.The reports of such sittings also have to be made public. This is good in that it stimulates public awareness, interest and participation despite the fact the general attitude and culture in Zambia is not to get involved in public issues unless you are a party to the proceedings. The publicity of such things by the Commission may encourage citizens to have the right attitude when it comes to human rights issues and hence increase the effectiveness of the Commission in the long run.

The major weakness of the Commission is that its recommendations are not binding or obligatory and hence they cannot compel a perpetrator to act in one way or refrain from acting in a certain way. This is found in Section 13. This sometimes is a great frustration of the work of the Commission and a waste of tax payer's money when the institution in question chooses to ignore or turn down the recommendation by the Commission despite all intellectual, financial and other resources pumped into making the said recommendation. This is the main reason why the Commission has been said to be defunct and hence the position of this paper that despite the many efforts that the Commission has taken to ensure efficient carrying out of its mandate, it has generally been ineffective and hence human rights violations continue to be on the increase. The

main reasons can be said to be ignorance of the larger percentage of the Zambian population of their human rights as they are illiterate /non- concerned and thus face difficulties in detecting human rights infringements when they occur. The other reasons can be said to be the many constraints that the Commission faces that clearly negate all other good works thereby painting the inefficiency picture. Aside from the constraints discussed above could be the fact that very little effort is made at making the commission operate as locally and grass root as possible, granted translations of literature has been done but like everything else, Zambia just normally imports ideas and laws and does very little adjustments to fit the local culture and needs. This is evident as most of the information at the Commission still maintains a form tailored for an educated population and this is not suitable for the many illiterate and uneducated Zambians who are usually the victims of human rights violations. Translators of the materials are being sought though only on contract basis.

4.4 CONCLUSION

It has been shown that though national human rights institutions may differ from place to place, there are certain basic measures that each institution must achieve in order to be effective and these include independence, defined jurisdiction and adequate powers, accessibility, cooperation and accountability. Against these and a few more, the Zambian Human Rights Commission was evaluated and it was found that it is ineffective. This is not good for the national human rights institution which has been in existence for 10 years and should have found its feet and taken ground by now hence recommendations of how it can improve on its effectiveness are given in the next chapter.

CHAPTER FIVE

5.1 INTRODUCTION

Although the Zambian Human Rights Commission has made great efforts at its work, it has had more deficiencies than efficiencies hence conclusion of this paper that it has generally been ineffective since its establishment in 1997. Recommendations will now be made on strengthening its effectiveness.

5.2 RECOMMENDATIONS

There is an urgent need for the Government, as the main source of funding for the Commission, to consider improving funding allocations to the Commission. This can only be fully effective if the Commission is granted full financial autonomy and not subject to any approval by the President before it can raise or accept any funds from other organizations. The Act needs to be amended in such a way that it compels Parliament to appropriate funds to the Commission as opposed to the current situation where it has a privilege to do so or not. Funding to the Commission is very vital as the Commission is one organization which actually is there to protect the interests of all human beings in the country and so there should be no doubt as to the importance that should be attached to it. In this regard, there has to be a continuous flow of funding to enable it decentralize into every province, district and town so as to make it easily accessible throughout the country. It is important that every person knows about the commission and all their rights and in order to do this the Commission needs adequate funds.

The mandate of the Commission is critical towards the development of good governance and the rule of law. In this regard, the Commission needs as much resources as possible to enable it function efficiently and effectively. Most of the problems of the Commission, including shortage of staff, vehicles and other needs are due to inadequate funding. Therefore the issue of funding needs no more discussion but immediate action so that progress can be made and other constraints are dealt with simultaneously and tremendous change in the human rights situation in the country will be seen.

A good measure of the government's seriousness in respecting its human rights obligations, both at national and international levels, lies in insuring that institutions such as the Human Rights Commission are given adequate financial and material resources. The Government needs to realize that it is to its own advantage if good governance institutions deliver to public expectations. In the final analysis it is the Government which will be applauded for creating effective and efficient good governance institutions.

With regard to law enforcement and human rights, it is recommended that as part of their training, police officers should take up internship of at least six months at the Commission learning about the human rights situation in the country and working at making it better so that when the time comes for them to enforce the law, they should implement the human rights laws as a matter of practice, as opposed to the current situation where many of the complaints that the Commission receives and deals with relate to police abuse of powers and torture of suspects in police cells. This should not be

the case as the police are supposed to protect the citizens and this includes criminal suspects. Today instead of one feeling safe and secure in the custody of the police, agitation and fear is what feels the person in such custody, this would not be the case if police officers were well trained and empowered to promote and protect human rights which are inherent before they enforce any other laws.

The fact that the Commission's recommendations, as to what sort of punishment or action to be taken towards a perpetrator or compensation of the victim, is not obligatory is very saddening. This is like chaining a dog and wanting it to walk around, clearly it is impossible. If an institution is given recommendations by the commission and all it is compelled to do by law is simply write a report on the action taken but not actually take the advice of the commission, it might as well do all the sittings and make its own decisions to avoid wasting the resources of the Commission in the case where a recommendation is not taken. This is one great aspect that urgently needs revision by Parliament so as to grant quasi-judicial powers to the commission in order to strengthen its performance.

The Commission can also form a network where ordinary citizens are involved in the human rights promotion and protection process. This could be done by having students from tertiary education institutions going round in secondary, primary and nursery schools sensitizing, investigating and promoting human rights. Farmers, lecturers, secretaries, miners, doctors, and other professions could also take the initiative of forming their own associations or departments solely for human rights purposes or better

still having a mini-legal department where all such matters are dealt with. All these activities may be overseen by the Chief Information and Education officer of the Commission. This would ensure that everyone participates in human rights activities and the notion that law is a preserve of the legal fraternity alone would be erased from people's minds.

5.3 GENERAL CONCLUSION

This paper has discussed the concept of the Permanent Human Rights Commission in Zambia and the general history of National Human Rights Institutions. The legal framework of the Commission has been shown to be good though restrictive in the sense that it does not give the Commission quasi-judicial powers and hence its advice is simply recommendation and non enforceable. The inter-relationships between the Commission and other institutions and organizations has been illustrated as being very vital to the effective achievement of its mandate, this mandate can also be efficiently attained be decentralization into all provinces, districts and towns. The Commission has also been seen to face a number of constraints that hamper its progress and have ultimately rendered it ineffective as measured against the elements of an effective national human rights institution. Ways of making the Commission more effective have been suggested as including the increment of funding, utilization of ordinary citizens and law enforcement officers in the dissemination of knowledge and the amendment of the law to give the Commission enforcement powers as opposed to the ones of simply recommending action or punishment of the perpetrator which is not obligatory.

By enforcing some and better still all of these recommendations, the Permanent Human Rights Commission as a main human rights institution will be of better help in improving the status of human rights in the country. It is hoped that if these or even just some of these recommendations are implemented, the human rights situation in country will be Zambia's pride and the Commission will have played a pivotal role in this image due to their effectiveness.

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