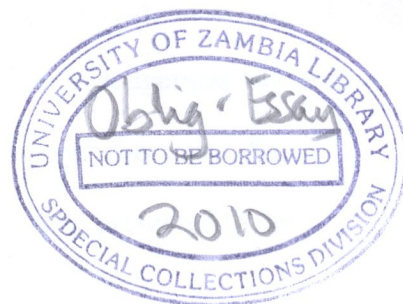


**THE ZAMBIA HUMAN RIGHTS COMMISSION: HISTORICAL
ESTABLISHMENT; SUCCESS OR FAILURE IN MEETING AND
IMPLEMENTING THE PARIS PRINCIPLES.**



BY

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2010

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I, **Mwenda Mwiba**, Identity Number **25092464** do hereby declare that I am the author of this Directed Research entitled: "The Zambia Human Rights Commission: Historical Establishment; Success or Failure in Meeting and Implementing the Paris Principles." I further declare that it is a work of my ingenuity and that due acknowledgement has been made where other people's works have been referred to. I honestly believe that this research, with the same theme and content, has not been previously presented to the School of Law for such academic works.

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ABSTRACT

The focus of this research is on the historical establishment of the Zambia Human Rights Commission and whether the institution, in its establishment process and works, has met and is implementing the guidelines contained in the Paris Principles which were established following the World Conference on Human Rights in 1993. The guidelines require that a national human rights institution should act as a source of human rights information for the government and people of the country; assist in educating public opinion and promoting awareness and respect for human rights; consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally and that the government may wish to refer to it; advise on any questions regarding human rights matters referred to it by the government; study and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and to prepare and submit reports on such matters to the appropriate authorities; as well as performing any other function which the Government may wish to assign to it in connection with the duties of the State under international human rights treaties and instruments as a state party. This research has therefore attached great importance to the establishment process, the provisions of the Human Rights Commission Act No 39 of 1996 (being the enabling Act), the independence of the institution, impartiality, financial control, the mandate, functions and powers of the Commission and other issues that are used to measure or determine the effectiveness of any national human rights institution (NHRI) under the Paris Principles.

DEDICATIONS

This essay is dedicated to my late father, Mr. Mwiba Adrian Mwenda, for being such a good father to me during the time he lived with us on this earth. Father, time is so short that you did not live to see your son complete school and successfully obtain a Law Degree at the University of Zambia. Tears may dry but memories about the good time we had together till the good Lord decided to take you away from us on 23rd January 2008 are still fresh and will never die. Father I thank you for the words of encouragement and hope you used to give me in the time of my suffering and endeavor to pursue my studies even with scarce resources. For sure, God has provided a way where there was no way and I believe that with him everything is possible and thy word shall come to pass. For all this I say “Not I but Christ be honored, loved and exalted.”

I also wish to dedicate my essay to my Mother, Mrs. Monica Mwenda, for her loving and kindness during the period of my struggle. Mother you are wonderful to me and I owe you so much.

ACKNOWLEDGEMENTS

I am thankful, first of all, to my God for making it possible for me to reach this far in my studies. I know that he is the God that giveth, he supplies abundantly, exceedingly and more than I can ask. Therefore, I say thank you Lord for being on my side through out my stay at UNZA. Secondly, I would like to thank my wife Musonda Bwalya-Mwiba for her support and understanding through out my endeavors. It was not always possible for me to be with her and the family whenever they needed me but she stepped in my shoes and took care of my family's needs. For this I say thank you very much and I am very proud of you. Being with you means a lot to me and I count it a blessing.

I am also highly indebted to Mr. Palan Mulonda, my supervisor, for the time he had to make corrections, advise and suggestions regarding this work. Sir without your input and guidance this work was going to be nothing. I well understand that you are a very busy person but you found time to attend to my work whenever I submitted to you.

I also thank in a special way Ms. Hope Chanda-Ndhlovu for her supportive attitude and understanding on work and school related issues. Finally, I thank authors of the different materials I was able to refer to in this research, and to everyone who contributed to this research in any way, I say thanks very much your contribution added value to my work.

I however, make mention that I am solely responsible for all the mistakes, errors and omissions contained in this paper.

Mwenda Mwiba

April 2010

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5. The Justice Act No 456 of 1993 of the Laws of Ghana
6. The Commission for Human Rights and Good Governance Cap 391 of the Laws of the United Republic of Tanzania
7. The Universal Declaration of Human Rights (UDHR).
8. The International Council on Human Rights Policy, 2000.
9. The UN General Assembly Resolution No. 48/134 of 20th December, 1993.
10. The 1993 Vienna Declaration on Human Rights and Programme of Action.
11. A/CONF.157/24 (1993), UN Doc.E/1993/22
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CHAPTER ONE

The Historical Evolution of National Human Rights Institutions, and The 1993 Vienna World Conference on Human Rights

1.0 Introduction

“Building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner. The establishment or enhancement of a national protection system in each country, reflecting international human rights norms, should therefore be a principle objective of the United Nations...”¹ This commitment, if universally undertaken by all states, can create an environment in which human rights are respected, promoted and protected thus enhancing the equality of all persons in dignity and status.

For many decades all over the world and now in Africa, human rights violations have repeatedly been coming up as one of the great or top agenda.² Furthermore, the human rights issues discussed at international, regional, sub-regional and national level present challenges which are in a continuous state of flux. As a result some writers have even doubted whether there can be effective solutions to such challenges,³ a doubt which is not well founded. To a considerable extent the international community, that is, the United Nations and other regional or sub regional

¹ K, Annan, “Strengthening of the United Nations: An Agenda for Further Change,” Report of the UN Secretary General, 9th Session, 2000

² M, Nowak, Introduction to the International Human Rights Regime, Brill Academic Publishers, the Netherlands, 2003, p.27

³ T, Buergental, International Human Rights in a Nutshell 2nd ed, West Publishing Co, USA, 1995, P.20

odies, has done a very commendable work by formulating and passing various human rights declarations, covenants, treaties and agreements in different dimensions.⁴

It is sad to however state that the United Nations noted with concern that even though these institutions have been instrumental in facilitating member states to enact various laws aimed at protecting and promoting human rights the main challenge remains that of forming effective national based institutions that would monitor and protect human rights and the respective member states' obligations to human rights within the respective United Nations instrument.⁵

After noting this particular challenge the United Nations came up with Resolution No. 1992/54 of March 1992. This resolution was adopted through the UN Human Rights Commission,⁶ which formulated the guidelines (now popularly known as the Paris Principles) in its effort to assist every member state to establish its own national human rights institution to have the basic responsibility of ensuring that fundamental human rights, civil liberties and freedoms are equally enjoyed by all persons without discrimination of any kind.⁷ The Paris Principles affirmed and still affirm that national human rights institutions should be vested with competence to promote and protect human rights and should also be given as broad a mandate as possible, set forth clearly in the country's constitution or in a separate piece of legislation.

Coming up with effective and practical solutions to the problem of human rights violations is however inevitable. This also stems from an understanding that the duty to promote and protect human rights primarily falls on governments. Governments' obligations are both positive and

⁴ A.H. Oona, Do Human Rights Treaties Make a Difference? 111 Yale Law Journal, Vol.78,2003

⁵ Fact sheet No. 19, *National Institutions for the Protection and Promotion of Human Rights P.2*, Office of the High Commissioner for Human Rights. (available at <http://www.unhchr/html/menu6/2/fs19.htm>)

⁶ The Commission has been abolished through the General Assembly Resolution No. 60/251 during the 72nd plenary meeting and established the Human Rights Council on March 15, 2006.

⁷ E/CN.4/1993/55,para 4

negative. Positive obligations include protecting, promoting and fulfilling human rights while Negative obligations demand that governments should abstain from human rights violations. The Zambian government has therefore, through its Minister of Justice, pledged to honor its obligation (both positive and negative) of human rights protection, promotion and fulfillment. This has been expressed to be the government's guiding principle.⁸

This therefore, necessitates the need to put in place a national human rights institution in any given country to effectively monitor the human rights situation. It is thus a remaining challenge to human rights experts, legal practitioners, scholars and academicians to propose measures and recommendations on how to make human rights a reality. Therefore, this paper is meant to make a positive contribution to the work of the Human Rights Commission of Zambia in meeting and implementing the Paris Principles.

On 10th December, 1948 the United Nations General Assembly, in coming up with the Universal Declaration of Human Rights (hereafter referred to as the UDHR), expressed the common understanding of all its member states that "fundamental human rights are not gifts from the state, but they are inherent in a person by virtue of birth. The enactment of those rights in the constitution is mere evidence of their recognition and intention that they should be enforceable in courts of law and an intention that those rights should not be arbitrarily restricted by the state."

1.1 Statement of the Problem

Creating an institution is one thing and clothing it with the necessary power is another thing. The Paris Principles affirmed that national human rights institutions should be vested with

⁸ Zambia's 1st National Report on the Universal Periodic Review Under the United Nations Human Rights Council, May 2008, p.1

competence to effectively promote and protect human rights and should also be given as broad a mandate as possible, set forth clearly in the country's Constitution or in a separate piece of legislation. The question that must be asked with concern therefore is whether the Zambian Government, by creating the Human Rights Commission, fulfilled this requirement?

Despite establishing the Human Rights Commission, government has not done its level best in equipping the Commission with the power it needs, financial and human resources necessary to effectively carry out its mandate hence the need to find and propose effective measures meant to enhance the capacity and operations of the Commission. This is further strengthened by the need to have an autonomous body, not only on paper, which does not bow easily to political pressure and mandated to monitor the state of human rights in the country.

1.2 Objectives of the Study

The Paris Principles list a number of responsibilities for national human rights institutions, which fall under the following headings:

- i. To monitor any situation of violation of human rights;
- ii. To be able to advise government and other stakeholders on human rights issues and their compliance with international standards;
- iii. To relate to regional and international organizations;
- iv. To educate and inform in the area of human rights: and
- v. To have, where necessary, quasi-judicial competence.

These responsibilities have therefore necessitated the need to examine the historical establishment of the Human Rights Commission of Zambia and to determine whether or not the institution has met and is implementing the Paris Principles in its work. There is also an inevitable need to grade the Commission under the newly introduced grading system of human rights institutions. This study is therefore meant to examine both the legislative and administrative flaws which may make it incompatible with the provisions, spirit and intent of the Paris Principles. Further, it is meant to propose, if need be, appropriate changes and measures which should be put in place in order to enhance the effectiveness of the Commission.

1.3 METHODOLOGY

The research is designated to be a desk research as well as a review of the Commission's work. It will be focused on assessing and examining the extent to which the Human rights Commission of Zambia has met and is implementing the Paris Principles, providing guidelines on the establishment and operations of national human rights institutions, agreed upon by the international community members to the United Nations. The research shall consider the works of different authors on the subject by looking at what they have written in their articles, books, journals as regards the implementation of the Paris Principles. Additionally, interviews shall be conducted with civil society organizations based in Lusaka as well as people experienced in human rights and conversant with the work of the Commission such as Commissioners, the Commission's members of staff and legal practitioners.

1.4 The Historical Evolution and Development of National Human Rights Institutions.

The historical evolution and development of national protection of human rights through national institutions, dates back to the discussion by the Economic and Social Council (ECOSOC) of the United Nations in 1946.⁹ The Council asked member states to consider the desirability of establishing information groups or local human rights committees within their respective countries to corroborate with them in furthering the work of the Commission on Human Rights (now the UN Council for Human Rights).¹⁰ Subsequently, the growth of human rights instruments in the 1960s and 1970s saw the need for mechanisms to guarantee the implementation of these instruments at the national level.

The result of this was the seminar on National and Local Institutions for the Promotion and Protection of Human Rights held in Geneva in September 1978.¹¹ Throughout the 1980s, the UN continued to take an active interest in this area of national institutions. Although this period was characterized with lack of clear definition of a national human rights institution, but this was the time that envisaged increased regional cooperation in the field. It was not until the early 1990s that the conceptual shift towards the promotion and protection of human rights at the national level by the NHRIs took the centre stage.

The consolidation of national institutions was spurred in 1990 when the Commission on Human Rights adopted a resolution requesting the Secretary-General to convene a workshop which

⁹ ECOSOC Resolution 2/9 of 21 June 1946

¹⁰ C, Meredith, *Comparative Study on Mandates of NHRIs in the Commonwealth*, Commonwealth Secretariat, London (2007) p.27

¹¹ St/HR/SER.A/2, Chapter V

national and regional human rights institutions would attend.¹² The workshop inter alia aimed at inquiring into the ways in which the co-operation of national institutions with the UN could be improved with a view to increase effectiveness of national institutions. Consequently, the first International Workshop on National Institutions for the Promotion and Protection of Human Rights was held in Paris from 7-9th October, 1991. The workshop discussed among other things, the legal status, structure, mandate and powers of national institutions.¹³

The outcome of the workshop was the birth of the Principles relating to the status of national human rights institutions (NHRIs) and their advisory role. However, in 1992, the Commission gave these principles a more neutral title- Principles relating to the status of National Institutions, and later they came to be known as the Paris Principles. The following year, these principles were endorsed by the UN Commission on Human Rights.¹⁴ Finally, on 20th December 1993 the Paris Principles were adopted by the United Nations General Assembly.¹⁵

1.4.1 The 1993 Vienna World Conference on Human Rights

For any human rights defender, it is interesting to note that the enthusiasm to form NHRIs has largely been positive in different regions of the world.¹⁶ The United Nations has been keen to take various measures for establishing human rights framework.¹⁷ But this trend on the establishment of NHRIs has been, among others, accelerated with the outcome of the Vienna World Conference on Human Rights of 25th June, 1993.

¹² A, Ponjolainen, *The Evolution of National Human Rights Institutions: The Role of the UN*, Danish Institute of Human Rights, Copenhagen, Denmark, January 2003, p.58

¹³ *Ibid.* p.59

¹⁴ UN Commission on Human Rights Resolution 1992/54

¹⁵ General Resolution 48/134 of 20th December, 1993

¹⁶ P, Eldrege "Emerging Roles of NHRIs in Southeast Asia." In *Pacific Review*, Vol 14, 2002, at p.209

¹⁷ D, Bell, "The East Asia Challenge to Human Rights: Reflections on an East Asia Dialogue." In *Human Rights Quarterly*, Vol. 18, 1996 p.641

The Vienna Conference marked an important milestone, not only in the historical development of human rights in general, but also of national institutions themselves. The Conference had two major objectives. The first was to examine the ways and means of improving the implementation of existing human rights standards. On the other hand, it was aimed at formulating concrete proposals for improving the effectiveness of the UN activities and mechanisms in the field of human rights.

Through an unprecedented degree of participation by government delegates and the international human rights community, the Conference Final Declaration and Programme of Action, adopted by the consensus of 171 states, reaffirmed the important and constructive role of NHRIs.¹⁸ The Declaration and Programme of Action in particular acknowledged the NHRI's advisory capacity to the competent authorities, their role in remedying human rights violations, in disseminating of human rights information, and education in human rights.¹⁹

The Conference unanimously reaffirmed the principle of universality, indivisibility, interdependence and interrelatedness of human rights. Furthermore, the Conference recognized the need for more formal equality between categories of human rights and as a result, a new kind of global human rights scheme of action was conceptualized which involved actors at all levels.²⁰

The Declaration and Programme of Action recognized the value of the Paris Principles as the benchmark for national institutions and thereby encouraged governments to establish and strengthen national institutions by being compatible to it instead of establishing NHRIs that do

¹⁸ Available at <http://www.unchr/html/menu5/wchr.html>, accessed on 10th November, 2009.

¹⁹ A/CONF.157/24(1993), Part 1, para. 36.

²⁰ Statement to the Vienna Conference in 1993, UN Doc.E/1993/22, Annex III, para 5 and 7

not adhere to the Paris Principles hence perceived as ‘window dressing’ institutions.²¹ The document also acknowledged the need and right of each state to consider a framework which is best suited to its particular needs at the national level during the national institution establishment.

Additionally, the Conference emphasized on increased development of international co-operation in the field of human rights. According to the Vienna Declaration and Programme of Action, the priority in co-operation, development and strengthening of human rights should be given a national and international action that aims at assisting the strengthening of institutional building in the area of human rights. During the Conference, it was argued that various stakeholders in this arena i.e government, the United Nations systems as well as other multilateral organizations have to allocate more resources.

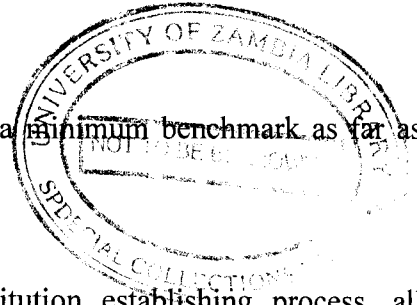
The allocated resources should be utilized for programmes aimed at the establishment and strengthening of national legislation, institutions and related infrastructure. Nevertheless, this conference which also instrumental to the growth of NHRs, insisted on the merits of national institutions to enact their National Human Rights Institution Action Plans (NHRAPs)²² which would provide overarching strategy for the protection and promotion of human rights.

1.4.2 The Process Involved in the Establishment of a National Human Rights Institution.

In order to have an independent and stronger national institution which is vested with competence to effectively protect and promote human rights at the national level, the Paris

²¹ Ibid.

²² Statement to the 1993 Vienna Conference UN Doc, Part C para 66-67, on Co-operation, Development and Strengthening Human Rights



Principles, contain requirements which can be considered as a minimum benchmark as far as NHRI establishment is concerned.

The Paris Principles require that during the national institution establishing process, all stakeholders in the particular state should equally participate in the process. These stakeholders should include, inter alia, government officials; parliament; religious organizations; non-governmental organizations; trade unions; social and professional organizations such as associations of lawyers, doctors, journalists et cetera.

In addition to the above, the Commonwealth Secretariat found the need of developing best practice guidelines which could act also as benchmarks on NHRIs establishment.²³ The guidelines clearly state that the mode of establishment of NHRI should be a national project of higher priority premised on a constructive, inclusive and transparent process. It is further emphasized that there is need to make sure that the legal mode of establishing a national institution should be found in the enabling statute or preferably entrenched in the constitution of the state.²⁴ The whole process in itself should be seen as critical for the sake of its success; be lead and supported at the highest level of the government; involve and mobilize all relevant elements of the state and civil society.

On the other hand and although he does support the Paris Principles to a greater extent, Prof Burdekin²⁵ argues that regardless of whether the original initiative comes from civil society or government, in order to have a smooth and successful establishment process, there may be an

²³ Commonwealth Secretariat National Human Rights Institutions - Best Practice, Legal and Constitutional Affairs Division, London, 2001.

²⁴ C, Meredith, Comparative Study on Mandates of NHRIs in the Commonwealth, Commonwealth Secretariat, London (2007) p.27

²⁵ B, Burdekin, and Gallagher, A. International Human Rights Monitoring Mechanisms, Kluwer Law International, Netherlands (2001) p.19

extended period of consultations involving human rights advocates, NGOs, lawyers, educators, and the community leaders as well as relevant bureaucrats and politicians. The consultations should be public and should address all significant issues. These include not only the mandate, powers and functions of the institution, but also the desirable composition and characteristics of its membership and the manner in which its members are to be chosen.

The whole essence for this inclusive approach is to achieve a bi-partisan political agreement from government, opposition parties and also the community at large, to feel a sense of ownership within the whole establishment process.

1.5 Conclusion

It can finally be said that there were various steps or initiatives taken at international level by different organs and especially by the United Nations Commission on Human Rights, which has since been replaced by the UN Human Rights Council, to ensure that there are mechanisms which may assist implementation of international human rights instruments at national level. Although all efforts undertaken aimed at ensuring implementing the aforesaid objective, it can be said that these institutions started to rapidly emerge and spread in many parts of the world after the introduction of the Paris Principles in the early 1990s.

The Paris Principles require that the NHRI be able to monitor any situation of violation of human rights; advise government and other stakeholders on human rights issues and their compliance with international standards; relate to regional and international organizations; educate and inform in the area of human rights; and to have, where necessary, quasi-judicial competence. As regards the process of establishment an inclusive approach is preferred in order to make the institution effective and acceptable by a cross section of society.

CHAPTER TWO

The Modalities and Functions of National Human Rights Institutions (NHRIs) under the Requirements of the Paris Principles

2.0 Introduction

The 1993 World Conference on Human Rights, which took place in Vienna, encourages the establishment and strengthening of national institutions, having regard to the principles relating to the status of national institutions and recognizing that it is the right of each state to choose the framework which is best suited to its particular needs at the national level.²⁶

According to Amnesty International, NHRIs can be distinguished from non-governmental organizations by their very establishment as a quasi-governmental agency occupying a unique place between the judicial and executive functions of the state, and where these exist, the elected representative of the people.²⁷ They have various roles ranging from encouraging government to ratify and implement international human rights standards to influencing government and various stake holders to adopt a rights based approach in the implementation of programmes.²⁸

Therefore, in realizing effective functioning of national institutions, there must be some modalities or framework which stipulates how the institution should operate. Indeed, the internationally recognized minimum core modalities are explicitly enshrined in the Paris Principles. They are regarded by the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights as benchmarks during the NHRIs

²⁶ The 1993 Vienna Declaration on Human Rights and Programme of Action. Part I, para 36

²⁷ Amnesty International Recommendations on Functions of NHRIs, 2001

²⁸ C, Meredith, Comparative Study on Mandates of NHRIs in the Commonwealth, Commonwealth Secretariat, London (2007) p.29

accreditation. However, in order to effectively understand the functions and modalities of a NHRI, it is inevitable to first of all define a NHRI, look at their different types or forms and the definition to be attached to the Paris Principles. Thereafter, the elements contributing to the effectiveness of NHRIs can be expounded.

2.1 What are National Human Rights Institutions?

The Paris Principles recognize national human rights institutions as those established with the competence and responsibility of protecting and promoting human rights as well as having the composition that guarantees independence and pluralism,²⁹ and according to these principles, a NHRI is supposed to have a broader mandate so as to be able to promote and protect human rights.

The Paris Principles require a NHRI to be vested with monitoring power of any situation of human rights violation; power to be able to advise government, Parliament and any other competent body on specific violations, or issues relating to legislation and its compliance with international human rights instruments, and on the implementation of these instruments. Not only that but also the Paris Principles require NHRIs to perform duties by relating to other regional and international organizations and have mandate to educate and inform the general public in the field of human rights.³⁰ Where possible, the Paris Principles also permit national institution to be vested with a quasi-judicial competence power.³¹

²⁹ M, Kjaerum, *National Human Rights Institutions Implementing Human Rights*, Danish Institute for Human Rights, Martinus Nijhoff Publishers, 2003, p.6

³⁰ *National Human Rights Institutions. A Handbook on the Establishment and Strengthening of NHRI for the Promotion and Protection of Human Rights*. United Nations, 1995, Paras 78 and 79.

³¹ *Declaration & Programme of Action, UN World Conference Against Racism, Xenophobia & related Intolerance*, Durban, September 2001, para 90.

More important is the fact that the definition on the NHRIs should allow for a broad, inclusive approach. Implicitly, in reference to this argument, the United Nations defines NHRIs as bodies that are established by governments under the constitutions, by legislation or by decrees, the functions of which are specifically defined in terms of the promotion and protection of human rights.

2.2 Types of National Human Rights Institutions (Models of NHRIs)

The broad concept of human rights institutions mirrors the situation in the field. It seems that there are as many types of national institutions as states. On the one hand, the International Council on Human Rights (ICHR) has placed NHRIs into three categories. These include Human Rights Commissions (HRCs), Ombudsman and specialized national institutions designed to protect the rights of particular vulnerable groups.³²

On the other hand, some scholars and councils have also categorized national institutions in five different groups.³³ One among them is Human Rights Bodies. These bodies can either be parliamentary, specialized bodies dealing with human rights issues. As far as this group is concerned, the French Human Rights Commission (*Le Commission Nationale Consultative des Droits de L'homme*), which is the oldest from 1948, is referred to as a good example.³⁴ In this respect, it is regarded as a broad-based commission with a membership consisting of key NGOs, the academia, representatives from different religious communities and others –all together 119 institutions and individuals. Members take an active part in the decisions of the commission. The

³² Performance and legitimacy: national human right institutions, International Council on Human Rights Policy, Versoix, Switzerland, 2000, p3-4

³³ S. Cardenas, 'Emerging Global Actors: The UN and NHRIs in Global Governance, Vol.9.2003, p.12-14

³⁴ Dickson, B., supra, note.47, p.11

commission does not deal with individual complaints.³⁵ This type of institutions is found in Greece and in a number of francophone African countries, including Morocco.

National Ombudsman: it is considered as a single member institution. Believed to have originated from Sweden and has been enthusiastically embraced throughout Europe. The aim of ombudsman is to protect individuals against misconduct or maladministration of the government. In this context, some of the clear examples can be referred to the Swedish, Denmark, Germany and Norway Ombudsmen.

Institutionalized Ombudsman: This form of ombudsman institutions, include those bodies which are not supervised by a single person, instead they constitute many persons under the status of an ombudsman. They may also constitute many persons under the supervision of one person. In Zambia there is one wing similar to the institutionalized ombudsman called the Investigator General appointed by the President but the office bearer is still assisted by a team of other members. However, this should not be confused with the Human Rights Commission as the two institutions are created under different pieces of legislation and have different mandates.

National Human Rights Commissions: As per UN Handbook, these nation institutions are referred to as multi-member institutions with a role to protect and promote human rights. According to the book, they promote and protect persons against all forms of discrimination, together with protection of civil and political rights are some of their primary concern. One good thing to note is that some of these institutions have been empowered to protect socio-economic

³⁵ M, Kjaerum, **National Human Rights Institutions Implementing Human Rights**, Danish Institute for Human Rights, Martinus Nijhoff Publishers, 2003.p.59

rights. Furthermore, these commissions engage in creating awareness and education provision to the general public on human rights issues.

Hybrid Institutions: these are a mixture of national ombudsman and NHRIs. They can also be referred to as quasi HRCs. Examples of such bodies include Ghana's Commission for Human Rights and Administrative Justice (GHRAJ) created under Article 216 of the Constitution of Ghana and whose hybrid nature is consolidated by an Act of Parliament,³⁶ Tanzania Commission for Human Rights and Good Governance (CHRAGG) established in 2001 under Article 129 of the Constitution of the United Republic of Tanzania and whose hybrid status is consolidated under the Commission for Human Rights and Good Governance Act.³⁷

2.3 Definitions of Paris Principles

The principles relating to the status of national Institutions (hereinafter referred as Paris Principles) are guidelines that provide a general framework for the structure, mandate and powers of national institutions. These guidelines also explain the need of the national institution to be vested with competence and responsibilities to promote and protect human rights, which may be enshrined in the constitution or legislative enactment, and also their composition and guarantee of independence to operation methodology and working methods and practices. Others include quasi- judicial competence that embodies within it the role and responsibilities of a NHRI to hear, investigate and resolve individual complaints.³⁸ Moreover these principles are generally considered as international minimum standards that serve as guiding governments in establishing and providing their new institutions with the 'essential basis criteria,' which to a

³⁶ Established under The Justice Act No 456 of 1993 of the Laws of Ghana

³⁷ Cap 391 of the Laws of the United Republic of Tanzania

³⁸ B Lindsaes, and L. Lindholt, **National Human Rights Institutions-Standard Setting and Achievements**, Danish Centre for Human Rights, 2001.P.3

greater extent assist the institution to effectively protect and promote human rights at the national level.³⁹

Despite the fact that the primary goal of introducing Paris Principles is to give governments some guidance during the national institution establishing process, still, governments retain a certain margin of discretion in determining which model fit their particular state. This situation was also supported by the resolutions of the UN Policy making bodies and the final documents of the Vienna World Conference , which encourage governments to set up national institutions keeping in mind the recommendations of the Paris Principles, explicitly recognize the “the right of each state to choose the framework that is best suitable to its particular needs.”⁴⁰ As a consequence, the Office of the High Commissioner for Human Rights, which has systematically highlighted the importance of developing national institutions compatible with the Paris Principles, has also chosen not to limit its support to one particular model.⁴¹

2.4 Elements Contributing to the Effectiveness of the Functions of National Human Rights Institutions

Although the Paris Principle set out national institutions’ competence and responsibilities which include submission of opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights, nevertheless, these Principles provide other elements which facilitate the effective functioning of the institution. These elements include but not limited to mode and methods of institutional establishment and operation, mandates, level of independence, availability of financial and human resources, scope of powers

³⁹ International Council on Human Rights Policy, 2000, p.2

⁴⁰ General Assembly Resolution No. 48/134 of 20th December, 1993 and also the Vienna Declaration and Programme of Action, 25th June 1993, para 3

⁴¹ E/CN.4/2003/110 and also A/58/261 of 2003

and integrity of their members. For the main purposes targeted to be achieved by this study, just few elements will be illustrated. These include independence, membership and investigation and inquiries.

Independence of national institutions is one of the essential or key criteria which is supposed to be given first priority in order for the same body to carry out its duties effectively. As previously illustrated, the Paris Principles insist on the need for national institutions to have an infrastructure which is suited to it smoothly conducting its activities independently from the government, particularly by having an adequate funding.⁴² The Paris Principles are embodied with this act in order to be independent of the government and not be subject to financial control which might affect its independence.

Membership of the institution is another key criterion that pertains to the whole issue of effective performance of NHRIs. This is among the most important elements for assessing real independence of any national institution. The Paris Principles state that in order to ensure a stable mandate for the members of the institution, their appointment may be effected by an official act which may also establish the specific duration of the mandate. In addition, the Paris Principles explicitly explain that the mandate may be renewable, provided that the pluralism of the institution's membership is ensured.⁴³

In respect of this study, *investigation and inquiries* is the last element worthy to illustrate as far as national institutional effectiveness is concerned. Among other things, the Paris Principles stipulate that a national institution may be vested with power to hear any person and obtain any information and any document necessary for assessing situations falling within its competence.

⁴² NHRIs, Professional Training Series No.4, p 10 para 68-85

⁴³ Ibid, p.85

The Principles also require a national institution to act freely in considering questions falling within its competence, whether they are submitted by the government or taken up by it without referral to a higher authority, on a proposal of its members or of any petitioner.

As far as the objectives of the study are concerned, another important issue to mention on this score is that the Paris Principles require the national institution to maintain consultation with other bodies or institutions, whether jurisdictional or otherwise, which are responsible for the protection and promotion of human rights.

2.5 Conclusion

From the foregoing discussion, it can be concluded that although a big number of national institutions that were established by being compatible with the Paris Principles where they derive their mandate and powers, there is a continued debate as to whether the Paris Principles do provide sufficient guidance regarding how the proposed functions of NHRIs would have performed their quasi-judicial competence. For instance it is argued that the notion of these principles to mention just: a national institution may be authorized to hear and consider complaints and petitions, without explaining how the institution would achieve this quasi-judicial power, may create confusion in its interpretation.

It was noted that although it is almost twenty years since the Paris Principle were internationally endorsed and up to now, they are still regarded as international core minimum guidelines in establishing national institutions, some experts in the human rights field do consider them to be vague and inadequate.

The Paris Principles are perceived to be too general, hence calls by some sections to have them amended. On the other hand, it is suggested that if the negotiation door will be opened in this regard, it is not clear what may be the outcome if changes will be effected; taking into account that the Principles continue to give guidance to government in national institutions' establishment process. Another reason brought up for the need of these Principles to be amended is: although some national institutions do not follow the Paris Principle (for instance they lack adequate independence) they have nonetheless been effective in their own context.

Despite this being the case it suffices to note that a national institution being compatible with the Paris Principles is not enough since this trend may not guarantee its stability if there is no political will from other organs of the state, that is, the Executive, Parliament and the Judiciary. If all these actors including free media and a well informed and educated public are not committed to making promotion, protection and respect for human rights, their priority and realisation may remain a myth and not a reality.

CHAPTER THREE

The History behind the establishment of the Zambia Human Rights Commission and an Analysis of its Status, Powers and Competences as per its enabling Act

3.0 Introduction

“Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”⁴⁴ Zambia has therefore pledged to achieve, in cooperation with the United Nations, the promotion of universal respect and observance of human rights and freedom in the nation.⁴⁵ It has continued to pursue the promotion and protection of human rights as part of its foreign policy.⁴⁶ It is in this vein and realization, as a duty bearer, that the Government of the Republic of Zambia established the Human Rights Commission to enhance the promotion and protection of human rights at all levels.

Zambia is a democratic state⁴⁷ and fully committed to the promotion and protection of human rights. This can be seen from a number of measures (both legislative and administrative) taken to ensure that Government meets its international human rights obligations.⁴⁸ It has committed itself to promote, respect and protect human rights and dignity of all individuals within the

⁴⁴ Preamble to the Universal Declaration of Human Rights

⁴⁵ HRC Bulletin, “Ten Years of the Human Rights Commission.” 2007, p.2

⁴⁶ Zambia’s 1st National Report on the Universal Periodic Review Under the United Nations Human Rights Council, May 2008, p.19

⁴⁷ Article 1 of Cap 1 of the Laws of Zambia

⁴⁸ Hon Kabinga Pande, Minister of Foreign Affairs for Zambia, “Position Paper Presented at the High Level Segment of the Human Rights Council, 7th Session.” 4th March, 2008. Geneva.

republic as evidence in Part III of the Constitution.⁴⁹ Thus, it has ratified a plethora of human rights instruments at international and regional level. At national level the Constitution entitles any individual whose rights are being or are likely to be infringed to petition and seek redress in the High Court.⁵⁰

Although the promotion and protection of human rights at national level have been guaranteed in the constitution, and their enforcement being supervised by the Superior Courts, the country, following the guidelines contained in the Paris Principles, in 1996 thought it fit to establish a national focal point human rights institution to ensure that human rights are effectively promoted and protected.

3.1 Establishment History

The Zambia Human Rights Commission was established under Article 125 of Zambia's 1996 Constitution following a recommendation of an Ad hoc Bruce Munyama Commission of Inquiry appointed in 1993, by the then Republican President, to investigate and establish violations of human rights during the Second Republic years covering the period 1972 to 1991. The Commission of inquiry was also tasked to consider violations that occurred in the third Republic which came into being on October 30, 1991, when the country reverted back to multiparty democracy.⁵¹

⁴⁹ Article 11 of Cap 1 of the Laws of Zambia

⁵⁰ Ibid article 28

⁵¹ Human Rights Commission Bulletin, "Ten Years of the Human Rights Commission." 2007, p.2

The Munyama Commission noted that many witnesses who testified 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.⁵² The idea of a permanent institution for the promotion and protection of human rights had also been recommended by the Mwanakatwe Constitution Review Commission, which was constituted to spearhead the introduction of constitutional amendments that were effected in 1996. The Government introduced a new constitution and one of the new aspects introduced in the constitution was Part XII entitled “Human Rights Commission.”

It is worthy noting that the Constitution⁵³ only ends at establishing the Commission but does not spell out the functions and powers of the institution. As clearly indicated in Article 125(2) the Commission was created as an autonomous body whose functions and powers, composition, funding and administrative procedures were to be prescribed in an Act of Parliament. To this effect, Parliament enacted the Human Rights Commission Act No. 39, of 1996 (hereafter referred to as the Act) containing the aforesaid matters.

The Act also makes it clear that the Commission is an autonomous body, which in the performance of its duties, is not subject to the direction or control of any person or authority. The Zambia Human Rights Commission finally became operational in April 1997 following the appointment of the first set of Commissioners by the Republican President.

⁵² Ibid, p.3

⁵³ In Article 125(1)

3.2 Management and Organizational Structure

The Human Rights Commission is made up of a Commission and the Directorate. The Act⁵⁴ provides that the Commission shall consist of the Chairperson; the Vice Chairperson; and not more than five other Commissioners.

Further the Act⁵⁵ provides that the Commissioners shall be appointed by the President, subject to ratification by the National Assembly. However, the Act requires that the Chairperson and the Vice Chairperson should be persons who have held, or are qualified to hold high judicial office. Seemingly, this requirement has been put in place because human rights present challenges of legal nature or character hence the need to have persons with a legal mind or experience to be at the helm of such an important institution.

On appointment, a Commissioner affirms or takes an oath and such oath is administered by the President. The tenure of office is a three year term subject to renewal as provided in section 7(1) of the Act. Nevertheless, a Commissioner may be removed from office for inability to perform the functions of the office, whether arising from infirmity of body or mind, incompetence or misbehavior.

Even though the rules of natural justice have to be observed when the question of whether or not a Commissioner should be removed from office arises, it is very unfortunate that the Act does not spell out the procedure to be followed for the removal of a Commissioner from office on any of the above given grounds. This leaves the appointing authority with power to remove a Commissioner from office even on unfounded or malicious grounds, a thing which must be seen

⁵⁴ In Section 5(1)

⁵⁵ In Section 5(2)

as a threat to the tenure of office and consequently to the protection and promotion of human rights in Zambia hence needing urgent attention.

A Commissioner may also resign by giving a one month notice to the President. Additionally the Act⁵⁶ provides that the office of a Commissioner shall become vacant:

- (a) If the Commissioner is absent without reasonable excuse from three consecutive meetings of the Commission of which the Commissioner has had notice;
- (b) If the Commissioner is declared bankrupt; or
- (c) Upon the Commissioners death.

As for the Directorate, it is made up of the Director, Deputy Director and other members of staff. According to Section 18 of the Act, the Director who is assisted by a Deputy Director, serves as the Secretary of the Commission and is responsible for the management and administration of the Commission. The Director oversees, on behalf of the Commission, the activities carried out by the Research and Planning, Information and Education, Investigations and Legal Services, and Human Resources and Administration departments.⁵⁷ The director is expected to be a qualified advocate and responsible for the implementation of any matters referred to him/her by the Commission.

In the performance of their duty both Commissioners and members of staff are immune to any civil and criminal proceedings. The Act⁵⁸ also makes it clear that a Commissioner or a staff member shall not be called to give evidence before any court or tribunal in respect of anything

⁵⁶ In Section 7(4)

⁵⁷ Know Your Human Rights Commission “Building a Sustainable Human Rights Culture Together.” 1997 also Leaflet. Available at www.hrc.org.zm

⁵⁸ In Section 20

coming to such person's knowledge in the exercise of such person's functions under the Act.

This is meant to allow Commissioners and staff to work freely.

3.3 Management and Organizational Structure

In order for any national human rights institution to smoothly carry out its activities, it must clearly incorporate elements that may contribute to its effectiveness in terms of its independence, mandate and powers to determine matters falling under its competences. For the Zambia Human Rights Commission, these elements are enshrined in its enabling piece of legislation.⁵⁹

The Commission was established as the national focal point institution for the promotion and protection of human rights in Zambia. The Commission's functions which are protective, promotional, educational and advisory are therefore in line with both its enabling Act and the Paris Principles. The core functions and powers of the Commission are provided for under Sections 9 and 10 of the Human Rights Commission Act No. 39 of 1996 respectively.

The Act, in section 9, confers the Commission with power to investigate human rights violations and equally to investigate any maladministration of justice. This can be done⁶⁰ on the Commission's own initiative or on receipt of a complaint or allegation from an aggrieved person acting in his/her own interest; an association acting in the interest of its members; a person acting on behalf of an aggrieved person; or a person acting on behalf of and in the interest of a group or class of persons.

It is also within the Commission's functions and powers to propose effective measures to prevent human rights abuses; and to visit prisons and other places of detention and related facilities with

⁵⁹ Act No 39 of 1996 of the Laws of Zambia

⁶⁰ According to Section 10

a view to assessing and inspecting conditions of the persons held in such places and make recommendations to redress existing problems.⁶¹

It is equally within the Human Rights Commission's Mandate to 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; as well as to do all such things as are incidental or conducive to the attainment of the functions of the Commission.⁶²

As earlier alluded to the Zambia Human Rights Commission, under section 10 of its enabling Act, has powers to:

- To investigate any human rights abuses either on Its own initiative, on receipt of a complaint or allegation under the Act by an aggrieved person acting in such persons own interest, by an association acting in the interest of its members or by a person acting on behalf of and/or in the interest of a group of persons;
- To issue summons or orders requiring the attendance of any authority before the Commission or for the production of any document relevant to any investigation by the Commission;
- To question any person on any subject matter under investigation before the Commission.
- To require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission.

The Commission is also empowered to make the following recommendations:

⁶¹ As per Section 9 clause (c) and (d) respectively

⁶² Ibid, clause (e) and (f)

- The punishment of any officer found by the Commission to have perpetuated an abuse of human rights;
- The release of any person from detention
- The payment of compensation to a victim of human rights abuse, or to such victim's family
- That an aggrieved person seeks redress in a court of law.
- Such other action as it considers necessary to remedy the infringement of a right.

It is worthy to make mention at this stage that the Commission has no powers to handle matters that are pending before a court of law⁶³ and does not by way of practice handle matters before other similar bodies.⁶⁴ Further, the Commission does not handle a complaint brought before it after two year from the time the alleged human rights violation took place. This in a way is in conformity with the maxim that delay defeats equity.

It can inevitably at this stage be argued that following the wider mandate and powers conferred on the Commission by the Act in general and section 9 and 10 to be specific, the Commission has established three main departments namely Investigations and Legal Department, Information and Education Department, and the Research Advocacy and Planning Department in order to be able to execute its mandate.

⁶³ As provided in section 10(5) of the Human Rights Commission Act No 39 of 1996

⁶⁴ K, Maduma, "A Presentation of the Zambia Human Rights Commission: Achievements, Challenges and Opportunities and Ways Forward in the Promotion and Protection of Human Rights in Zambia." 3rd Conference of National Human Rights Institutions (NHRIs). 8-10November, 2009. Banjul, Gambia. P.3

These departments are referred to as programme departments because they deal with specified programmes that contribute effectively to the functioning of the Commission. However, they are assisted by the Human Resources and Administration department to ensure the smooth and timely running of programmes.

Pursuant to Section 15 of the HRC Act that empowers the Commission to establish committees to whom certain functions can be delegated, the Commission currently has in place five Thematic Committees acting as working groups centred on a number of priority areas each headed by a commissioner. These committees whose membership may include persons other than commissioners and members of staff are the:

- Children’s Rights Committee;
- Committee against Torture;
- Economic, Social and Cultural Rights Committee;
- Civil and Political Rights Committee; and
- Gender Equality Committee.

3.4 The Institution’s Core Values, Mission Statement and Vision

The Commission’s responsibilities are guided by values that seek to remind its staff to represent the Commission through an impeccable work ethic. These values try to strike a balance between how work is done and the people who do the work. There is a general belief that if these values are recognized and held as important, the resulting conduct will create greater harmony among

the people, which will eventually result in the creation of a sustainable environment for human rights culture thus contributing significantly to its institutional integrity, excellence, transparency and accountability.

On the other hand, its Mission Statement strives to ensure the promotion and protection of human rights for all people in Zambia through investigations of human rights violations, rehabilitation of victims of human rights abuses, education of communities and advocacy for policy and legal changes influence by evidence based research. The Commission, as an institution has the vision to be an effective, respected, responsive and independent guardian of human rights for all time while having the vision for Zambia aimed at creating a society that respects and upholds human rights for all persons in in the country.

3.5 Conclusion

A national human rights institution is a focal point institution in any given country primarily established to effectively ensure the respect, promotion and protection of human rights. More importantly, it has the duty to monitor government's implementation of its international human rights obligations and commitments as well as to investigate any matters involving human rights violation and to empower people in society with human rights knowledge through information dissemination and education. However, all this is dependent on government's willingness to create a well represented, independent and balanced national human rights institution having clear guidelines on its operations and free from political interference.

The above can only be achieved where the Paris Principles are taken into consideration in the establishment of the NHRI and through effective legislation. Having looked at the historical

establishment of the Zambia Human Rights Commission and an analysis of its status, powers and competences as per its enabling Act, the next chapter will be committed to analyzing the successes, challenges and weaknesses of the Commission so as to determine its effectiveness in line with the Paris Principles and then arrive at the way forward.

CHAPTER FOUR

An Assessment of the of the Zambia Human Rights Commission's Performance in Realizing the Fundamental Human Rights and Freedoms in Relation to the Paris Principles

4.0 Introduction

As was pointed out earlier, the main purpose of this study is to assess whether the functions undertaken by the Human Rights Commission in Zambia for the promotion and protection of human rights are compatible with the Paris Principles. By so doing, the study examines the works of the Commission in the area of investigations, information and education, research and advocacy, and above all issues of independence, staffing levels as well as financial control in order to determine their compliance with the requirements under the Paris Principles.

This chapter is therefore committed to identifying the flaws contained in the enabling legislation and the Commission's practices in the execution of its mandate in order to examine their compatibility with the Paris Principles or guidelines. It is obvious that the legal flaws and practices may hinder the Commission's legal duty of promoting and protecting human rights in Zambia.

These legal flaws and practices, which are the main issues of this study, will be critically analyzed using the key criteria required for the effective functioning of NHRIs under the Paris Principles. The criteria involve the examination of an institution's financial control and independence, membership, investigation and inquiries,⁶⁵ as well as information dissemination and education of the general public on human rights issues.

⁶⁵ [www.nhri.net/2007/List Accredited NIs Dec 2007.pdf](http://www.nhri.net/2007/List_Accredited_NIs_Dec_2007.pdf), accessed on 07th March 2010

4.1 Institutional Financial Control and Independence

The most critical factor in determining the effectiveness of a NHRI is its capacity to act independently in pursuing its mandate. However, achieving and sustaining independence involves a variety of factors-all of which are important, but some of which require a continuing and sometimes difficult balance with legitimate demands for accountability,⁶⁶ and one such a factor is financial control.

Institutional financial control is one of the major elements that assist the national institution to conduct its functions independently, without political interference, and in line with the Paris Principles. During the enactment of the institutional enabling statute, it is imperative that this element be given higher consideration.⁶⁷ As it has been highlighted in the earlier chapters, the requirement of a national institution to work independently from the government, particularly by having an adequate funding which may also enable it to recruit its own staff and secure premises, and not to be subjected to unnecessary financial control or interference, which might effect its independence are some of the guiding factors established in the Paris Principles.⁶⁸

As this being the case, the Human Rights Commission Act No 39 of 1996 in section 21 expressly states that “the funds of the Commission shall consist of such moneys as may be appropriated by Parliament... or paid to the Commission by way of grants or donations...” The Act further provides that “there shall be paid from the funds of the Commission: the salaries, allowances, pensions and loans of the Commissioners and staff; reasonable traveling, transport and

⁶⁶B, Burdenkin, National Human Rights Institutions in the Asia-Pacific Region, Martinus Nijhoff Publishers (2007) p.43

⁶⁷ B, Lindsnaes, and L, Lindholt, L NHRI- Standard Setting and Achievements, Dannish Centre for Human Rights, (2001) p.18

⁶⁸ Ibid, p.22

subsistence allowances for the Commissioners and members of any committee of the Commission, when engaged in business of the Commission; and any other expenses incurred by the Commission in the performance of its functions.”⁶⁹

This study concurs with the idea of the salaries to emanate or be appropriated from Parliament and other consolidated funds (grants) and donations. However, past experience has shown that the government has no political will to allocate enough funds to the Commission in order to ensure the smooth running of programmes. The worst experience has been under the 2010 allocation in which the amount allocated to the Commission was not even subjected to debate by Parliament.⁷⁰ In as much as salaries and allowances for Commissioners and staff are paid timely and without difficulties, there is need to sufficiently fund the programmes if the Commission is not to become a white elephant.

As clearly indicated the constraints, especially funding, faced by the Commission in its quest to discharge its mandate have become perennial problems and have adversely affected its effectiveness and efficiency to address the human rights problems of the public.⁷¹ This has continued to be a major constraint since the Commission’s creation and has affected the carrying out of programmes, transport provision and above all the staffing levels as indicated in the Commission’s Annual Reports for 1997 to 2005 which were readily available and accessible at the Commission’s head office in Lusaka.

This has shown that the Commission’s financial constraints and experience detracts from the much needed independence and contrary to the requirements of the Paris Principles. In order for

⁶⁹ Section 22(3) of the Human Rights Commission Act

⁷⁰ 2010 Budget Debate Proceedings by the National Assembly

⁷¹ The Human Rights Commission Annual Report, 2003, p.29

a national institution to work independently from governmental influence, *inter alia*, the Principles require that control of the institutional finance should be placed in a position which may not affect its independence.⁷²

4.2 Membership and Duration of Mandate for Commissioners

As far as the issue of members in any national institution and duration of their mandate is concerned, the Paris Principles insert some criteria that may be followed during the process of establishing institutional legislation. The Principles require the national institutions to have a stable mandate for the members of the national institution. Again the Principles states that in order to ensure a stable mandate for the members of the institution , their appointment may be effected by an official act which may also establish the specific duration of the mandate. This duration may be subject to renewal, provided that the pluralism of the institution's membership is ensured.⁷³

The Human Rights Commission Act No 39 of 1997 provides that a Commissioner shall be appointed for a term not exceeding three years.⁷⁴ However, the appointment may be renewed after the expiry of the term as provided in the Act. It is argued that the duration of the said mandate may not ensure a stable mandate as advocated by the Paris Principles for the members of the Commission to effectively utilize their expertise in order to actualize the commission's vision, which seeks to make sure that the state has a sustainable human rights culture, in which human rights and are respected, promoted and protected.

⁷² B, Lindsnaes, and L, Lindholt, L NHRIs- Standard Setting and Achievements, Dannish Centre for Human Rights , (2001) p.18

⁷³ Ibid

⁷⁴ Section 7 of Act No 39 of 1996

This study is of the considered opinion that this duration of mandate is not sufficient for the members to efficiently serve the Commission, and therefore incompatible with the requirements of the Paris Principles, which insist on the need of ensuring stable mandate of members of the national institution. Therefore, this study finds that it is imperative for the Commissioners to be accorded enough duration of mandate so as to effectively undertake duties of promoting and protecting human rights. Eventually, the Commission can become a more effective body at the national level in the area of human rights and become a good example to other regional and international NHRIs. In the alternative, Commissioners should be appointed on a permanent basis so that they become more dedicated and committed to the Commission's work.

In determining a stable mandate this study looks to the practice of other comparable examples from other national institutions in the Commonwealth. Kenya,⁷⁵ South Africa,⁷⁶ India⁷⁷ and Australia are among many countries whose national institutions establishing legislation have provided their members with stable duration of mandate that range between five (5) to seven (7) years as required by the Paris Principles. Stable mandate and long duration of mandate may act as stimulus for the Commission's members to ethically perform their duties without being induced by any temptation, or be compromised to any pressure from outside.

4.3 Investigations and Inquiries

The chief function vested in a national human rights institution is to receive complaints from individuals and occasionally, from groups alleging human rights abuses committed in violation

⁷⁵ <http://www.khrc.or.ke/> accessed on 14th April 2006

⁷⁶ Human Rights and Equal Opportunity Commission, Australia, Annual Report 1997-1998, p. 34

⁷⁷ B, Rao, *National Human Rights Commission India, Experiences in fulfilling mandate*. Paper presented at the Commonwealth Forum of NHRIs, London, 26th-28th February 2007.

of existing national law as well as initiating its own investigations on matters of public interest without being moved.

The ability of receiving complaints assists NHRI to ensure that the rights of all citizens will be fully protected. It also helps persons who feel that their rights have been violated by either private parties, government officials and even administrative bodies will be seriously received and acted on. In this regard, the Paris Principles also require a national institution to be vested with powers of hearing any person and obtain from him or her any information and documents necessary for assessing situations falling within its competence. It is however regrettable to say that there are very few instances when the Commission has initiated investigations on its own without being moved by an individual and therefore not acting in accordance with the Paris Principles.

The enabling Act establishing the functions and mandate of the Commission, further provides that “a complaint or allegation shall not be received by the Commission unless it is made within a period of two years from the date on which the facts giving rise to any such complaint or allegation become known to the person making the complaint or allegation.”⁷⁸

This study is of the considered view that this particular provision of the Commission’s enabling statute, limiting the time in which a complaint can be admissible, provides a hindrance to effective promotion and protection of human rights. To start with, the Commission has not fully sold itself to the Zambian people because it does not cover the entire country or is not present in all the nine provinces. Worst still even in provinces where the HRC is present, it is still not well known.

⁷⁸ Section 11(3) of the Human Rights Commission Act

According to the assessment that was conducted by the Commission it was in fact discovered that very few people are aware and visit the Commission to access its services. It was reviewed that most of the people who hail from urban areas have basic understanding of what Human rights are but rarely visit the commission offices. Lusaka province in terms of the Commission's services being utilized had 12%, followed by Northern with 11%, Western 8% and Southern being the list with 5% of people visiting the Commission offices.⁷⁹

This could mean that many people are not aware of the presence of the Commission in these areas. And the worst affected are those living in provinces where the Commission has no presence or are rarely visited by the Commission and only resort to accessing the services of Legal Resources Foundation (LRF), Young Women Christian Association (YWCA) and many others which are not national focal point human rights institutions thus portraying another weakness and making the time limit contained in the Act of no help to people at all.

The Commission is also empowered to visit prisons and places of detention or related facilities with a view of assessing and inspecting conditions of persons held in such places and make recommendations to redress existing problems.⁸⁰ To this effect the Commission conducts yearly prison visitations. It has visited prisons nationwide and produced reports on its findings and made recommendations. However the source of concern is that due to lack of funds the Commission only visits prisons in one province per year.

⁷⁹ Report on the "Assessment of the Implementation of the Human Rights Commission 1999-2009 National Plan of Action." December, 2009. p.26

⁸⁰ Section 9(d) of the Human Rights Commission Act

This means that if a prison is visited today, it will take nine years for the Commission to go back to that prison. Meanwhile human rights abuse in prisons are being experienced by inmates on a daily basis and one wonders where the complaints will be taken given the earlier time bar or limit acknowledged above. This is a major operational weakness of the Zambia Human Rights Commission which needs redress. After conducting prison visits, the Commission comes up with reports whose recommendations are submitted to the relevant authorities. Nevertheless, the release of such reports takes extremely long and by the time they are released their relevance in most cases is undertaken by events due to delay.

At the time of this research, that is to say 7th March, 2009 it was discovered that the Commission only had in stock prison reports of up-to 2006. Prison reports for the year 2007 to 2009 were not yet published or printed due to financial constraints. Previously and due to delays of a similar nature, the Finnish Embassy on 31st December 2004 signed an agreement for the printing of the 2001 to 2003 Reports so that the Commission can clear a backlog of various reports and to develop a strategic plan.⁸¹

The above outlined factors are a clear indication that even though the Commission visits prisons, the findings revealed in the reports are not likely to be acted upon by the relevant authorities because they are outdated and taken over by events by the time the reports are coming out and therefore not compatible with the Paris Principles which require national human rights institutions to be effective in the execution of their mandates. All these operational and legal flaws do not create a palatable environment in which human rights can be effectively promoted and protected as per the Paris Principles.

⁸¹ Human Rights Commission 2004 Annual Report, p.29

4.4 Impartiality in Addressing Violators of Human Rights

In advocating for national human rights institutions to be impartial and equally addressing perpetrators of human rights, the Paris Principles require the institution to act freely when it is considering any question that falls within its competence. Among others, this is by disregarding whether those questions are submitted by the government or otherwise. Impartiality in investigation and addressing perpetrators for any national institution constitutes its effectiveness as a protector of human rights. It reduces frustration and cynicism towards it from victims, Non Governmental Organisations and the general population within its jurisdiction, especially when the actions of major violators of human rights have not been addressed in a satisfactory way. It is yet to be seen whether the Commission can be bold enough to withstand political pressure on matters of public interest and human rights.

4.5 Collaboration, Consultation and Networking with Other Institutions

Collaboration, networking and consultation with other bodies is another elements stated in the Paris Principles. The Paris Principles require that a national human rights institution may maintain consultation with other bodies or institutions, whether jurisdictional or otherwise, which are responsible for the protection and promotion of the human rights.⁸² This element may also be important on the national institution to enhance its independence and effectiveness.

One of the core principles or requirement is that the institution may have mutual consultation with the judiciary. Despite not being judicial bodies, but quasi judicial bodies, NHRIs may be

⁸² B, Burdenkin, National Human Rights Institutions in the Asia-Pacific Region, Martinus Nijhoff Publishers (2007) p.68

officially permitted to submit advice to the courts, such as *amicus curiae* briefs or third party interventions. The advice may also be on legal issues within their field of expertise in an independent capacity. This is important in ensuring that courts are informed about specialized human rights law concerns and also to make sure that human rights standards are actively implemented in court decisions.

When it comes to working with the judiciary, the Commission is only not permitted to interfere or handle cases before the court⁸³ but the enabling statute does not contain any specific provision precluding the Commission to act as a friend of the court as this is where the incidental clause⁸⁴ can be invoked or taken advantage of. The issue of the Commission to act as a friend of the court enhances the Paris Principles requirement which state among others, the need of a national institution to maintain consultation with other bodies, whether jurisdictional or otherwise, which are responsible for the protection and promotion of human rights.

As far as this point in motion is concerned, there are some of the national institutions which have incorporated the power of acting or intervening in legal proceedings as *amicus curiae* in their legislations. In various degrees, these powers have assisted much in the issue of general public to realize their fundamental rights and freedoms. Some examples can be drawn from Ghana, South Africa, Australia and India. The South African Human Rights Commission has gone very far whereby there are cases in which it intervened as an *amicus curiae* even in the South African Constitutional Court. But this is not practiced in Zambia and therefore forms part and parcel of the Commission's failure to fully meet the Paris Principles effectively in its operations and mandate.

⁸³ Section 10 (4) of the Human Rights Act

⁸⁴ Ibid, Section 9(f)

4.6 Promotional Mandate and Advisory Role of NHRI

On a positive note, the Zambia Human Rights Commission has successfully carried out a number of human rights researches, sensitization and education activities countrywide including activities such as workshops, trainings, discussions, radio discussion programmes in both English and the local languages debates and community drama performances for various categories/groups including law enforcement agencies, teachers, curriculum developers and other educational authorities; health workers; heads of government departments in selected provinces; civil society organisations and the general public.⁸⁵

The Commission has also utilized the commemorations of international human rights days as an opportunity to sensitize the public on particular rights (and groups entitled to the said rights). This has also provided an opportunity for the Commission to strengthen its collaborative efforts and interactions with NGOs particularly in the provinces.

The successes the Commission has seen in this area include: the inclusion of Human Rights in the High School curriculum and production of school materials following work with Ministry of Education and civil society; Successful implementation by the Commission of a project to train, empower and equip community radio personnel with knowledge and skills to design and produce human rights programmes.

This has particularly helped to achieve increased knowledge about human rights and raised awareness among community radio personnel, and increase in their technical skills in the production of human rights-based programmes, which in turn would positively impact on the

⁸⁵ K, Maduma, "A Presentation of the Zambia Human Rights Commission: Achievements, Challenges and Opportunities and Ways Forward in the Promotion and Protection of Human Rights in Zambia." 3rd Conference of National Human Rights Institutions (NHRIs). 8-10 November, 2009. Banjul, Gambia. P.6

communities they seek to serve.⁸⁶ The targeted groups in this project included women, men, youths and persons with disabilities who appreciated the community radio programme initiative and, as a result, demanded more education and sensitization on human rights.

On performing its advisory role, the Commission has conducted a number of researches in identified thematic areas such as in the area of children's rights, employment and Labour rights, and has since 2007 been producing the Annual State of Human Rights Report intended for: Advocating for policy and legislative reforms in Zambia; Effectively planning, and monitoring Human Rights in Zambia; and assessing, monitoring and evaluating the performance of government in the domestic implementation of its international obligations for the protection and promotion of human rights in Zambia.⁸⁷

The reports are also intended to catch the attention of a larger public and thereby inform and educate on matters of human rights; and to offer government, civil society, donor and multilateral agencies specific follow-up actions based on the issues and challenges raised and discussed in the report.

Consequently, the production of such reports has resulted inter-alia in increased understanding by the larger public of fundamental issues of human rights in Zambia; a creation of awareness and debate on issues amongst decision makers; offering concrete policy recommendations to government, civil society and cooperating partners; design of specific follow-up actions based on concrete engagement plans following the publication, launch and distribution of each report; as well as creating greater visibility for and reinforces the position of the Human Rights Commission in Zambia.

This has further strengthened the research and analytical capacities of the Human Rights Commission to systematically carry out researches. It allows the Commission to fulfill its mandate, under the Act, of carrying out a programme of research, education and information on

⁸⁶ Ibid, p.7

⁸⁷ Ibid

the one hand and advising the government on the protection and promotion of human rights on the other hand.

4.7 Conclusion

From the aforesaid, although this study has found that some practices and certain provisions of the Commissions founding legislation are incompatible with the Paris Principles, it is to the greater extent, provided with legal power to carry out its functions within the state. A notable area of achievement has been noticed. For instance, the Commission is doing extremely fine in collaborating and networking with regional and international human rights institutions as well as organizations within the country. Further, it has tried to raise or come up with information and awareness programmes though this is to a greater extent hindered by limited staffing levels and finances to make it possible for the Commission members of staff to reach out to the people in every angle of the country.

On the part of failure, the Commission has failed to successfully complete its decentralization programme because there are still three provinces in which the Commission is not present, that is to say, Luapula, Central and North-Western Provinces. It is therefore high time the Commission considered finishing this programme and if possible to take its presence to district level. Furthermore, the provinces in which the Commission has presence are inadequately staffed and are at best manned by four officers comprising an investigator, a clerk, a driver and a Human Rights Officer supported by United Nations Development Programme.

It is therefore, worth noting that despite the fact that the legislation still contain some legal flaws, the Commission has been performing a good job in making sure that the public realize their fundamental rights and freedoms although more efforts need to be done especially opening more

branch offices in regions so as to spread the Commissions accessibility and functions through out the country and up-hold the Paris Principles.

CHAPTER FIVE

GENERAL CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

This chapter provides a brief summary in its conclusion of what has been discussed in the foregoing chapters. The chapter also winds up by proposing some measures or recommendations to be undertaken in order to make the Commission's enabling statute, experiences and practices compatible with the Paris Principles. These recommendations should therefore be utilized by the Commission in proposing to the responsible authorities if the need of amending or repealing ambiguous and unfriendly provisions in the commission's founding legislation which are not compatible with the Paris Principles will arise. The provided recommendations based on three main aspects stipulated in the Paris Principles as among of the key factors for the effectiveness of any national institution. As previously demonstrated, the said factors include independence, membership and investigation and inquiries.

5.1 General Conclusion

There has been a growing recognition, by the United Nations, international financial institutions and most wealthy donor governments, that human rights are an integral element of "good governance" and good governance is essential for sustained development.⁸⁸ There has also been increasing recognition that systematic discrimination and widespread violations of human rights

⁸⁸ Burdenkin, B, National Human Rights Institutions in the Asia-Pacific Region, Martinus Nijhoff Publishers (2007) p.1

invariably lead to political turmoil and conflict which has serious implications on national stability and security.⁸⁹ In recognition of these realities, development assistance has been conditioned on respect for human rights and reforms designed to enhance good governance. Consequently, this has led to the establishment of national human rights institutions in many countries of the world, in both developed and developing countries, and Zambia has not been left out in such developments.

This research has indeed established and do agree with the idea that “building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner...”⁹⁰ Therefore, the establishment or enhancement of a national protection system in Zambia, reflecting international human rights norms and following the Paris Principles, should remain the country’s principle objective.

It should be re-emphasized here that from the time the international community started setting standards in the field of human rights, it has always been a requirement that a NHRI should act as a source of human rights information for the government and people of the country; assist in educating public opinion and promoting awareness and respect for human rights; consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally and that the government may wish to refer to it; advise on any questions regarding human rights matters referred to it by the government; study and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and to prepare and submit reports on such matters to the appropriate authorities;

⁸⁹ Ibid, p.2

⁹⁰ K, Annan, “Strengthening of the United Nations: An Agenda for Further Change,” Report of the Secretary General, 9th 2000

perform any other function which the Government may wish to assign to it in connection with the duties of the State under international human rights treaties and instruments as a state party.⁹¹

In this regard, it is highly recommended under the Paris Principles and guidelines that regard should be given to the structure of the national human rights institution. The guidelines recommended that such structures should be so designed as to reflect in their composition, wide cross-sections of the nation, thereby bringing all parts of that population into the decision-making process in regard to human rights; function regularly, and that immediate access to them should be available to any member of the public or any public authority; and that in appropriate cases, have local or regional advisory organs to assist them in discharging their functions.⁹²

Despite discussing different matters pertaining to national human rights institutions, the core aim of this research was to examine the establishment process of the Zambia Human Rights Commission, its enabling statute, experiences and practices, and to determine whether they are compatible with the Paris Principles so as to ensure the institution's effectiveness in promoting and protecting human rights at the national level.

The study highlighted various issues like evolution to the establishment of national human rights institutions and their functions modalities. Furthermore, it discussed the status, powers, competences, guiding factors and structure of the Zambia Human Rights Commission. Finally, it examined the legal flaws, experiences and practices as well as challenges that hinder the

⁹¹ The UN Office of the High Commissioner for Human Rights Fact Sheet No.19, National Institutions for the Promotion and Protection of Human Rights

⁹² Ibid

Commission to effectively and efficiently promote and protect human rights in Zambia and how they can be made compatible with the Paris Principles.

This legal research has come to the conclusion that the Human Rights Commission enabling Act, as well as practices, contains some provisions which are not compatible with the wording and requirements of the Paris Principles. This acts as an obstacle for the promotion and protection of human rights and for the full realization of fundamental rights and freedoms in the state. Moreover, it may not create an enabling environment for the Commission to fulfill its vision that targets at making sure that Zambia has a sustained culture of human rights.

As pointed out earlier, the need for the Commission to serve the general public in Zambia is growing very fast and this is strongly supported by the final declaration and programme of action of the Vienna World Conference on human rights. It has been expressly witnessed how the Commission is trying to expand its activities by opening provincial offices and also employing new staffs though this has been met with strong financial constraints. But, it has to be understood that all these initiatives can not be successfully achieved if the Commission enabling Act is not amended appropriately in the needful areas identified, and the creation of a good political will for people in government so that human rights issues are prioritized by the executive, legislature and the judiciary.

5.2 RECOMMENDATIONS

The Human Rights Commission, despite facing a number of constraints and limitations, has remained committed to upholding the human dignity and equality of all people enunciated in a number of international, regional and national human rights instruments. It has conducted

activities in the area of information and education, research and advocacy as well as legal and investigations. However, there is still much that needs to be done if the Commission's enabling Act, practices and experiences are to be in line with the Paris Principles.

To start with, the Paris Principles require a NHRI to inquire into cases using a wider pattern by hearing any person and obtain from him or her any information and documents necessary for assessing situations falling within its competence. It is therefore recommended that the provision, in the Human Rights Commission Act, which prohibits the Commission from receiving complaints of human rights violations allegedly committed two or more years ago should be amended to allow the Commission to admit and investigate such cases.

The above recommendation is due to the understanding that the Commission currently is not present in all the provinces and this de-links the Commission from victims of human rights violations and the act which is further stressed by the time bar or limit which currently is not justifiable. The removal of the time bar will therefore enhance the image of the Commission to the general public as an institution that operates impartially and committed to addressing all perpetrators of human rights as required by the Paris Principles.

On the part of prison visits, it is recommended that the Commission with the help of government and its cooperating partners should ensure that the major challenges faced in this area are addressed. It was clearly pointed out that owing to limited funding the Commission has been unable to conduct its prison visits in the recommended manner i.e. regular and/or unannounced visits (and) with all necessary personnel such as Commission staff, medical and social welfare personnel. This should therefore be acted upon as a matter of urgency.

Further, ensuring implementation of the Commission's recommendations in a timely and fashion manner by government and its agencies following prison visitations and other places of detention was equally cited as a challenge. However, a number of human rights violations revealed in the said Prison visitations are not necessarily willful on the part of the state but are as a result of limited resources, and/or facilities within the criminal justice system. Consequently, there are:

- Prolonged and/or unlawful detentions;
- Failure to separate juvenile offenders from adult offenders held by the state
- Congestion in prisons resulting in inhumane living conditions for prisoners and many more.

It is therefore recommended that government should have the political will to address these challenges because a person despite being a prisoner does not lose his/her humanity hence being equal in dignity and rights.⁹³

In order to strengthen institutional independence, especially on issues pertaining to institutional financial control and other matters incidental to such, advocated by the Paris Principles, this study recommends that there should be increased budgetary allocations given to the Human Rights Commission in the National Budget. More importantly, it will be beneficial if the Commission's budget is laid before and discussed directly by Parliament as opposed to a committee.

This will enable the Commission to fully become operational by opening offices in all provinces and were possible have district offices, employ staff and smoothly carry out programmes.

⁹³ Preamble to the Universal Declaration of Human Rights (UDHR)

Currently, the Commission has no offices in three provinces (Central, Luapula and North-Western Provinces) but has provincial offices on Lusaka, Eastern, Southern , Northern, Western and Copperbelt Provinces. However, the effectiveness of provincial offices is yet to be seen because they are severely constrained in terms of manpower and have no working budget of their own hence depending on Lusaka Head Office for them to work.

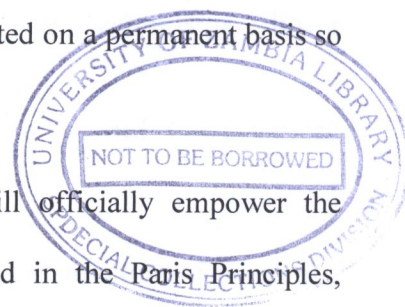
This study highly concurs with the idea of the salaries to emanate or be appropriated from Parliament and other consolidated funds (grants) and donations. However, past experience has shown that the government has no political will to allocate enough funds to the Commission in order to ensure the smooth running of programmes. This has become a perennial problem and has adversely affected its effectiveness and efficiency to address the human rights problems of the public.⁹⁴ Consequently, it compromises the Commission's independence and mandate and if not addressed would lead to the Commission become a white elephant.

Further, in order to ensure that there is full commitment to duty by the members of the Commission and thus create commitment in such members to serve the Human Rights Commission, Commissioners should be given a stable mandate and duration as required under the Paris Principles and the procedure for the removal of a Commissioner from office on the basis of the infirmity of body or mind, which is currently lacking, should be clearly spelt out as the present situation leaves Commissioners at the mercy of the appointing authority.

It is recommended that the provisions stipulating duration of the mandate of the Commission's members in the office be amended. This study is of the considered opinion that the three year mandate given to Commissioners is not sufficient for the members to efficiently serve the

⁹⁴ The Human Rights Commission Annual Report, 2003, p.29

Commission, and therefore incompatible with the requirement of the Paris Principles. Therefore, this study finds that it could be imperative for the Commissioners to be accorded enough duration of mandate so as to effectively undertake duties of promoting and protecting human rights and eventually become a more effective body at the national level. Good practices from other NHRIs in the region should be adopted in order to strengthen the Human Rights Commission. Should there be need; Commissioners should be appointed on a permanent basis so that they become more dedicated to the Commission's work.



Lastly, this study does recommend that any provision which will officially empower the Commission to consult with other bodies or institutions as stated in the Paris Principles, especially the judiciary, be inserted in the enabling Act. This trend may assist the Commission in adhering to the Paris Principles requirement which create a need of a national institution to maintain consultation with other bodies or with institutions, whether jurisdictional or otherwise that are responsible for the protection and promotional of human rights.

Considering the above given recommendations will ensure that the Human Rights Commission Act No. 39 of 1996, and the works or practices of the Commission become compatible with the Paris Principles. Currently, some of the provisions of the Act and the Commission's practices are only in partial fulfillment of the Paris Principles hence the need to implement the observations and recommendations made in this paper for the Commission to fully meet and implement the Paris Principles which should be an ideal situation.

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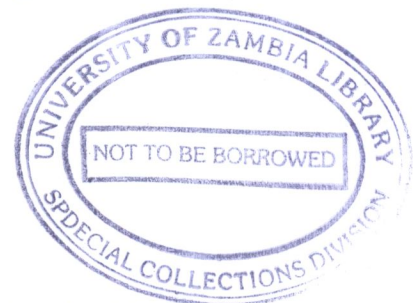
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