


# THE UNIVERSITY OF ZAMBIA

## SCHOOL OF LAW

I recommend that the obligatory essay prepared under my supervision by BOB M. MUSENGA entitled:

**A CRITICAL EXAMINATION OF THE ROLE OF HUMAN RIGHTS ORGANISATIONS IN ZAMBIA: A COMPARATIVE STUDY OF THE LEGAL RESOURCES FOUNDATION (LRF) AND ZAMBIA CIVIC EDUCATION ASSOCIATION (ZCEA).**

be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements relating to format as laid down in the regulations governing Obligatory Essays.

Date ..... 15<sup>th</sup> SEPTEMBER 2005 ..... Signed:  .....  
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**BY**

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**An obligation Essay submitted to the faculty of Law of the University of Zambia in partial fulfilment of the requirement for the award of the degree of the Bachelor of Laws (LL.B)**

**FACULTY OF LAW  
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DEDICATED

TO

My late father, and my mother whose determination, love and encouragement has always been a source of inspiration.

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## ABBREVIATIONS

FODEP	Forum for Democratic Process
LAZ	Law Association of Zambia
LRF	Legal Resources Foundation
MMD	Movement for Multiparty Democracy
NAZI	National Socialist Party
NGO	Non-Governmental Organisation
NGOCC	Non-Governmental Organisation Coordinating Coommittee
UN	United Nations Organisation
OAU	Organisation of African Unity
UNIP	United Nations Independence Party
ZCEA	Zambia Civic Education Association

## INTRODUCTION

The quest for a human rights culture is of cardinal importance for any democratic nation. The man or woman in the street if he or she is fortunate to know what human rights are would probably not know what to do if his/her rights were violated. Worse still another person would not even understand what his/her human rights are and would therefore in "happy ignorance" allow acts of gross violation of his/her rights go unheralded. Notwithstanding this background the realities of our time demand a solemn attention to the quest for promotion and observation of fundamental human rights as enshrined in the Universal Declaration of Human Rights. The question may thus be asked: Of what interest is a human rights culture for Zambia? This seemingly simple question is often paid lip service to or at the worst simply ignored. We are inclined to assume that the issue of human rights promotion and protection is of utmost importance to any democratic governance and therefore, must be accorded the attention it deserves.

It is in this respect that this study will discuss the corpus of fundamental human rights tracing it from the work of natural law theorists and as understood in the contemporary liberal world.

It is then proposed that we look at the provision of the Zambian law on fundamental human rights and we will endeavour to highlight the effect of the many human rights instruments to which Zambia is a signatory. [As will be seen later, the said instruments have no legal effect in the sense that they do not form part of Zambian law].

In the advocacy for a sound human rights culture it has generally been argued that the state to all intents and purposes cannot be the best institution to champion the quest for promotion and to some extent even protection of human rights for as would be revealed later, it (the state) is usually the chief perpetrator of human rights abuse through its organs like the police force. There is therefore, an urgent need for an alternative force to check human rights abuse, and in Zambia this role is assumed by Non Governmental Organisation, the church and even institutions like the Law Association of Zambia (Human Rights Committee) which is an association of lawyers formed by an act of parliament. Our concern in this study is the role of these non-governmental Human Rights Organisations. Their role in short is the promotion and protection of human rights but the question arising is: Are these organisations performing their role and if not, why? This study will specifically focus on two of these NGOs and these are: The Legal Resources Foundation (LRF) and Zambia Civic Education Association (ZCEA). The two organisations have been picked because they have brought a new dimension to the role of the Zambian non governmental human rights organisations. This new dimension is legal representation and is admittedly the most pragmatic way of redressing actual violation of human rights for as would be seen it is usually the vulnerable members of society who are susceptible to human rights abuse. Of special interest to our discussion is the legal framework from which this very noble and humanitarian service is executed. [As would be seen later these two organisation are

not mandated to offer legal representation]. Further the two organisations have one marked difference which is of great interest in our discussion. Whereas the LRF is a limited company incorporated under The Companies Act Cap 686, the ZCEA is an organisation registered under The Societies Act. We will endeavour to analyse the legal implications of such structures.

Admittedly it may be correct to assert that human rights organisations are not doing enough and therefore, we will critically examine their operations. In this respect this study will undertake to examine their achievements as regards their outlined objectives. The question may thus be posed: **Are human rights organisations' outlined aspirations a reality or myth?** Further, it is proposed that in our study we answer the following questions:

The cause for a human rights culture - competition or cooperation for human rights organisations?  
Human Rights organisations - an extension of political factions?

These and other questions are hoped to stimulate a critical examination of the role of human rights organisations in Zambia.

In conclusion it is hoped that the revelations of the investigations to be carried out and the very humble recommendations to be made may assist in anyway and manner the smooth and efficient running of non governmental Human Rights organisations and thereby contribute to the establishment of a human rights culture in Zambia.

## CHAPTER ONE

This chapter will be an attempt to trace the origins of fundamental human rights which forms the core of our discussion. The origins of human rights as will later be seen lies in the work of natural law theorists. It is proposed that we look at the postulation of the natural law school.

This school arose in the prescientific era when there were no national states and also when law and religion were largely undifferentiated. During this period people could not explain certain phenomena like why there was day and light. They therefore, resorted to metaphysical speculation. Consequently, there arose a belief in the existence of supreme being that was in control of everything and human beings, it was believed, were equally subjected to that supreme force. It was believed that there were certain natural laws which could be found in divine reason. This was said to be absolute and unquestionable, and could only be discovered by natural reason. These were fundamental laws and human laws could only be valid in so far as they conformed to these fundamental laws.<sup>1</sup> One natural law theorists Grotius defines natural law as being "the law of God as disclosed by Nature to the reason of man"<sup>2</sup>. The natural school therefore, assumes that a person is able to discover these natural laws by using natural reason and common sense. Further, these laws exist independently of any other laws made by man and are attributed to a supreme being.

Although, admittedly, the natural law school of thought is but of the past, it is submitted that this school has had tremendous impact on the shaping of the contemporary legal system. One learned scholar paying tribute to the natural law school says: **"The conviction that there are superior principles of right, or higher laws to which the ordinary civil rules made by man must conform and which necessarily place limits on the operation of such rules, is one of the most persistent ideas in the evolution of legal thought"**.<sup>3</sup> With this in mind we will proceed to look at some of the natural law theorists and what they say on natural rights or man's inherent rights which have now come to be called human rights. Ideally, these philosophers postulate the same views which recognise natural rights or inalienable rights which belong to man by virtue of being human.

The Greeks were among the first to formulate ideas of natural law. The early Greek theorists were called sophists. They consisted of writers and jurists. The Greek philosopher Aristotle considered natural law, which he at times referred to as natural justice, as that which is universal, eternal and omnipresent. In his book **NICOMACHEAN ETHICS** he thus stated: **"Of political justice part is natural, part legal - natural, that which is everywhere has the same force and does not exist by people's thinking this or that"**.<sup>4</sup> The theme of a universal law emanating from the gods runs throughout the work of early Greek natural law theorists. However, human laws i.e. those enacted by man, were recognised but it was argued that these could only be valid if they conformed to natural

justice. To this end Haines in his book Revival of Natural Law Concepts quotes Aristotle as having suggested that when an advocate was pleading a cause and found that the positive law (law enacted by man) was against him such an advocate could then appeal to the law of nature as rendering the act void.<sup>5</sup>

The Roman natural law theorists relied on the work of the early Greek philosophers. The Roman theorists, like the Greek philosophers argued that natural law was universal and eternal. They further contended that man-made laws that did not conform to such a law did not deserve to be called laws. Of utmost importance these philosophers brought in the concept of equality in the natural law postulations. Roman jurists like Seneca suggests that men in their natural state were free and equal and to this end argued that virtue could be attained by both the slaves and free men. He argued that slavery merely affected the body while the mind could not be forced in bondage. Further, jurists like Ulpion, Tryphanus and Florentinus were against slavery since man, they contended, were by nature born free and equal. From the Roman theorists, the idea of equality of men slowly gained ground. The stoic philosopher Cicero was instrumental in the advocacy of equality of men. He taught that natural law is in nature and was source and limit of rights.

The Medieval Christian natural law theories were advanced when the Roman Empire collapsed and the church became very powerful. During this time, elements of christianity were introduced into law. It was befitting that the church assumed the role of

interpreting natural law for it claimed to be the final interpreter of the truth. The church therefore, fused natural law teachings of the Greeks and Romans with the scriptures. Pre-eminent among the christian scholars were St. Augustine of Hippo and St. Thomas Aquinas. The church contended that human law could only be valid as long as they conformed to natural law or divine law. Divine law, it was argued, gave man inherent rights.

The collapse of the Medieval Christian natural law teachings led to the rise of powerful rational states and this in turn gave rise to absolute rulers. Owing to this of affairs, there was unprecedented rise in inequality. For example most of the land was owned by powerful kings and barons as was the case in England where all hand in the realm belonged to the king or could only be held of him by his tenants in capite. There was an outcry by the exploited majority who began to question the existence of these powerful and despotic national states. Some philosophers at about this time advanced what were called social contract theories. These theories arose to try and justify and rationalise the existence of the state. One of the leading exponents of these social contract theories was John Locke who had an optimistic view of man in the state of nature (pre-government era). He said man in the state of nature is governed by the law of state of nature and that all men are equal. Talking of the state of nature Locke says:

The state of nature has a law to govern it, which obliges everyone, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or

passion; for men being all the workmanship of one omnipotent and infinitely wise maker; all the servants of one asvereign master, sent into the world by His orders and about this business; they are made to last during His, not one anothers' pleasure.<sup>6</sup>

Locke's exposition of the state of nature is clearly laid down but the question is: **Why should man seek a government in the abundance of divine inspired happiness?** To this, Locke, says there is need for the state to execute the natural law but he clearly gives certain inalienable rights to man. These rights inherent in man are God given and cannot be taken away. According to Locke when man enters a social contract with a sovereign or state he retains his inalienable rights and the state on the other hand undertakes to protect these rights. These rights are the rights to property, life, and liberty.<sup>7</sup> From the work of Locke there is a categorical identification of man's natural rights which are inherent in man. It is not surprising that framers of the US constitution which reflects a human rights culture were largely influenced by Locke.

The other eminent classical theorist is Jean Jacques Rousseau and this philosopher influenced the making of the French Constitution. Like Locke, Rousseau, had a very optimistic view of man in the state of nature and though he advocates an association of men to safeguard their interests, he recognises that man has always been free even in the state of nature.

We have endeavoured to trace the root of human rights. From our discussion we saw the stoic concept of Universal equality which undeniably can be compared to contemporary fundamental human

rights. Further, liberal democratic philosophers like Locke and Rousseau have had immense influence on the US and French constitutions respectively. It is therefore, submitted that the concept of human rights is traced from natural law theorists. The Fontana Dictionary of Modern Thought rightly restates this assertion in the following sentence: "That there are human rights in a contemporary form of the doctrine of natural rights, first clearly formulated by Locke and later expressed in terms of the rights of man".<sup>8</sup>

Having traced the origins of human rights we may now answer the question: **What are human right?** Deducing from our discussion we can simply state that human rights are rights of a person. The rights belong to an individual by virtue of being a human being and such rights ought to be respected and protected. It is recognised that these rights have to be protected for the development of a person in all areas of human endeavour. The respect for human rights is a cardinal test for a democratic governance as is evident from the an acclaimed US Declaration of Independence of 1776 which categorically stated that it is 'self evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness'.<sup>9</sup> This was yet again reflected in the Bill of Rights (first ten amendments to the US constitution - 1791) which, inte alia, contains the right to free speech, right to privacy of home and right to counsel.

As pointed out human rights are inherent in man. They are important because they are essential for the development of an individual. Further they are cardinal in the preservation of peace and justice. We may refer to the genocide committed against Jews at the hands of the NAZI regime of Adolf Hitler. This is a test case of violation of human rights and its consequences. Further abuse of human rights can be seen in the former USSR at the time of Stalin. Dissension was brutally eliminated by incarceration in the notorious concentration camps. In Africa, it is so unfortunate that instances of abuse of human rights are ever so ample. Zambia is not an exceptional. Even when professing to be a democracy Zambia has perpetrated some acts in blatant disregard of human rights.<sup>10</sup> It is therefore, imperative for all countries to have universally defined and understood concepts of human rights. This is crucial for the sustenance of economic and social development. The then UN Secretary General U Thant rightly made this observation when he stated:

"The establishment of human rights provides the foundation upon which rests the political structure of human freedom; the achievement of human freedom generates the will as well as the capacity for economic and social progress; the attainment of economic and social progress provides the basis for true peace."<sup>11</sup>

On the international plane, the cornerstone of human rights is reflected in the charter of the UN which proclaims in its preamble a reaffirmation of faith in fundamental Human Rights. In 1948 the General Assembly of the UN adopted a Universal Declaration of Human

Rights. This outlines a catalogue of human rights to be enjoyed by everyone irrespective of nationality, race, colour or creed. The UN's commitment to the quest for the promotion and protection of human rights cannot be overemphasised. In a FOREWARD to a UN publication the then UN Secretary General U Thant observed:

"...the promotion and protection of human rights form the very essence, and provide the deepest meaning and motivation, of the UN as an international and inter-governmental organisation. For, in the last analysis, a recognition of the 'dignity and worth of the human person', in the words of the charter, is a symbol of all the other activities and purposes entrusted to and pursued by the world organisation: Peace, the security of future generations from the scourge of war and the promotion of social progress and better standard of life in larger freedom.<sup>12</sup>

The sentiments expressed by U Thant is a true reflection of the ideals of the Universal Declaration of Human Rights which recognises the fact that promotion and observance of human rights is a foundation of freedom, justice and peace. Pertaining to this, in drafting the Universal Declaration of Human Rights the message is clearly delivered in the opening statement of the preamble which states: "...In 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".

## ENDNOTES

1. This is an opposed to the Positive School which contends that laws (human) are valid as long as they have been enacted following the formal laid down procedure notwithstanding their contravention of natural laws.
2. W.S.M. Knight, The Life and Works of Hugo Grotius, London: Sweet and Maxwell, 1925, p. 211.
3. Charles G. Haines, The Revival of Natural Law Concept, New York: Russell and Russell, 1965, p. 3.
4. Quoted in Lloyd's Introduction to Jurisprudence, London: Stevens and Sons Ltd., 1985, p. 149.
5. Opct p. 6.
6. John Locke, The Second Treatise of Government, (edited by J.W. Gough) Oxford: Basil Blackwell, 1966, p. 5.
7. Ibid
8. The Fontana Dictionary of Modern Thought, London: Fontana Press, 1990, p. 395.
9. American Government: Basic Documents and Materials, New York: D. Van Nostrand Company, 1950, p. 7.
10. Examples of such abuses abound: Police shooting at unarmed University of Zambia students and killing one youth see The Weekly Post October 2 - 8, 1992; killing one Thomas Sibande at Mafiwa Fishing camp when police opened fire on unarmed villagers alleged to have been fishing during the fishing off season reported in The Post January 10, 1995; and more recently the killin of Alick Sakala during police interrogations. See The Sunday Times 30th July, 1995 and also The Sunday Mail 30th July, 1995.
- 11.
12. The United Nations and Human Rights, New York: UN 1968.

## CHAPTER TWO

In the past chapter, it was pointed out that Human Rights are imperative for the development of individuals and preservation of peace and justice. It is therefore, important that these human rights are universal and inalienable. At a distance, Zambia's provisions on human rights, look impressive. However, a closer look reveals many faults. It is proposed that we discuss the salient features of the Zambian constitution on Human Rights.

Zambia joined the UN in 1964. She pledged to respect human rights as envisaged in the charter. However, the Charter does not list the rights and freedoms that are to be promoted. A later convention passed after the Universal Declaration of Human Rights, European Convention on Human Rights, went further in its bid to promote human rights. In its preable the European Convention on Human Rights recognises the role of the Universal Declaration of Human Rights which it takes after and which role is aimed at "...securing the universal and effective recognition and observance of the rights their-in declared". It must be pointed out at this stage that the Zambian Bill of Rights takes more of the form of the convention than the Universal Declaration. It must be borne in mind that ideally the two instruments contain the same provisions. The Universal Declaration contains both civil and political rights. It also contains economic, social and cultural rights. The Declaration gives the following rights, inter alia,: Right to life, liberty and security of persons;<sup>1</sup> equality before the law;<sup>2</sup> prohibition of slavery;<sup>3</sup> torture and cruel or inhuman treatment;<sup>4</sup>

Right not to be subjected to arbitrary arrest, detention or exile;<sup>5</sup> right to a fair and public trial by an independent and impartial tribunal;<sup>6</sup> presumption of innocence and prohibition against application of defacto laws and penalties; right to a nationality and right to own property.<sup>9</sup> On economic, social and cultural rights the Universal Declaration gives the following rights: Right to employment, free choice of employment, to just and favourable condition of work, to equal pay for equal work; to form and join trade unions,<sup>10</sup> and to social security.<sup>11</sup>

However, these rights are not absolute. The Declaration permits a state to pass laws restricting the exercise of these powers for the sole reason of affording "due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public orders and the general welfare of a democratic society".<sup>12</sup> This article entails that where one rights are at conflict with general morality, then one's rights may be curtailed. The definition of public morality transcends any control for it is so subjective. This is equally true for "public order" and "general welfare". This gives administrators discretionary powers to define what these words mean and as was clearly laid down in the case of NKUMBULA V. ATTORNEY GENERAL<sup>13</sup> such powers transcends judicial control. However, Article 30 of the Declaration provides that nothing contained in the Declaration may be interpreted "...as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth

herein". Having looked at the provisions of the Declaration we may ask ourselves the effect of this document on national states. The Declaration is not legally binding on national states. It however, is used as an international standard of human rights. The Declaration has had an immense influence on national constitutions (especially Bills of Rights). It has also inspired many international conventions like the European convention on Human Rights. Accordingly the preamble to the Declaration rightly proclaims that the Declaration was meant to be "... a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms..."

Zambia's commitment to the quest for a Human Rights Culture is, in principle, remarkable. She is a signatory to numerous international and regional Human Rights Instruments. To this end Zambia appended her signature to the African Charter on Human and people's Rights. The African Charter was adopted by the organisation of African Unit (OAU) in June 1981 and came into force in October 1986. The Charter guarantees civil, political, economic, social and cultural rights. The Charter essentially reflects the rights outlined in the Universal Declaration of Human Rights. The other convention to which Zambia is a signatory and has ratified are as follows: International Covenant on Economic, Social and Cultural Rights (has been ratified by 129 countries with only 2 signatories awaiting ratification); Convention on the Rights

of the Child (ratified by 163 countries and awaiting 11 ratifications); International Convention on the Elimination of all forms of Racial Discrimination (Ratified by 138 countries and awaiting 6 ratifications); International Covenant on Civil and Political Rights (Ratified by 126 countries and awaiting 2 ratifications); and Convention on the Elimination of all forms of Discrimination against Women (Ratified by 131 countries and awaiting 8 ratifications)<sup>14</sup>

From the above, it may be inferred that Zambia has shown some willingness to promote and respect human rights. However, as has been pointed out, these international instruments are not legally enforceable. It is therefore, up to a country to either incorporate these provisions in its constitution or simply ignore the same. Zambia is also notably absent from two important conventions. Its absence may in a way account to its bad record in torture and deportation of political opponents.<sup>15</sup> These are the Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention Relating to statelessness.

Zambia, in its endeavour to promote and respect of human rights has included a justiciable Bill of Rights in its Constitution. This has been since independence. The Bill of Rights was first incorporated in the self government Constitution of 1963, Appendix 3 of the laws of Zambia. This was done along the lines of the European Convention of Human Rights. The Bill of Rights was reproduced with minor amendments in the 1964

Independence Constitution (Chapter 1 sections 1 - 13). The same was reflected in the One Party Constitution of 1973 (Chapter 3 Articles 13 - 25). This has also been retained in the new draft constitution although we cannot say with certainty that this will be adopted.

It is for this reason that it is proposed that we concentrate on the current constitution. The constitution's preamble rightly recognises that "individual rights of citizens including freedom, justice, liberty and equality are founded on the realisation of the rights and duties of all men in the protection of life, liberty and property, freedom of conscience, expression and association within the context of our national constitution". This therefore, sets a good premise for drafting of fundamental Human Rights in the articles of the constitution for like the provision of International Human Rights Instruments, the provisions of the preamble are not justiciable. The preamble, nevertheless, goes on to outline certain economic, social and cultural rights like, "the right to free choice of employment, to just and favourable condition of work and to protection against unemployment" and also the "right to equal access to social, economic and cultural services and facilities provided by the state or by public authorities". These provisions are however not found in the actual articles of the constitution. Since it has been pointed out that the provisions of the preamble are not justiciable then an individual cannot seek the courts intervention in the event of violations of purported rights contained therein. This can be

advanced as the first fault with the Zambian Bill of rights. The actual provisions of the Zambian Bill of Rights are found in Part III of the constitution. This is quite an elaborate section which pertains to the protection of fundamental Rights and freedoms of the individual.

Article 11 of the constitution is actually the first article of Part III. It begins with a general declaration that every person in Zambia is entitled to fundamental rights and freedoms irrespective of his race, place of origin political opinion, colour, creed, sex or marital status. The following are the said rights: **Right to life, liberty, security of person, protection of the law; freedom of conscience, expression, assembly, movement and association; right of persons from exploitation;** and right to privacy of home and property. These outlined rights are however subject to two exceptions. They can only be enjoyed if this does not prejudice other people's rights or does not prejudice public interest. In the earlier part of this chapter, an attempt was made to show how difficult it is to determine what amounts to phrases like "public morality" or "general welfare". This is equally the case with "public interest". We can therefore, conclude that such provisions places undue limitations on the rights of an individual.

Further, Article 12 which provides for the protection of right to life attaches serious limitations to the purported protection. For instance Article 12(1) permits the court to deprive one of this very important right by way of a court sentence (death penalty).

Article 12(3) also permits the deprivation of life where reasonable force is used for the following: in defence of any person from violence for the defence of property; in order to effect a lawful arrest; in order to suppress a riot or in order to prevent the commission of a criminal offence. This therefore, makes the deprivation of life solely dependant on the decision of a fallible court of law. The issue of reasonable justification is bound to be abused and may lead to indiscriminate killing by trigger happy policemen. It is so easy to rely on reasonable justification for the police to justify murder that they have committed. This is evident from the numerous deaths reported in police cells which are attributed to police beatings. Recently, a suspect was tortured to death in the name of police interrogation.<sup>16</sup> One remained prisoner at Lusaka Central prison admitted to seeing a colleague die after being badly beaten three days earlier.<sup>17</sup> Though the clinical officer in-charge of the prison denied such charges, newspaper reports have confirmed the existence of police brutality which have lead to deaths in cells.<sup>18</sup>

Article 13 makes provision for the protection of the right to personal liberty. Article 13(1) gives ten instances in which deprivation of the right to personal liberty is authorised by law. This therefore, defeats the essence of protection of the right to personal liberty. We may refer to Article 16 of the constitution which is yet another provision that is followed by numerous exceptions. This article seeks to protect individuals from deprivation of property but is immediately followed by a catalogue

of exceptions to this right. For example under the Land Acquisition Act CAP296 the president can, using his discretion, acquire an individuals property with or without compensation. This clearly defeats the whole idea of having a right to property. Further derogative powers that undermine certain fundamental human rights could be seen in the power to abrogate the right to personal liberty. This is under the emergency powers. Although, in principle, emergency powers used correctly and for a limited time can be said to be a necessary evil we are inclined to think that in practise emergency powers are but a weapon for abuse of human right.<sup>19</sup>

From our discussion, it is apparent that the purported guarantee of human rights cannot in effect be called a guarantee. The qualification that follow each "guaranteed right" takes out the substance of the human right in question. Further, illustration may be seen in the freedom of speech and association found in Article 21. Ideally, this act recognises people's right to gather and share ideas. However, the article, mandates the state to curtail these rights. For instance the freedom of association is threatened by the Societies Act which makes it mandatory for the registration of societies with the Registrar of Societies or get special exemption. The registrar is a civil servant who owes allegiance to the appointing authority. To illustrate this point, we may refer to the denial of registration of an Islamic party. The Moslem Youths who sought to register this party later appealed to the Minister of Home Affairs. Since no result was forthcoming,

they took the matter to court but later withdrew the case.<sup>20</sup> This shows how the Societies Act can impend freedom of association for up to now there is no Islamic party. Further S.23 of the Act gives the Minister absolute discretion to ban a society if he thinks such a society (or societies) is operating against public interest. From our discussion on the use of discretionary power we saw how courts are reluctant to intervene in the exercise of discretionary powers. The government can use this to stamp out political opposition. This is evident from the then Minister of Home Affairs perpetual threats to ban small political parties.<sup>21</sup> The other act of parliament which is a direct attempt at curtailing rights enshrined in Article 21 is the Public Order Act which regulates public meeting and processions. Section 5 of this Act requires an association or an individual to apply for a permit from a regulating police officer. Amongst other obnoxious provisions, the authorising officer determines who speaks and even the topics to be covered. The particular provision dates back to the colonial days of independence struggle and was used against native freedom fighters. The then Public Order Ordinance was retained almost verbatim at independence. In the run up to the 1991 elections, the UNIP government used the same Act to deny MMD rally permits. Under the MMD government, this retrogressive and blatant disregard of the right to assembly and association has continued.<sup>22</sup> Ironically, President F.T.J. Chiluba in his maiden speech to the First session of the Seventh National Assembly recognised that the work of his new government "... is being threatened by inherited laws and

procedures, which in the long run subvert the original goals of our party and our pledges to the nation".<sup>23</sup> Since the government appears fully aware of the dangers of retaining status like the Public Order Act then we are inclined to think that they are merely being hypocritical.

The defunctive nature of Zambia's 'guaranteed human rights' is also evident in the article relating to freedom of speech and which also entails freedom of the press. This is Article 20 of the constitution. Article 20 (2) categorically prohibits the enactment of any law that will provide for derogations from the freedom of the press. Although there is admittedly some reserved restraint on the government machinery, it cannot be doubted that under the present Zambian law, the law is set for suppression of press freedom. The importance of this freedom cannot be overemphasised. It is vital for a transparent and accountable government. However, this is subjected to a number of limitations. For instance the article provides that there shall be deemed no derogation from freedom of expression where such derogation is done in the interest of state defence, public order, public morality or public health. In reality, what remains is no freedom of expression for the substance of this right is eroded. An illustration of the erosion of the substance of the right to expression can be seen in the provision of Section 53 of the Penal Code CAP 146. This gives the president power to ban publications on rather flimsy grounds. The criteria to do so is solely vested in the mind of the president. Such a provision readily curtails freedom of expression or press

freedom as it promotes pre-publication censorship. Further s. 68 makes it an offence to defame the president whether by writing, printing or in any manner. The penalty on conviction is three years imprisonment. The determination of what amounts to defamation leaves much to be desired. It is often used to muzzle the press. The subjection of The Post to this provision bear testimony.<sup>24</sup>

In conclusion, it can be stated that the guaranteed fundamental human rights enshrined in the Zambian Bill of Rights is diluted by numerous qualifications. The only exception to this is Article 15 which gives protection against inhuman treatment. Further, zambia's ratification of numerous Rights is of little use since they are not legally binding. It is therefore, suggested that Zambia incorporates some of the provisions of these Human Rights Instruments in her constitution. This way, Zambia would be legally bound to observe internationally accepted human rights.

## ENDNOTES

1. Article 3
2. Article 6
3. Article 4
4. Article 5
5. Article 9
6. Article 10
7. Article 11
8. Article 15
9. Article 17
10. Article 23
11. Article 25
12. Article 29 (2)
13. (1972) Z.L.R. 205
14. As at June 30th 1994. Source: Human Rights International Instruments (Chart of Ratifications) New York: UN, 1994.
15. We may refer to the deportation of two UNIP members namely William Banda and John Chinula to Malawi. See The Times of Zambia of 1st, 2nd and 16th September 1994.
16. Killing of Alick Sakala during police interrogation reported in the Sunday Times of Zambia 30th July, 1995 p.1. and Sunday Mail 30th July 1995.
17. Interview with unknown prisoner at Chimbokaila Prison Lusaka 1993.
18. See The Weekly Post, October 23 - 29, 1992 in which three people were reported to have died in police custody. Further there was a Press Release issued by the office of the Inspector General which did not attempt to refute this report but sought to justify the circumstances of the reported deaths. See The Weekly Post, October 30 - November 5, 1992.
19. For example was used to suppress the rights of UNIP members alleged to have participated in the ZERO OPTION PLOT. See The Weekly Post, March 11 - 18, 1995.

20. The reasons advanced for the refusal by the state were that: (1) Registering the party would amount to promulgation of a foreign ideology; and (2) It would set a bad precedent for other people to set up political parties on religious grounds. It must be noted that the given excuses are of course of no merit see The Weekly Post, October 8 - 14 1993.
21. See The Weekly Post, May 22 - 28, 1992
22. We may take the example of the recent denial of students a permit for a peaceful march against the renaming of the University of Zambia to Harry Mwaanga Nkumbula University reported in The Times of Zambia, August 1st, 1995.
23. SPEECH (29th November 1991) Lusaka: Government Printers, p. 7.
24. For example the reproduction by the then Weekly Post (now The Post) of a South African newspaper's (Sunday Times) report of a donation of a BMW car to Chiluba as an inducement was deemed defamation of the president. In a letter to The Post the Attorney General indicated that unless the newspaper apologised and retracted the article, he would proceed with the libel action on behalf of the president. See The Weekly Post, August 27 - September 2, 1993 p.1

### CHAPTER THREE

In this chapter we will endeavour to discuss the general role of Human Rights organisations in Zambia. In our discussion we will attempt to study the structure of these organisations and also the legal framework underwhich they operate. We will also investigate the cause of inertia that is characteristic of Zambian Human Rights organisations. The notable Human Rights bodies are the Legal Resouces Foundation (LRF), Zambia Civic Education Association (ZCEA), Foundation for Democratic Process (FODEP), Law Advisory Society, National Women's Lobby Group, Law Association of Zambia (LAZ) Human Rights Committee and recently the Peace Quest which has its first branch at the University of Zambia.

The general role of Human Rights organisations may be summed up in the following words: **PROMOTION** and **PROTECTION** of human rights. These organisations are therefore an important pillar in the quest for a human rights culture. The role of promoting and protecting of human rights inevitably falls on human right organisations because the state which is traditionally charged with that role cannot effectively execute this role. As we saw in the previous chapter, the state is usually the chief perpetrator of human rights violations. Further, the human rights organisations in Zambia are offered yet another challenge. The Zambian legal net-work is based on the adversary system in which the judge acts as an independent arbitrator rather than prosecutor. Therefore, it is incumbent upon petitioners to seek the courts ruling. This would be different under an inquisitional system in which the

courts of law take the initiative of commencing legal action. Given the present arrangement we take this as an invitation to the Zambian Human Rights bodies to shoulder the burden of initiating petitions.

From the preceding chapters, it was clearly pointed out that human rights do not only end at civil and political rights but also extends to economic and social rights. This therefore entails that any human rights body must also extend its activities to cover promotion and protection of economic and social rights. A ready example of an organisation doing this is the Programme for Urban Self-Help (PUSH). PUSH offers women in townships employment opportunities in construction of roads in their local areas. In return they are given food. The response to this project by the unemployed womenfolk is unmatched as is evident from the outcries that meet the news of PUSH's demise.<sup>1</sup>

A number of ways have been identified as means of carrying out the role of human rights organisations. One way of doing this is by ensuring that appropriate legal mechanism exists to project rights and prevent abuse. A case in point is the continued application of repressive laws like the Public Order Act which we referred to in the last chapter. A Human Rights body serious on carrying out its role must therefore, advocate removal of such oppressive legislation. It may be recalled from our study in the previous chapter that it is imperative for the Zambian Bill of Rights to reflect international Human Rights Instruments. To this end, an organisation in Human Rights advocacy must always strive

for approval, ratification and eventual incorporation of these international treaties. Zambia is signatory to numerous international instruments but this is of no legal significance since these instruments have not been incorporated in the Zambian legislation. A lot of statements, albeit being political, have been made about the same. Chiluba in his maiden speech to the First Session of the Seventh Zambia National Assembly in 1991 thus said:

"On the matter of human rights: In order to ensure a more meaningful and beneficial implementation of the cardinal principles behind the concept of the rule of law ... All the regional and world-wide human rights instruments to which Zambia is a party, but which citizen currently find impossible to enforce in our courts of law, will be incorporated (in our domestic legislation)".<sup>2</sup>

Although the above is but a political statement, we are inclined to take it as a challenge to the human rights organisations. If these could toil towards incorporation of the said instruments, this would go a long way in establishing a human rights culture for then Zambian legislation on human rights will be a reflection of internationally accepted standards.

One other way of executing the function a Human Rights entity is through mass human rights education. If people could be educated on their rights then even incidents of abuse could reduce considering that some victims of human rights abuse do not even know about their rights. Others may vaguely know about their rights but probably do not know the procedure of petitioning in the event of their rights being violated. One victim of police brutality had

made futile attempts to sue one of the police officers in the local court and was so sceptical when advised at the LRF to sue the Attorney General in the High Court. The foregoing revelations shows the seriousness of the problem at hand. However, some Human Rights organisations are vigorously pursuing human rights education. The ZCEA and LRF are about the most aggressive entities in educating the masses. FODEP has also conducted a lot of seminars in voter education.

Human Rights organisations in Zambia are largely non-governmental. This in itself is a good indicator. As already pointed out, the state is usually a major perpetrator of human rights abuse. It is therefore, only right that organisations committed to the promotion and protection of fundamental human rights are detached from the government. Human Rights advocate Simenza thus observes, "If we involve government, it will mean interference and you compromise your stand, especially since the state is at the core of many human rights violations. But we expect cooperation".<sup>3</sup>

The birth of human rights organisation may come about by either registration under the Societies Act or incorporation under the Companies Act. It is proposed that we look at the implications of incorporating an organisation under the latter. This makes it a business oriented body and would appear to be incompatible with the objectives of human rights organisations. However, a closer look reveals a sense of stability for the company is distinct from its members. This is unlike a body registered under the Societies

Act which is more of a club and can be banned by a Minister on rather flimsy grounds. Even registration can be refused on similar grounds. Considering the nature of the work of human rights organisations which may involve stepping on the toes of government, we are of the considered opinion that it is very advisable for non-governmental human rights to operate as registered companies.

Further, study of the results of incorporating an organisation under the Companies Act reveals that such an organisation is guided by this statute and its articles of association. Such an arrangement has a direct bearing on the structure of an association because of necessity it requires a director and secretary as required by sections 6, 204 and 205 of the Companies Act. In addition all the members of such an organisation have to contribute a certain amount in the event of the company winding up. For example the LRF articles of association dictates that for one to qualify for general membership she or he has to make a payment of fifty US Dollars or its Kwacha equivalent and this is subject to two thirds ratification of the members of council which is the supreme body. Further to qualify to be a governor of the foundation one has to pay one hundred US dollars which is also subject to two thirds ratification. The articles of association grants life membership to the foundation's two founder members Messrs Robert Simenza and John Sangwa. The resolutions of the council have to be supported by either of these two gentlemen failure to which they would be deemed invalid. It is indeed inconceivable to note that such oppressive provisions are found in

the constitution of human rights advocating associations. We are inclined to term this provision oppressive because it is a recipe for rule by a minority. We may stretch our minds a little further by assuming that the general membership of the foundation grows to fifty, the question then is: **Is it fair for such a large group's decision to be determined by only two people in the name of founder members?** The answer of course is no. Human Rights NGOs must therefore, be wary of their own administrative structure which should be fair and reflect their noble calling.

We will now proceed to look at the structure and legal framework from which a society registered under the Societies Act operates. As has been indicated, registration under this Act entails that an organisation operates in accordance with regulations set thereunder. An organisation could therefore, take the form of a society, association or club but must operate in line with the provisions of the Act failure to which it might be deregistered. We can therefore, assert that the structure, and to a large extent its legal framework, is predetermined by the Societies Act. We may take the example of the ZCEA whose membership is open to individuals above fourteen (14) years of age and also body corporates. It has an Executive Committee which is the supreme body. However, the association's constitution clearly states that the committee must run the association according to the Societies Act.<sup>4</sup> Elections to the Executive Committee is open to all 'active members' of the association. The association's constitution defines an 'active member' as a fully paid member of

the association for one particular year. This constitution undoubtedly represents quite a democratic set up of ascension to the Executive Committee. Further there is a Board of Trustees which act as a check on the activities of the association and maintains a link between the funding agencies and the association.

We may conclude or discussion on the structure and legal framework under which Human Rights NGOs operate in Zambia by saying that for those incorporated under the Companies Act they are much freer to choose their own structure as long as it does not contravene the articles and to some extent the Companies Act. This is unlike NGOs registered under the Societies Act which are largely guided by the regulations of the Act.

Having looked at the structure and legal framework from which Human Rights Organisations operate in Zambia, it is proposed that we consider some of the possible causes of inertia. Generally speaking, Zambia lacks aggressive Human Rights societies to champion the cause of human rights. One immediate factor that accounts for this state of affair is the overconcentration on civil and political rights. These are undeniably cardinal human rights but if this is overemphased at the expense of social and economic rights, then the preaching of human rights could sound idealistic. The majority of the Zambian populace appear to be more concerned with problems of poverty and unemployment. It is therefore, likely that these people would mostly respond to campaigns aimed at promoting their social and economic rights. Although the present economic scenario is not conducive for any meaningful effort

towards the realisation of social and economic rights, we are still inclined to believe that these will always be fundamental rights and thus need to be promoted and protected. The readiness with which people react to their social and economic wants needs no emphasis. Whilst on a LRF Civil Education seminar recruitment, this author talked to some women working on a PUSH project in Chaisa township of Lusaka. Although these women expressed vague knowledge of their rights they categorically urged the LRF to first consider attending to their immediate problems which are lack of food, clean water and medicine. To them it was a luxury to talk of their civil and political rights. Admittedly, we cannot subscribe to this view but however, it gives us a lesson. Overconcentration on political and civil rights may prove disastrous especially for us in the developing world.

One other serious setback to the role of non-governmental human rights organisations is lack of funds. Even the most highly ambitious human rights body would be crippled if it has no sound financial standing. LRF Executive Secretary J. Chikonkoto in an interview pointed out that the question of funding is so cardinal.<sup>5</sup> This is more so for foreign donor funded organisations. To this end he attributed LRF's early stage inertia to this problem. Indeed the operations of a non-governmental organisation are bound to fail if it is not adequately funded. It is always advisable that human rights bodies find alternative sources of income to sustain their operations.

Human Rights Organisations in Zambia rely almost entirely on the funding from foreign donors. The major donors are NORAD, the German Friedrich - Nauman Foundation and the US Southern University. It is so discouraging that local business houses have shown no interest in funding human rights organisations when they have always been ready to spend millions of Kwacha on sponsoring football or other related sports. It is therefore, incumbent upon human rights bodies to seriously solicit the participation of local business institutions in the funding of their operations.

The effective functioning of the Human Rights NGOs may also be severely affected by the form of its registration. As we saw, an NGO registered under the Companies Act is less restrained in its operations than one registered under the Societies Act which is subjected to a lot of restrictions.

We will conclude our discussion by pointing out another factor that may contribute to the ineffectiveness of human rights bodies and this is the absence of an umbrella body to oversee the activities of each and every human rights body. This would enhance cooperation unlike the present situation where human rights organisations compete against each other. We may refer to the relationship between the LRF and ZCEA. The two have had to compete for funding from one source - Friedrich Naumann Foundation. Such a situation makes it difficult for organisations to be effective for their working relationship is already strained. It is therefore, suggested that human rights organisations operate under one mother body. An attempt was made in 1985 to establish a non governmental

bodies umbrella. This culminated in the birth of NGOCC (Non Governmental Coordinating Committee) which strives to coordinate and strengthen links between its members. However, this committee restricts its operation to women's NGOs. The Zambian Human Rights bodies may take a leaf from NGOCC.

## ENDNOTES

1. See Times of Zambia, July 31, 1995
2. F.T.J. Chiluba, SPEECH (29 November 1991) Lusaka: Government Printers, p. 3.
3. 'Standing Up for Human Rights', African South and East, January/February 1993, p.19.
4. For example Article 5 (b) (ii) gives the Executive Committee the responsibility of running the association in accordance with the Societies Act and any regulations thereunder.
5. Interview with J. Chikonkoto, LRF, Lusaka, 22nd May, 1995.

## **CHAPTER FOUR**

### **INTRODUCTION**

This is a study of the LRF and ZCEA with specific reference to their outlined objective of a quest for a human rights culture. We will also dwell at some length at the issue of legal representation for the underprivileged which was hitherto unknown to the non-governmental Human Rights bodies. This study will also seek to evaluate the two organisations response to day to day reports of human rights abuse. It is proposed that we first look at the backgrounds and objectives of both independently. We will start with the LRF and then proceed to the ZCEA.

### **LEGAL RESOURCES FOUNDATION (LRF)**

#### **BACKGROUND**

The idea of creating the LRF is said to have been conceived in 1991 at the height of multiparty advocacy. With the coming of a new democratic government it was imperative that the existing laws and institutions suitable for the one party state be reformed and secondly, it was rightly felt that the new democratic system required of necessity an enlightened citizenry. The citizens of Zambia's third Republic having been liberated from a period of human rights suppression at the hands of an all powerful one party state machinery looked forward to implementation of the ideal democratic system so much eloquently promised in the pre-election campaigns. It was therefore imperative that after the attainment of a new government the reform should also extend to the people,

who if armed with human rights knowledge and civil awareness, would be in the forefront in sustaining the new found democracy. It must be pointed out that at this time there was no organisation in Zambia specifically involved in human rights advocacy. The bodies that sought to promote human rights at this time were those that were primarily set up for a different purpose. Needing mention here were organisations like the Women's Lobby set up to fight for the rights of women and FODEP which started as Zambia Elections Monitoring Coordinating Committee (ZEMCC) in September 1991 with the primary purpose of ensuring that the Presidential and General Elections were free and fair.

The other groups that championed the course of human rights were political parties who had their own political agenda. It was therefore against this background that the idea of setting up the LRF was conceived. Regrettably, the actual setting up of the foundation remained just an idea until March 1993 when the foundation was fully incorporated as a legal liability company. This therefore makes the foundation a distinct legal personality from its members. The incorporation of the foundation was the work of two young lawyers Robert Simenza and John Sangwa later to become Chairman and vice Chairman respectively.

## **OBJECTIVES**

As already pointed out in the in the introductory remarks the LRF was set up with primarily two broad objectives namely promotion of the emergence of a sound human rights culture in Zambia and

contribution to the development of the law in the country. The foundation is further committed to the promotion of general civil awareness. In short we can say that the goal of the foundation is to attain an enlightened civil society subjected to good governance.

For the execution of the Foundation's objectives a number of ways have been identified for this purpose. These are by way of conducting workshops and seminars aimed at specific groups of people such as the Police and other members of security wings of the government, and also ordinary members of the community, at which fora participants are taught of their human rights with the hope that the acquired knowledge is passed on to others. This programme appears to be going on as planned. To date the LRF has conducted about ten seminars in Lusaka town. Further, it is hoped that the objectives of the foundation could be achieved by conducting para legal trainings to selected people. Paralegal training gives one basic knowledge of the law and such a person could be in a position to give legal advise on basic matters of law. Disappointly, the foundation has yet to commence this programme.

The other identified avenue for achieving the foundation's set objectives is by publishing a monthly newspaper to be called Zambia Law Monthly. This will act as a campaign medium for the foundation's activities. This newspaper, it is hoped will include edited cases from various courts in Zambia. It must be noted that the last Zambian Law Report was published in 1985. Admittedly,

this would be a positive development in law reporting. However, this plan is yet to become a reality. The present funding of the foundation cannot sustain the publication of the said newspaper.

Further, the foundation hopes to conduct film shows and public lectures centred on human rights. This would hopefully be extended to television and radio. Considering that electronic media in Zambia enjoys a large following we can rightly predict the transcending of the outlined publicity plans beyond sceptism. One writer in an optimistic sum up on the LRF thus states:

"The task at the hands of the foundation is mountainous alight. But given the intellectual prowess and the spirit of commitment in the brains behind it, only doubting Thomases can question the Legal Resources Foundation's ability to deliver the goods to the people more so to the underprivileged."<sup>1</sup>

This writer fully shares the above sentiments but begs to disagree on the said "spirit of commitment" for as will be revealed in our study, the level of commitment leaves much to be desired. In the period between December 20th, 1994 and February 22nd 1995 the foundation received twenty-nine cases of human rights violation but only two lawyer members of the foundation managed to attend to ten of these cases. Appointments kept on being postponed until some clients out of frustration gave up.

It is suggested that we consider yet another means of promoting and protecting human rights set in the LRF's plans. This entails development and reform of the law and legal institution, by

embarking on legal research and documentation. It is recognised that there are a number of retrogressive and redundant laws on our statute books. Examples of such laws are the Public Order Act which as we saw in the preceding chapters is oppressive as it infringes on the right of assembly and association. One of the first cases to be handled by the Foundation centred on this oppressive Act. In this case, FRED MEMBE V ATTORNEY GENERAL, which we shall refer to later, the petitioner sought the repeal of section 5 of the Public Order Act which obliges people to obtain a police permit before addressing a public gathering.

Finally, as pointed out in the introductory remarks the LRF has attempted to go over and above the conventional role of non-governmental human rights organisations in Zambia in that it affords legal representation to the vulnerable members of society in matters involving violation of human rights and other cases in the public interest. There is no defined class of 'vulnerable members of society' and in determining this the foundation looks at whether one would afford a lawyer or not. Of course this gives rise to some problems but the LRF Executive Secretary insists they have had no serious difficulty in screening clients who could afford to pay for the services of counsel.<sup>2</sup> This writer unreservedly believes that the best assistance that can be given to a victim of actual human rights abuse is legal representation. In most cases mere legal advice achieves very little more so that a poor layman not versed in the mazed procedures of the court would fail to advance his or her cause in the courts of law. In the US

the right to counsel is a constitutional guarantee and this is indeed cardinal in ensuring observance of human rights. It is therefore in this respect that the foundation has ably responded to this need which hitherto was unknown in Zambian human rights advocacy. Legal representation is a pragmatic solution in addressing human rights abuse for an individual's right to be heard (Article 18 of the Constitution) can rightly be interpreted to mean the right to be heard through a lawyer. It is therefore only appropriate that victims of human rights abuse should be afforded the services of counsel for even where their rights are clearly violated most victims do not even know how to institute litigation. This is evident from the number of cases involving police brutality and unlawful detentions reported to the foundation. Some clients have expressed great astonishment on being told that to institute legal proceedings against the police they have to sue the Attorney General. Further the fundamental human right to be heard would be of little benefit if no legal representation was offered. A poor suspect would most likely be convicted where the state has at its disposal public prosecutors for she or he will fail to advance her or his case. Ideally, legal aid must be sought from the Legal Aid Department but owing to under-staffing it can only attend to a few cases. The seriousness of the matter has prompted LAZ to devise its own legal aid scheme. To this end Honorary LAZ Secretary Mundashi in a press interview says: "Basically LAZ wants to have its own system of giving free legal services to the poor because the legal aid department which is supposed to do so is nearly

dead."<sup>3</sup> The Zambian human rights organisation is therefore directly challenged to litigate on behalf of a human rights victim who cannot afford the services of a lawyer. As has been rightly pointed out, the process of litigation is not only too costly but may also prove too complicated to a poor layman. I am reminded of the wise words of Justice Sutherland who perceived the mystery of the law through a layman's eyes in the following passage:

"The right to be heard would in many cases be of little avail, if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law... He requires the guiding hand of counsel at every step in the proceedings against him. Without it though he be not guilty he faces the danger of conviction because he does not know how to establish his innocence."<sup>4</sup>

However the foundation's noble course of representing the vulnerable of the Zambian Community is hampered by its failure to employ a qualified lawyers to take up cases on behalf of the foundation. To date the LRF has been handling its clients cases through its two founder members' law firm and another member's law firm.

The Legal Resources Foundation has so far successfully completed one case. This is the case of MUSONDA MOFYA V THE ATTORNEY GENERAL in which the plaintiff was tortured by the police after being accused of conniving with the thieves to steal his own car. One magazine gives us the following sad revelation of

Mofya's case: "Mofya was locked up, handcuffed, beaten and denied visits by relations and friends. Investigations conducted into his alleged collusion in the disappearance of his vehicle drew a blank and police finally conceded Mofya was innocent."<sup>5</sup> The foundation took up this case in the High Court where the plaintiff was awarded K2 million as compensation but the state appealed. The Supreme Court however has ruled in favour of Mofya. The MUSONDA MOFYA case can be said to be the first test case that has yielded results. The other test case is the case of FRED M'MEMBE V THE ATTORNEY GENERAL in which the petitioner who is the managing Editor of The Post seeks the repeal of Section 5 of the Public Order Act, which obliges people to obtain police permits before addressing any Public gathering. The grounds of petition are that it is in conflict with Article 21 of the Constitution which guarantees freedom of assembly and association. However, this case, which was taken on because it is in the public interest, is currently before the Supreme Court on appeal on a preliminary issue. There are a number of other cases still before the courts of law and quite a number have been settled outside court. One such case is the one involving Maureen Tembo who was shot by the Republican President's son. The foundation boldly took up the case notwithstanding the political pressures that surrounded the case. Maureen Tembo later withdrew the case opting for compensation. The case has since then been closed although the prosecutor should have still charged Castro Chiluba with unlawful possession of a gun. The other politically controversial case that the foundation has handled is

the case of Mr. L. Mbao who was a body guard to the Vice President and under some mysterious circumstances got lost in South Africa and for sometime was feared dead. When Mbao sought compensation he met alot of difficulties from his superiors. This case has not yet been taken up to court.

In concluding our study on the Legal Resources Foundation we may briefly outline their main problems. The first major handicap is lack of readily available funding.<sup>6</sup> This has in turn led to non implementation of their projects. In our study it has been noted that the foundation legal aid programme is seriously hindered by the foundation's failure to employ on fulltime basis a qualified lawyer who can take up cases in court. Further the commitment of lawyer members of the LRF is not impressive for as we saw they rarely avail their services to the foundation. This has made the foundation rely extensively on their paralegal staff. However, there is a danger in doing this as these may mislead clients. We may also refer to the dictatorial structure of the foundation which we studied in Chapter 3. This curtails free flow of ideas and implementation of programmes.

#### **ZAMBIA CIVIC EDUCATION ASSOCIATION (ZCEA)**

The Zambia Civic Education Association was registered as an association in September 1993 although it actually commenced operations in November 1993. Unlike the LRF the idea of the association was conceived much later in the reign of the MMD government. The association was founded for a number of reasons.

One of them was the felt need for assistance of development of the democratic process in Zambia. This is to be done through the promotion and implementation of Civic education and awareness programmes. The ultimate aim is the creation of greater awareness in Society and understanding of civil and political rights. The association has admittedly progressively pursued this outlined objective. To date the association has conducted a number of civic awareness seminars and workshops in Lusaka. The association has further availed itself to the very important task of educating the electorates on electoral rules and procedures. This, it is hoped will provide a solution to the problem of unabated election apathy which Zambia has witnessed after the 1991 Presidential and General Elections. The gravity of the problem can be seen by having recourse to the last Parliamentary by-elections in Chingola and Mwanzi Constituencies respectively. In Chingola out of a total registered voters of 39,000, a meagre 5,893 voters turned up on the election day. The situation in Mwanzi was the same. Of the 7,000 registered voters only 1,564 cast their votes.<sup>7</sup> In terms of percentages, the turn out at Chingola and Mwanzi Constituencies were 15.1% and 22.3% respectively. The mammoth task that awaits the ZCEA cannot therefore be over-emphasised. The electorates must always be informed of why they must vote. Some people have attributed voter apathy to the unfulfilled MMD Campaign promises. In a democracy the electorates have every right of using the vote to kick out a government from power. It is therefore arguable that if the reason for voter apathy is mere discontentment with the

government, then the more reason for turning up in large numbers to ensure that worthy persons are entrusted with leadership. It is therefore with respect to the given argument that the association should vigorously pursue education of the electorates. This task becomes increasingly crucial as we approach the forthcoming Presidential and General Elections. One other NGO that appears to seriously champion voter education is the Forum for Democratic Process (FODEP) which started as the Zambia Elections Monitoring Coordinating Committee in September 1991 to ensure that the 1991 Multiparty elections were free and fair.

The initiators of the ZCEA had the promotion of progress and justice in Zambia at heart. Realising the importance of the legal framework of a nation, they imposed an obligation on themselves of seeing to it that the ordinary Zambia makes him or herself conversant with the supreme law of the land which is the Republican Constitution. The acquisition by the ordinary Zambian of knowledge on the provisions of the constitution especially the Bill of Rights is a long step towards the establishment of a human rights culture. To this effect the association has conducted a number of seminars and Debates on the proposed Constitution.

It is now proposed that we look at the manner in which the ZCEA attempts to seek the realisation of respect of human rights. At its inception the association set up a Citizen's Advice Centre in Chilenje township of Lusaka. The advisory centre gave legal advice to the people that came forward. Besides this the association vigorously worked with the local community (Chilenje)

in cleaning the local market and other related places. Clearly their work was not only confined to the issue of human rights and in an address one of the association's founder members says:

"What became increasingly clear was that while the Association had begun as a human rights organisation, the problems on the ground went well beyond just human rights abuse. The basic problem was one of a total abdication of responsibility not only by the consultants but also and probably more so by the community."<sup>8</sup>

However from the Citizen's Advisory Centre the association learnt a number of lessons. Firstly, most of the cases involved wrongful detentions by the police and required urgent attendance. Secondly, Ms Kunda who is the associations legal coordinator points out that even where due advise was tendered, it was apparent that the procedure of instituting litigation was for too complicated for the ordinary and poor layman.<sup>9</sup> It was against this background that the association contemplated legal representation where a client could not afford to hire the services of counsel. This indeed is a pragmatics solution to the posed problem of human rights abuse by the state. However, the association cannot on its own offer legal representation on Probono basis. This is because unlike the LRF the association is not a corporate body. It would nevertheless appear that the association could seek audience in the courts of law if it registered under the Registration of Business Names Act and then have one of its lawyer members obtain a practising licence

under the association as per requirement of s.36 of the Legal Practitioners Act CAP 48. However, in an interview with Kunda, she insisted that as a matter of law CAP 48 forbids gratuitous legal representation although they still continue to do it under varying private law firms.<sup>10</sup> The argument appears to be rooted in s.52 read together with s.56. s.56 defines a 'client' as "any person or body of persons, corporate or unincorporated, on whose behalf a practitioner in connection with his practice relieves more." It therefore, follows that one who does not pay any money cannot be deemed a client. This definition falls under the part pertaining to keeping accounts and is therefore, in my understanding, solely for paying clients. The general interpretation clause of CAP 48 which is s.2 gives a definition of 'client' devoid of any monetary attachments. It merely indicates that a client could be a person who is or may be liable to pay to a practitioner any cost. It is therefore arguable that actually a client can either meet the cost or be offered legal services gratuitously. It must also be pointed out that probono legal representation cannot in anyway be considered undercharging which is an offence under s.52. The reason is simple. There is no undercharging since there is no payment being made.

Further, the fallacious assumption that gratuitous legal representation in the courts of law other than under the Legal Aid Act CAP 546 is unlawful is amazingly entrenched even in LAZ. In one interviews with a LAZ official he pointed out that the law prohibiting NGOs like LRF and ZCEA from offering gratuitous legal

representation is good law.<sup>11</sup> He apparently was alluding to CAP 48. Further he said that lawyering is a noble profession and therefore to protect the interests of clients and integrity of the profession it is unethical to offer free legal representation other than under CAP 546.<sup>12</sup> This writer finds no merit in this fallacious monetary oriented ethic. It would be most unfortunate if lawyers turned a blind eye to human rights oppression in the name of ethics. One would on the contrary deem it unethical for a lawyer to ignore violation of human rights if such violation does not promise any remunerative gains. However, as already indicated, the association represents its consultants using its two lawyer founder members Christine Kunda and Lucy Sichone, who do so under private law firms.

It is proposed that we consider some of the cases that the association has taken up. In one case ATTORNEY GENERAL V NSAMA BWEEMBYA the defendant was beaten up by the police but later charged with the criminal offence of aggravated assault. Bwembya approached the association and was represented resulting in his acquittal. The association has now commenced action for damages (personal injury) against the state. In yet another case involving one Monica Phiri who was allegedly beaten up by the Woodlands Police officers, the association is representing her but owing to the delay on the part of the Attorney General's Office this case has been pending in the court for sometime now. The ZCEA also took up the case of Thomas Sikande following newspaper reports of a very sad incident which happened at Mafiwa Fishing Post.<sup>13</sup> The villagers

of this area were reported to be fishing during the last fish breeding season when it was an offence to do so. The villages maintained the fish they caught was for their own consumption and not for selling. They later are reported to have disarmed the police officers who were sent to implement the ban on fishing. The police sent for reinforcement and received a consignment of the notorious ZEBRA police force who upon arrival ordered the unsuspecting villagers to lay down. They reportedly opened fire killing Thomas Sikande and seriously injured another villager called Patrick Musonda whom they later detained in police custody. The ZCEA intervened and Patrick was released on police bond. Up to now the police have not formally charged him. The involvement of the association did not end here for they also had to provide a coffin for the deceased after pleas from the deceased's relatives.

It is proposed that we briefly revisit the happening at Mafiwa Village. The incident reveals a very negative but true picture of the operation of the Zambian police. Their blatant violation of human rights makes sad reading. Going by the instant case it is clear that their shooting at unarmed villagers was most uncalled for. This resulted in the deprivation of the life of one villager Thomas and injury of another, Patrick. Further this act of locking up Patrick is indicative of the ill motive of the police. We may construe this to have been intended to keep Patrick from revealing to the public the happenings at the remote village. This is also evident from their failure to prosecute him. It is so disillusioning to note that the trend of police brutality which was

assumed to have been buried with the Second Republic rears even a more uglier head in today's supposed human rights respecting Third Republic. A year after the existence of the new MMD government a newspaper report carried a deplorably revelation of 30 lives lost at the hands of the police. The report thus went: "At least seven other people were killed in the first three months of this year (1992), bringing the number of deaths in the first nine months of this year to 30. Throughout this period there have only been two reports of police officers being injured, which suggests the police are shooting at unarmed suspects or are quick to shoot first.<sup>14</sup> These revelation are a grim reality of the flagrant and scandalous manner in which the right to life is held. It is therefore imperative that the Human Rights Organisation in Zambia seriously consider focusing the police officers for human rights education since these are the chief perpetrator of human rights abuse. The CEA rightly conducted one such seminar for police officers.

The Civic Association has had tremendous success in imparting free legal advice to the number of people who flock to their advice desk or offices. One student volunteer who manned the desk indicates they got an average of ten clients per session.<sup>15</sup> This was in the period between January 1995 to April 1995 and the desk operated on Monday and Friday mornings. We may note that the Advice Desk is currently not in operation but plans are underway to shift the Advisory Centre to the association's offices. The Advisory Centre is expected to resume operation between September and October 1995.<sup>16</sup>

The ZCEA has conducted paralegal trainings. This training essentially provides trainees with basic legal knowledge. This project although hampered by funding has yielded favourable results. Some of the people trained by the association are now able to tender legal advise at a number of Human Rights Organisations. Notably among these are the first two persons to run the LRF's offices in Bauleni Township and Lusaka Town centre office. Talking of the experience gained from this paralegal training one of the said two indicated that the ZCEA had thoroughly taught him the basics of law and he was therefore able to confidently give legal advise.<sup>18</sup> My short observation of his encounter with clients truly reflected his sound knowledge of elementary law.

The association faces a major problem of funding. Their chief donors are foreign institutions. These are the Norwegian Development Agency (NORAD) and Swedish International Development Agency (SIDA). However, these only cater for administrative costs and is inadequate to support their legal aid scheme. Further the provisions of CAP 48 renders their act illegal and worse so that, they are not a registered law firm. The issue of under funding has really undermined the operations of the ZCEA. Its plans of extending to rural areas cannot be achieved without first solving the problem of under funding. To this we may also attribute the reduced versatility of the association's other programmes such as paralegal training scheme and civic awareness campaigns. Their efforts to woo financial support from local business houses has

been met with heartbreaking apathy. The association had approached a number of local businesses to enable it meet the seven million kwacha required to successfully host a Draft Constitution Debate and the local businesses contributed a meagre one hundred thousand kwacha representing 1.5% of the total requirement. This is indeed discouraging to human right activists considering that our local business houses have been known to heavily fund football games and other related sports.

Having looked at the two organisations it is proposed that we comparatively and critically examine their operations with regard to the given role of Non Governmental Human Rights Organizations. To start with it is noted that the objectives of the two bodies are essentially the same. They both seek to promote and protect human rights. One difference that one easily detects is the broadness of the aspirations of the ZCEA. Whereas the LRF appear to be confined to the sphere of human rights, the ZCEA on the other extends its activities to other areas other than human rights. This is evident from their unrestricted legal aid service. The association attends to all aspects of legal matters although as at now they have only offered legal representation in cases involving violation of human rights. This is evident from the cases that we considered. We may be inclined to wrongly perceive human rights as ending at political and civil rights and hence the bias against handling of cases with no trace of police brutality or discrimination based on political affiliations. It is therefore suggested that cases brought by clients be scrutinized by a lawyer for as pointed out they can

easily be dismissed for not being a traditional human rights case. One therefore finds the unrestricted approach taken by the ZCEA to be a very healthy one as far as legal representation of the poor is concerned. We may remind ourselves with the all embracing resolution of the International Commission of Jurists which stands thus: "Equal access to law for the rich and poor alike ... It is, therefore, essential to provide adequate legal advice and representation to all those threatened as to their life, liberty, property or reputation who are not able to pay for it."<sup>17</sup>

One other salient feature that stands out between the two bodies is their structure. The ZCEA is a society that is registered under the Societies Act. The LRF on the other hand is a duly registered Company with limited liability. From our study it was noted that the types of these bodies give rise to many implications. The foundation by virtue of being an incorporated company takes a distinct legal personality from its members which is not the case with a society registered under the Societies Act. Although the LRF is regulated by the Companies Act and therefore falls under regulation, it is arguable that being a society or a club registered under the Societies Act puts such a body under unnecessary controls by government for the Minister can easily ban a society on even frivolous considerations. Considering the nature of the role of a human rights body which is that of promoting and protecting of human rights and considering that the state has been identified to be a chief instrument of suppression of human rights then it is only wise that a human rights body operate as an

incorporated company. Although there has not yet been any banning of a human rights body certain remarks have been made which are indicative of government's intolerance.<sup>19</sup>

The role of the LRF and ZCEA has been mostly impeded by poor funding. This has led to their non implementation of their projects. Both these organisations' source of funding is foreign donors. It is disappointing to note that local business houses and individuals are not keen on giving financial support to human rights bodies. There a number of reasons that accounts for the attitude of local business institutions. One of them is the fear that the funds collected may be misused since it is very difficult to monitor the activities of NGOs.<sup>20</sup> Further there is a fear of identifying oneself or an organisation as being anti-government because government appear to view human rights institutions as political fronts.

This is more so for the ZCEA which at its inception appeared to be merely an extension of the United Nations Independence Party (UNIP).<sup>21</sup> However there is imperative need for domestic financial support. Foreign Donor support cannot be guaranteed as the focus of Western countries appears to have shifted from human rights to animal rights. It is therefore submitted that a vigorous campaign of attracting local donors be put in place. In addition the human rights bodies should seek alternative sources of income. One way of doing this could be through selling of their publications to the public. Both the organisations under study have shown no

innovation in seeking ways and means of raising funds. They have sat back awaiting responses to their proposed budgets.

It has been argued that legal representation is the most pragmatic solution that can be accorded to a poor victim of human rights abuse. It makes sad reading to note that both the LRF and ZCEA seem not to seriously pursue their establishment as bodies that can lawfully represent their clients. From our study we noted that both these organisations offer representation under private firms. It was further pointed out that for an NGO to offer legal representation it must have a qualified lawyer or lawyers and then register under the Registration of Business Names Act CAP 687. The issue at hand is therefore mere compliance with the law. Having said this we hasten to say that it is just not in order for private firms to take credit of the work of a human rights organisation. Further, although it is not clear from the investigations on how human rights organisation choose private law firms under which to offer legal representation this writer finds this totally uncalled for. It is therefore necessary that in their bid to seek promotion and protection of human rights, NGOs should do so in conformity with the law.

From our study it is undeniable that the two organisations are striving towards the realisation of a human rights culture. Despite the outlined obstacles there is a degree of commitment towards this goal.

## ENDNOTES

1. Bwalya Nondo, 'LRF set to reform legal Institutions' Zambia Daily Mail, 15th February 1994, p. 4.
2. Interview with J. Chikonkoto, Lusaka, April 1995.
3. Honorary LAZ Secretary M. Mundashi in an interview with a Times reporter reported in The Times of Zambia, May 15 1995.
4. POWELL V ALABAMA (1932) 287 US 45
5. Africa South and Est Magazine, January/February 1993, p. 9.
6. Interview with R. Eno (Law Graduate volunteer working for the LRF) August, 1995.
7. Reported in The Times of Zambia, May 18, 1995.
8. Address by C. Kunda to the South African Legal Aid and Legal Advice NGOs Regional Conference held in Johannesburg 7-8th November, 1994.
9. Interview with C. Kunda (ZCEA Legal Coordinator) Lusaka, August 1995.
10. Ibid.
11. Interview with LAZ Official A. Mubanga, Lusaka, August, 1995.
12. Ibid.
13. Reported in The Weekly Post, January 10, 1995.
14. The Weekly Post, October 23-29, 1992.
15. Interview with D. Mazumba, Lusaka, August 1995.
16. As confirmed by C. Kunda in an interview.
17. The Rule of Law and Human Rights, ICJ, 1966.
18. Interview with Pastor Banda, Bauleni, Lusaka, February 1995.
19. See The Weekly Post, May 15-21, 1992, also may 22-28, 1992.
20. Interview with Mr. Sambule (prominent sponsor of City of Lusaka Football Club) Lusaka, August 1995.

21. Before relinquishing her Political Post, Lucy Sichone the chairperson of the association was UNIP's Chairperson for Legal Affairs. Further her suspected affiliation to UNIP was such an hindrance to the public's acceptance of the ZCEA. See Sichone further openly supported the Musokotwane faction at the height of UNIP's leadership wrangle by acting as lawyer for Musokotwane's faction see The Post, January 6, 1995.

## CHAPTER FIVE

Having traced the origins of human rights, looked at the provisions of the Zambian law on fundamental human rights and studied the role of human rights NGOs with specific reference to the LRF and ZCEA we can disclose our confidence and hope in the eventual realisation of a human rights respecting Zambia. This, it must be pointed out, can be achieved by non partisan and vigour reinforced human rights NGOs. Our study unfolded some difficulties presently besetting the operations of human rights bodies and therefore, we wish to submit some recommendations to help overcome some of the said obstacles.

### RECOMMENDATIONS

Our study endeavoured to show the implications of registering a human rights body under either the Societies Act which as we saw makes such a body subject to the whims and caprices of a politician in the name of a Minister of Home Affairs. We also noted the consequences of registering under the Companies Act which makes an organisation distinct from its members. The act of incorporating a human rights body as was revealed places it at a safe distance from governmental threat and it is therefore, suggested that prospective human rights NGOs and existing ones should contemplate incorporation under the Companies Act for the said reason.

From our study we noticed the dictatorial structure of the LRF and we submit that human rights organisations should always strive to be democratic. It is grossly ironical for an organisation to

champion the cause of human rights when its structure is undemocratic.

Of special interest to our study is the aspect of legal representation which as we saw is the most practical assistance that can be rendered to a victim of human rights abuse. It is suggested that human rights bodies that offers legal representation should ensure that they do so independently of any private law firm. They should register their organisations under the Registration of Business Names Act and in compliance with other relevant laws carry out this function.

Futher, it is proposed that human rights NGOs draw away from the trend of confining their activities to political and civil rights. They should extend their work to encompass social and economic rights which apparently are most appealing to the Zambian public.

It is futher proposed that human rights organisations seriously pursue the incorporation of some of the International Human Rights Instuments into her domestic laws. In the same vein they should advocate the repealing or amendment of oppressive laws like the Public Order Act.

From our study it is clear that the issue of funding poses a very serious threat to the operation and life of a human rights NGO. The situation is made worse in that faced with unsuportive local business institutions, human rights bodies in Zambia resort to foreign donation. It is however, suggested that these organisations seriously take up the issue of coercing local

business institutions and individuals to invest in human rights activities. Alternatively they should embark on fundraising ventures rather than solely relying on handouts. The issue of funding has a direct bearing on all the undertakings of human rights organisations and therefore, with secured funding their work could go on smoothly.

The role of a lawyer in the promotion and protection of human rights cannot be overemphasised. It is therefore imperative, that all human rights organisations employ at least one qualified lawyer to attend to clients. The use of paralegal staff is commendable but this should only form a supporting unit and should in no way usurp the work of a lawyer.

Our study revealed the absence of any Human Rights organisations' coordinating body. This has resulted in the denial of a flow of information between these bodies. It is therefore, suggested that Human Rights NGOs must have one motherbody to coordinate their activities.

It has been noted with dismay that there is a tendency of restricting the operations of human rights organisations to urban areas. This is a very counter progressive step for apparently the vast number of people who need to be made aware of their rights are in the rural areas. In urban areas the message appears to have been delivered considering that people in urban areas are exposed to both electronic and print media which constantly disseminates such information. On the contrary the rural dwellers are starved of such information and are therefore, most likely to be susceptible

to human rights violation. It is therefore, strongly recommended that human rights NGOs consider setting up in rural areas.

Finally, it is confidently hoped that the given humble submissions would contribute in any small way to the fulfilment of the role of human rights organisations in Zambia and thereby contribute to the realisation of a human rights culture in Zambia.

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