

**THE ROLE AND EFFECTIVENESS OF
COMMISSIONS OF INQUIRY IN ZAMBIA**

BY

ZULU JAMES MALENI

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THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

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THE ROLE AND EFFECTIVENESS OF COMMISSIONS OF INQUIRY IN ZAMBIA

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.....
Mr Michael Musonda
(LL.B, LL.M, M. Phil)

09.10.95.....

Date

(ii)

THE ROLE AND EFFECTIVENESS OF COMMISSIONS OF INQUIRY IN ZAMBIA

By

ZULU JAMES MALENI

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DEDICATIONS

TO MY MUM, BRIDGET C ZULU AND ALL OF MY FAMILY WHO PAINFULLY UNDERSTOOD AND STILL UNDERSTAND THE EXPENSIVE COST OF EDUCATION AND ITS IMMENSE BENEFITS. I LOVE YOU ALL AND LET US REMAIN FAMILY.

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May you all walk in the light of the Lord.

TABLE OF CASES

- 1 ASSOCIATED PROVINCIAL PICTURE HOUSE LIMITED V. WEDNESBURY CORPORATION (1947) 2 ALL ER 680 (C.A.)

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CHAPTER ONE

HISTORY AND DEVELOPMENT

INTRODUCTION

The world that we live in has given rise to various forms of governance and the manner in which the governors have ruled has varied from one system to another. From the ancient days when assumption of power was basically either through wealth or other forms of personal attributes to our present days when in certain instances power is assumed through the will of the people i.e through democratic means in the electoral process or in instances termed rather undemocratic such as a coup d'etre, the role of governments has remained more or less the same. The role of the State has been to maintain law and order, ensure the security of the State, and allow government to conduct its business in an orderly manner.

However, these roles were never the case even before until the emergence of the welfare State or properly stated these roles became more visible and workable after the emergence of the welfare state. It is worth noting that before the emergence of the welfare state, there existed the system of industrial capitalism which had in turn succeeded the Feudal system. Under the Feudal system, there was hardly any organised form of government except that the land was owned by the landlords and inherited by their children. Poor people had to work in the fields of the rich who in turn provided security and protection to the poor people.¹

The Feudal system was, however, after a period of time altered greatly by the development of trade. People who had the initiative and courage engaged in such business as obtaining goods from different countries and offered them for sale. These traders had to do a lot of hardwork and so they sold their goods to profit themselves. This gradually developed in the system of industrial capitalism which in turn promoted the philosophy of laissez faire. Basically the terms "laissez faire" mean "let them do it alone"². This philosophy brought into play the fact that traders who had developed into factory owners decided what to trade in, how to pay their workers and even how to dismiss them. Laissez faire philosophy advocated that such issues as the social and economic affairs of an individual were not the concern of the government. The individual had to care for himself and the traders were to transact however they wanted without any state interference. The other influence on the philosophy of laissez faire was the philosophy of liberal capitalism. The liberal philosophy concentrated on,

"the individual, his private initiative and private property."³

That each human being is free to regulate his own affairs with little or no state interference at all.

This, was unfortunately never to succeed, because its tenets rather promoted the exploitation of the weaker and poor members of society by the stronger and richer factory owners. The philosophy of laissez faire had given birth to abject poverty and then an explosion occurred which conceived the welfare state. The situation is different in a welfare state as the state assumes a very active role in social and economic affairs of the State's citizens and this entails the enactment

of pieces of legislation which are intended to protect and regulate behaviour in the country. Up until now this has been the role of the modern state, to regulate the economic, social and political activities of its citizens.

As earlier stated, to achieve this role a number of pieces of legislation had to be put into place and these had an influence on the development of administrative law. It has been said about the United Kingdom that, "until 1914, a sensible law abiding Englishman could pass through life and hardly notice the existence of the state, beyond the post office and the policeman."⁴

It has been proved that this observation was not in itself conclusive of the real situation as it existed that time because of the presence of such pieces of legislation as Housing and Town Planning Act,⁵ Education Act,⁶ Old Age Pensions⁷ and indeed the National Insurance Act.⁸ The enactment of such pieces of legislation was an obvious manifestation of a system of government. Governing it is believed is aimed at pursuing the public good or common welfare, but it has been stated also that power when vested in an individual or in a group of individuals collectively is bound to be misused or abused. It is for this reason that administrative law which is that aspect of public law related to administration of government enters the scenario so as to protect the citizen against the abuse. As Wade states:

"Abuse ... carries no necessary innuendo of malice or bad faith."⁹

It should be emphasised that the injection of administrative law in the running of government does not intend to cast a shadow or latent mistrust on the authorities, but be as it may, public

authorities can misunderstand their responsibilities and so endanger the lives of the citizens by their decisions. The various functions performed by both central and local governments have called for a scope of administrative procedures and processes. These procedures are helpful in the promotion of justice but they also promote injustice and this is why the study of these processes is very vital. The government conducts its business through different processes among them inquiries, appeals to mention but a few. However, the focus of this discussion is the Inquiry.

It is now important to understand what an Inquiry is and how it operates. Various writers have given different definitions of what an Inquiry is, but Garner could not have defined it better when he said:

"an inquiry ... is essentially a fact finding agent convened to ascertain what the facts may be relating to the matter in issue."¹⁰

It can thus be stated categorically that the primary objective of an Inquiry is to ensure that the best possible decision on a matter of public concern is made. As Wade states:

"the statutory inquiry is the standard device for giving a fair hearing to objectors before the final decision is made on some question of government policy affecting citizen's rights and interests."¹¹

However, it should be noted that it is not always the case that the hearing is the preserve of objectors because in certain inquiries the matter is just about ascertaining facts of an issue and objections may as a matter of fact be unnecessary. In the United Kingdom, under the Tribunals of Inquiry (Evidence) Act 1921, both Houses of Parliament may resolve that it is

"expedient that a tribunal be appointed to inquire into a matter of urgent public importance.¹² What is a "matter of public importance" is not defined, and it seems therefore that this is up to the subjective whim of the authorities. If leakage of budget secrets allegations was held to be a matter of public importance and as such a tribunal was appointed under this Act in 1936 to inquire in such allegations. Equally in 1966, after the Aberfan Tip disaster in 1966, another Tribunal was constituted to inquire into the cause of the accident. Note should be taken here that although in the two instances referred, Tribunals are mentioned and not Commissions of Inquiry, what is of substance is that matters leading to the appointment of such Tribunals were regarded to be of "public importance."

In Zambia, Commissions of Inquiry derive their validity from Chapter 181 of the Laws of Zambia.¹³ Under Section 2(1) of Chapter 181 of the Laws of Zambia, it is provided that:

"The President may issue a commission appointing one or more commissioners to inquire into any matter in which an Inquiry would, in the opinion of the President, be for the public welfare."

From this provision, it can be observed that in the Zambian context, the appointing of a Commission is the subjective responsibility of the President only and it is him who determines what is the public welfare. This however, is not the case in the United Kingdom where the determination of whether a matter is of public importance is made by the two Houses of Parliament. What is for the public welfare was illustrated in the case of NKUMBULA V THE ATTORNEY-GENERAL in which the

appellant raised the issue that the appointment of the Commission of Inquiry was ultra vires and null and void as the matters to be inquired into could not be for the "public welfare." In his judgment, Baron J.P stated that he was unaware of the judicial interpretation of the expression, "public welfare." But he stated,

"What is in the public interest or for the public benefit is a question of balance; the interests of the society at large must be balanced against the interests of the particular section of society or of the individual whose rights or interests are in issue, and if the interests of the society at large are regarded as sufficiently important to override the individual interests then the action in question must be held to be in the public interest or for the public benefit."¹⁴

It was further stated in the Nkumbula case that:

"the power in the present case is to set up a Commission if an inquiry would, in the opinion of the President be for the public welfare; the words in the opinion of the President clearly makes the matter one for the subjective decision of the President."¹⁵

However, it should be observed that the use of the expressions, "in the opinion of the President" as in the Inquiries Act and "subjective decision" in the Nkumbula case entail a lot of discretionary powers. It is very clear and a proven fact that discretionary power is bound to be abused either by taking into account improper considerations or by failing altogether to take proper considerations into account. As Lord Greene MR said in the case of ASSOCIATED PROVINCIAL PICTURE HOUSE LIMITED V WEDNESBURY CORPORATION that;

"It is true that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That I think, is quite right, but to prove a case of that kind would require something overwhelming."¹⁶

It should be noted that in Zambia, the Inquiries Act, Chapter 181 of the laws of Zambia by virtue of section 2(1) gives the President absolute powers to appoint a Commission if it be in his opinion that such is for the public welfare. It is for this reason that it is difficult to impute an act of bad faith on whether his decision is unreasonable that no authority could ever have come to it. It is also however, very indisputable that the appointment of certain commissions has raised questions as to importance. It is argued that in certain issues particularly salaries and conditions of service for public workers, there is no necessity to inquire as the problem and the solutions are in "black and white" for all to read. But a dissenting view has been expressed that in certain instances, Commissions of Inquiry are the last resort to be used:

"when nothing else will serve to allay public disquiet, normally based on sensational allegations, rumours or disasters."¹⁷

In Zambia, the question or issue of appointing Commissions of Inquiry due to "public disquiet" can be proved in many cases but a particular one is that of the Mvunga Constitutional Review Commission which was appointed at the height of multi-party political debate and this was the Commission that produced the present 1991 Zambian Constitution. Another case in mind is when in 1975, Herbert Chitepo, National Chairman of the

Zimbabwe African National Union (ZANU) was brutally killed in a bomb blast at his Chilenje home, in Lusaka.¹⁸ Four days after this tragedy, on 31st March, President Kaunda announced that he was setting up a Special Commission of Inquiry to study the events and circumstances leading to Chitepo's death, it became known as The Special International Commission on the assassination of Herbert Wiltshire Chitepo¹⁹ and it was chaired by Reuben Kamanga, a Member of the Central Committee of the United National Independence Party (UNIP), at the time Zambia's ruling Party.

Having traced the history and development of Commissions of Inquiry, it can now be safely stated that Inquiries have grown with Administrative law and then having portrayed the Zambian situation, mention should be made that in the following chapters, we will analyse particular selected Commissions' Reports and how they were effective if at all, then we will also look at the constraints and drawbacks in the work of various Commissions and then lastly we will make recommendations on how best probably the work of Commissioners can be appreciated if at all and also how the statutes as regards Inquiries could be reviewed to strengthen the work of the Commissions.

ENDNOTES

- 1 O. HIRMAN, MARX, MONEY, CHRIST, MISSION PRESS, NDOLA
1982 at page 6.
- 2 Ibid. Page 12
- 3 Ibid. Page 13
- 4 H. W. R. WADE, ADMINISTRATIVE LAW, ELBS, OXFORD, 1988
at page 3
- 5 Ibid at Page 3
- 6 Ibid at Page 3
- 7 Ibid at Page 3
- 8 Ibid at Page 3
- 9 Ibid at Page 5
- 10 J F GARNER, ADMINISTRATIVE LAW, LONDON BUTTERWORTH 1929. at pa
102
- 11 Op Cit at Page 955
- 12 E.C.S. WADE AND A. PHILLIPS, CONSTITUTIONAL LAW, LONGMAN,
OXFORD at Page 151
- 13 INQUIRIES ACT, CHAPTER 181 OF HTE LAWS OF ZAMBIA
- 14 M NDULO AND K TURNER, CIVIL LIBERTIES CASES IN ZAMBIA
AFRICAN LAW REPORTS, OXFORD, 1984
at Page 128
- 15 (1972) AFRICAN LAW REPORTS ON APPEAL (C.A)
- 16 (1947) 2 ALL ENGLAND REPORTS at Page 680 (C.A)
- 17 H. W. R. WADE, ADMINISTRATIVE LAW, ELBS, OXFORD, 1988
at Page 1001
- 18 D. MARTIN AND P. JOHNSON, THE CHITEPO ASSASSINATION,
ZIMBABWE PUBLISHING HOUSE, HARARE,
1985. Page 57.
- 19 Ibid at Page 67

CHAPTER TWO1. COMMISSION OF INQUIRY REPORT INTO THE ZAMBIA NATIONAL
PROVINDENT FUND STRIKES OF 3RD TO 8TH MAY AND THE
3RD TO 8TH OCTOBER 1984

The effects of an industrial unrest at any place of work can never be over emphasised. It is crystal clear that if workers down their tools, the production levels in that particular industry or industries are definitely bound to drop and the effect of such on an already ailing economy is terrible. It is for this reason that there are statutory provisions on the best possible means of resolving industrial disputes than resorting to strike action. This is also why in every industry workers are free to organise themselves into trade unions so that the union acts as a mouth piece for the entire workforce on matters of their interests. The necessary statutory provisions on labour relations do not disallow strike action if all means of peaceful negotiations fail. It becomes very difficult to control industrial unrest when a union leader is subject of the dispute because in more instances than one workers are bound to sympathise with their leaders. But the situation becomes grave when other workers from other industries join in an industrial action that does not directly affect them but rather just as a form of solidarity with their colleagues who are involved in such action. It becomes grave because instead of only one industry affecting the economy of a country, a cross-section of economical base is affected. This was displayed in 1984 when workers from the Commercial Banks, Zambia State Insurance Corporation, Zambia National Building

Society and the Workmens Compensation Fund Control Board went on strike in sympathy with their colleagues at the Fund the Zambia National Provident Fund.¹

Tribalism is not only a retrogressive element in any society but can also act as a very good recipe for civil unrest. It is a retrogressive element because there is no one tribal group in any particular society that is endowed with all the skill and intelligence which could make them the only ones best suited for a particular position or positions of influence. Any chauvinist belief in Tribalism could not only deprive the nation the benefit of the rich skill of marginalised tribes but could also have an adverse effect on the economy in that workers would lose their morale to work as they will realise that no matter how much they work, they will never be rewarded, i.e. promoted because the top positions are the preserve of a particular tribal grouping, this is a very demotivating factor and could therefore reduce production levels as workers input will be extremely low.

The consequences of tribalism in most countries can never be over-emphasised. The civil unrest that emanates from tribalism has led to and still leads to total destruction in most of our societies. The cases of the massacres in Rwanda and Burundi, the conflict in Bosnia and Hercegovina. The loss of life in the mentioned cases has up to this time remained a question unsolved as to what the feeling of tribal inclinations can have in any society. Zambia has not been unaffected by this scourge, ever since the Movement for Multi-Party Democracy (MMD) government came

into power in 1991, questions of how the cabinet has been tribally imbalanced and how all the strategic posts in cabinet have been given to a particular tribe have continued to be raised and certain political analysts have warned about the consequences of tribal imbalance in cabinet. On an industrial level, questions have been raised about the composition of top managerial staff at Zambia Telecommunications Company Limited (ZAMTEL) that all the top posts are occupied by only one tribe or tribes closely related to one major tribe namely Lozi. In the case of the cabinet questions have surrounded the influence of Bemba and Bemba speaking related tribes in government.

In 1984, questions of tribalism became a major issue at the Zambia National Provident Fund Head Office. Although it never came out predominantly from the very genesis, it is now strongly believed that it was a latent but very precipitating factor in the strikes that occurred between 3rd and 8th May and 3rd to 8th October 1984. The issue of industrial unrest in an ailing economy and questions of tribalism are bound to affect the public welfare if left unattended to. It was probably for this reason that His Excellency the President of Zambia Dr Kenneth Kaunda by Statutory Instrument No. 121 of 1984 appointed Commissioners to inquire into events and circumstances that led to the strikes by the Zambia National Provident Fund employees from 3rd to 8th May 1984 and the 3rd to the 8th of October 1984. He also directed the Commissioners to make findings and recommendations upon their inquiry. The

Commission was headed by Honourable Mrs Justice Florence Ndepele Mumba assisted by Joseph Chileshe Esq, and Professor Lyson P Tembo from the University of Zambia (UNZA).

THE REPORT AND RECOMMENDATIONS²

There were two strikes at Zambia National Provident Fund in 1984 namely one from 3rd to 8th May 1984 and the second from 3rd to 8th October 1984. On the first occasion which is when workers went on strike from 3rd to 8th May 1984, three workers had been suspended by the Fund's Board Secretary Christopher Lubasi Mundia. The three namely Ernest S Mwaanga, a Transport Officer, Patrick K Mulenga a driver and Charles Z Moono, a Senior Clerk who was also the Branch Chairman of the Zambia Union of Financial Institutions and Allied Workers (ZUFIAW) and the Chairman of the works Council. The first two were suspended for forgery while the third was suspended for over expenditure of K667.84 during his stay at the New Savoy Hotel in Ndola between 27th and 29th February 1984. Soon after news of the suspended officers was relayed workers went on strike demanding that their colleagues be reinstated thus suspensions lifted. A meeting was convened between the Union's Vice-Chairman who was now acting Chairman with Mr Mundia to discuss the plight of the three suspended workers. At that meeting Mr Mundia agreed to lift the suspensions of Mulenga and Mwaanga but not certainly that of Moono. Upon hearing this the workers went on to demand that Mundia be removed from his office

and so on the following day, Mundia was escorted out of the Fund offices by the Police.

Between 4th and 8th May 1984 three meetings were held to try and break the impasse. The first meeting on 4th May 1984 between the Union and Management ended in a deadlock. The second one held on 7th May 1984 between Management and the National Executive of ZUFIAW equally ended in another deadlock. Then the third one was held on 8th May 1984 and in attendance was the Management, ZUFIAW officials and a representative from the Ministry of Labour and Social Services. At this meeting Management acceded to the Union's demand to lift the suspension of all the three workers and that Mr Mundia be kept out of the office until his status in the Fund was agreed upon, also promised to submit to the Management definite written allegations against Mundia. About a fortnight later on 25th May 1984 another meeting was called for by the Minister of Labour and Social Services. He however held two separate meetings with each faction. Management told the Minister that it would in their opinion set a bad precedent to leave it to the workers to decide whether Mundia should work or not. But in another meeting the Union was adamant and stated that Mundia was not a man they could be expected to work with. The issue therefore became one of whether Mundia should work for the Fund or not. Management was persistent in having Mundia return to work and several meetings were held to reconcile the parties but all efforts failed and by this time, Mundia had taken legal action against the Union, efforts to have him withdraw the action failed.

On 1st October, Management decided to issue circular No. 29 of 1984 which informed members of staff that:

- (a) as a result investigations against Mundia, both by Ministry and the Board had not been able to prove the substance of the allegations against Mundia;
- (b) Some of the allegations had already been investigated by the Investigator-General who had cleared Mundia of maladministration; and
- (c) Mundia would resume duty with immediate effect, Management would ensure that Mundia changed his attitude and that all members of staff were required to give him due co-operation for the good of the organisation.

ZUFIAW told the workers to disregard and ignore the contents of the circular. Mundia reported for duty on 3rd and 4th October 1984, workers went on strike and Management issued a warning that all those workers who would not report for work on 5th October would be regarded as having resigned. They never reported for work and by this time the strike action had spread to the Copperbelt offices. On 9th October 1984, the National Press carried a Management statement that all workers had been dismissed and vacant posts were advertised. This time other employees from Commercial Banks, Zambia National Building Society, the Zambia State Insurance Corporation and the Workmens Compensation Fund Control Board joined the strike

in sympathy with their colleagues. The strike action took a political dimension when the District Governor for Lusaka intervened to help reconcile the parties. He only went so far as to form an adhoc committee which only met on four occasions before His Excellency the President Dr Kenneth Kaunda appointed a Commission of Inquiry.

During the Commission's sittings, a lot of allegations were raised against Mundia by the Union and they ranged from his awarding a contract a tender for workers' uniforms to a company the Union believed Mundia had an interest in which the Commission found to the contrary although the uniforms supplied were according to the Commission, of poor workmanship, to allegations of Mundia's total disrespectfulness towards other officers and this was substantiated. The Union further complained that Mundia had suspended six senior inspectors in September 1980 without proper cause. This the Commission found was not proper against Mundia as an individual but the entire management.

On the allegations of tribalism, Mundia was found by the Commission of not being guilty of any charge of tribalism although in certain cases Mundia had exerted undue pressure to the detriment of other officers and in one particular case Mundia's unreasonable intense dislike for Chanda, a District Inspector in Monze whose appraisal form Mundia rejected was noted. It should be further noted that apart from his poor working relations with employees at the Fund evidence was further adduced to the Commission to the effect that Mundia equally was a problem even when dealing

with senior government officials, and there was also a submission to the effect that Mundia did not respect his superiors at the Fund.

After the submissions, the Commission found that the structure at Zambia National Provident Fund during the inquiry might have to a certain extent contributed to the industrial relations problems that led to the strikes and was partly responsible for the difficulties which arose in attempts to the problem of the strike. A particular example noted was the position of Board Secretary - a position held by Mundia - who was in charge of transport, security and the cleaners over and above his normal duties. It was observed that his functions created anxiety and resentment among the workers as these were seen to be abnormal and unnecessary concentration of power into the hands of one man. The Commission further noted that the strikes were caused by the suspensions of Mwaanga, Mulenga and Moono, the Union Chairman. The suspensions, it was believed, occurred through and within an atmosphere of mistrust between the workers and the management. The workers saw their colleagues' suspensions as an expression of the management's indifference and high handedness and another cause was the Management's action of bringing Mundia back for duty in the face of the workers' objections. It became clear that Management had failed to take heed of the Ministry's warning about Mundia's return to work and disregarded the seriousness with which the workers treated the suspension of their colleagues. The Commission established further that the practice of one industry, one union was not realistic and

found that the two categories of organisations, that is the financial institutions on one hand and the Allied Workers on the other, were unrelated and functionally different. It also established that:

- (a) bank workers did not normally initiate strikes but they only went on strike in sympathy; and
- (b) strikes by commercial organisations were more disastrous than those by service organisations because of their immediate consequences on the national economy.

RECOMMENDATIONS

Several recommendations were made by the Commission to the government of which some were accepted, noted or not accepted. However, in this case, we shall restrict ourselves to those that appear to have been incidental to the strikes. There were notably two recommendations on the organisation's structure as regards the post of Board Secretary firstly that the Board Secretary must head the Professional Secretariat and the Legal Department and secondly that general administration and personnel should not ^{be} the concern of the Board Secretary, both recommendations were accepted. On Industrial Relations it was recommended that labour laws should be amended:

- (i) To prohibit double leadership and spread responsibility i.e. Union members should not be eligible for elections to Works Council.
- (ii) To allow the Ministry of Labour and Social Services to inspect confidential service records for all

aspiring candidates to the Union Executive and Works Council.

Both recommendations i.e. the one on the prohibition of double leadership and the one on the capacity of the Ministry of Labour and Social Services to inspect confidential services records were not accepted. It was also recommended that Charles Zemba Moono gives up his positions as Union Chairman and Works Council Chairman to allow for fresh by-elections, this was not accepted, it was in fact advised that proper legal procedures be followed. Then on the issue of tribalism, it was recommended that since tribalism is a troublesome issue, no effort should be spared to ensure that administrative practices are aimed at enhancing fair and equal treatment of all workers regardless of tribe, and this recommendation was noted.

2 COMMISSION OF INQUIRY REPORT INTO LAND MATTERS IN THE SOUTHERN PROVINCE OF 1980

Land is probably the most important asset for any country in the world and it is for such importance that land matters have brought into play a number of conflicts. "Zambia has approximately 750,000 square kilometres of land and in 1988, its population density was just below 10.4 persons per square kilometre. More than 60 per cent of its population live in rural areas, and most are engaged in agriculture."³ That is why it has been pointed out that colonial consideration dominated a land tenure system (L.T.S.) and hinges on protecting the competing interests of settlers and the indigeneous

people on one hand and economic considerations requiring the exploitation and development of minerals on the other.⁴

Different definitions of land tenure have been given but one which has a particular striking states that land tenure is:

"the personal rights, privileges, duties and obligations attached to land ownership. It regulates the security and confidence of the individual, his access to credit and the patterns of both personal incentives and personal rewards."⁵

It is important that the study and understanding of Zambian land tenure will be incomplete if regard is not had to the historical background and development. It should also be understood that the categorisation of Zambian land tenure was done by the Europeans who were the administrators in the colonial period of Zambia before independence. They divided the land into three categories on the basis of the land tenure obtaining in the country at that time. The first category was crownland, then Native Reserves and the last category was Native Trusts. However, after independence, there was a change and the crownland became known as the state land. Stateland was the most fertile and accessible land because most of it was situated along the line, while there were pockets in the Eastern Province and in a few other patches in the countryside. State land was exclusively for use by commercial farmers, townships and the railway. Reserves were probably the poorest or least fertile of the lands, and there were reserved for the sole use of the indigeneous population and then the Trust lands were reserved for the common benefit direct or indirect of the indigeneous population of the country. However, now it can be aptly said

that:

"Zambia has a dual land tenure system comprising statutorily and customarily regulated regimes. In reserves and trustlands, tenure is governed by customary law while statutory law governs tenure in the statelands."⁶

It is now important to revert to the question of customary land tenure. It has been argued that in traditional African economies, the security of rights in land is guaranteed and protected by the very principles under which the initial rights were required, which principles may be of kinship, residence, clientage, service to a higher authority, political affiliation or allegiance.⁷ However because of the increase in the demand for land due to population boom which in turn affect the socio-economic set up of any country, fertile land is rapidly being taken and so in certain instances the traditional methods cannot be carried out as per tradition due to this drastic change. Various traditional societies have different methods, notable among these are the Bemba who practice the "chitemene" system of farming which is basically a method of shifting cultivation. With the excessive demand for land, it becomes almost impracticable to continue with such a practice. Equally, the Tonga of Southern Province rely almost totally on livestock for their livelihood. And the livestock depend on pasture logically so that when most of the land is being taken away from the peasants for commercial farms, railways and townships the peasants fear for their lives and also for the lives of their animals for grazing lands. And if such fears are

not calmed, they can result in great insecurity in a country and thus threaten the peace of the nation. Land conflicts have probably been the most dangerous of all because they affect people's lives directly. The peasants of Southern Province expressed their dissatisfaction about their lives due to displacement of indigeneous population from their original areas to give way to various developmental projects. The peasants in the Southern Province used their traditional historical claims as one major reason for demanding that commercial farms established on their "Tutongo" (traditional lands) be given back to them. This was definitely a precipice for insecurity to the commercial farmers who might have invested heavily in the farms and to government in that such insecurity on the part of the farmers can affect their production and as such affect the economy. The President of the Republic of Zambia, His Excellency Dr K Kaunda on 13th October and 24th December, 1980 issued Statutory Instruments Numbers 134 and 167 of 1980, under the Inquiries Act, Chapter 181 of the Laws of Zambia appointed a Commission to inquire into Land matters in the Southern Province headed by Honourable Mr Justice Ernest L Sakala.

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THE REPORT AND RECOMMENDATIONS

The terms of reference of this Commission were to:

- (a) Investigate and report on the following matters in relation to land in the Southern Province:
 - (i) Availability of land for use by peasant farmers;

- (ii) Methods which may be used to facilitate expeditious acquisition of unutilised or under-utilised land;
 - (iii) The need to alienate for agricultural use certain portions of stateland, Trustland, Reserves and to determine the extent of such alienation;
 - (iv) The type of settlement which shall be established in respect of any land which is alienated in consequence of the Commission's recommendations;
 - (v) What, if any, restriction ought to be applied in relation to the extent or type of economically viable land units which may be owned or occupied by a single lessee;
 - (vi) Any other matters which to the Commission relate to the foregoing and which in the opinion of the Commission ought in the public interest to be inquired into; and
- (b) Make such recommendations with regard to the matters covered by the first term of reference as the Commission may in the light of its findings deem appropriate.

The Commission with a view to cover the terms of its reference then embarked on a tour of all Southern Province towns and received not only oral but also

written evidence from the Commercial Farmers Bureau (CFB) and its affiliated associations and representatives from Parastatal, public and private companies whose activities were relevant to land matters in the Southern Province. Having accomplished this task, the Commission then made several recommendations concerning particular districts of the Southern Province and generally issues to land in Zambia. Our area of interest now however, is to look at the general recommendations made to government by this Commission. Term numbers (a) (ii) of the reference was on the methods which may be used to facilitate expeditious acquisition of unutilised or under-utilised land, the Commission noted that the existing methods of acquiring land were adequate but were rendered less expeditious by the inadequacy of personnel and unnecessary lengthy administrative procedures and particularly lack of land monitoring unit to determine constantly the degree and extents of utilisation of agriculture and it was then recommended that:

- (i) The administrative procedures be shortened to allow resolve the Commissioner of Lands to secure the Presidential resolve directly. This was not accepted.
- (ii) A land inspection unit to monitor the degree and extent of land utilisation must be established. This too was not accepted by government.

Then on the issue of land tenure, administration and management, the Commission recommended that:

(i) The two systems of land tenure, namely, statutory land tenure and customary land tenure may continue in their respective areas of application for such time until there is an overall review of the land laws of Zambia, this recommendation was not accepted by government.

(ii) In respect of peasant farmers wishing to obtain more security to portions of land under customary land tenure, the existing land tenure be modified as follows:

- (a) The initial consent should be given by the chief in consultation with the village headman or headmen; this was accepted;
- (b) The final approval should be given by the District Council and this recommendation was not accepted;
- (c) The District Council should register and issue a certificate of occupancy and this recommendation was accepted;
- (d) And that each District Council should establish a customary land tenure registry, this too was accepted.

Having studied the report carefully, the Party and its Government accepted most of the recommendations and, in addition, made the following decisions:

- (a) The Party and its Government would make a deliberate policy:
 - (i) To settle people on virgin land in remote areas provided there was infrastructure;
 - (ii) To bring about equitable distribution of land by repossession of idle or under-utilised farm lands so that they are made available for productive purposes;
 - (iii) For the State to intervene, where title to land is unclear, and where chiefs insist they have traditional powers to allocate land, in order to free land for production.
- (b) All farmers will be required by law to devote a percentage of their farmland to various trees for purposes of erosion, control and re-forestation; and
- (c) Another Commission be appointed to rationalise the land policy in general.

Having looked at the aforesaid reports, he will in the next chapter endeavour to analyse and bring up some of the constraints and drawbacks that Commission reports face in their potential implementation or in a view to implement them and even before they are actually implemented.

ENDNOTES

- 1 COMMISSION OF INQUIRY REPORT ON ZAMBIA NATIONAL PROVIDENT FUND STRIKES, GOVERNMENT PRINTER, 1988
- 2 Ibid
- 3 J T MILIMO AND S WANMALI (Eds), ADOPTING IMPROVED FARM TECHNOLOGY: A STUDY OF SMALL HOLDER FARMS IN EASTERN PROVINCE, ZAMBIA. (WASHINGTON D C; INTERNATIONAL FOOD POLICY RESEARCH INSTITUTE, 1991) P. 129
- 4 P M MVUNGA, NATIONAL CONFERENCE ON LAND POLICY AND LEGAL REFORMS IN THIRD REPUBLIC OF ZAMBIA, A PAPER. LUSAKA, UNZA, 1993
- 5 K OSEI-HWEDIE AND M NDULO (Eds), ISSUES IN ZAMBIAN DEVELOPMENT (OMENANA, NYANGWE, 1985) P 233
- 6 Ibid at Page 232
- 7 COMMISSION OF INQUIRY REPORT ON LAND MATTERS IN THE SOUTHERN PROVINCE, GOVERNMENT PRINTER, 1985

CHAPTER THREEDRAWBACKS AND CONSTRAINTS

In most situations when a Commission of Inquiry in a particular matter is constituted, there are mixed feelings from a cross-section of the people. The people closely linked to the matter of inquiry may be as victims feel a sign of relief in that this appears to resolve their problem but to another group most probably cynics, this is just another of those political gimmicks aimed at promoting the government's image to the public i.e. a form of public relations. It is obviously not enough only to appoint a Commission, but to ensure that such a Commission does its work according to the terms of reference of appointment. And the work of the Commission is not per se the end of the road in that the report of the Commission has to be made public since the Commission is deemed to inquire into a matter that is for the public welfare. In certain instances there is so much anxiety as in the Special International Commission on the assassination of Herbert Wiltshire Chitepo,¹ in which people had a lot of expectations because of the volatile atmosphere and circumstances surrounding the death of Herbert Chitepo. It brought into the arena of suspicion the roles of opposition liberation groups from Southern Rhodesia (now Zimbabwe), the Zambian government and neighbouring countries. Different interest groups had their own expectations and for the Zambian government, it was to clear its name in that tragedy as one Commissioner said:

"lots of other things should have gone into the report, but you should keep in mind that the main objective was to clear Zambia's name."²

And then President, Dr Kaunda confirmed this and stated that the Commission was set up because "all fingers had been at us, that we had killed the late Chitepo."³

Having had all such expectations, it thus becomes a frustrating and disappointing phenomenon when the report is not made public or if it is made, most of the recommendations are not implemented. The questions raised among them, why has the report not been made public, or why have most of the important recommendations not been implemented, who can be compelled to implement such recommendations, how can government be "forced " to release the report, what is the legal protection that the public can seek recourse to? It has however, been stated Commissions of Inquiry face a lot of difficulties from their appointment to the time they hand over the report. So are these difficulties statutory or simply general, the candid answer is that both pose great difficulties and so we will try to look at these constraints and drawbacks.

STATUTORY: CHAPTER 181 OF THE LAWS OF ZAMBIA

1.0 Section 2(1)

"The President may issue a Commission appointing one or more Commissioners to inquire into any matter in which an inquiry would, in the opinion of the President, be for the public welfare."

This provision is deemed to be the genesis or put in another way, the origin of the problems that Commissions face. It has been argued that

this particular provision gives unlimited discretion to one man and the result of resting such excessive discretion is not without any repercussions. "All legal power" it has been stated "as opposed to duty is inevitably discretionary to a greater or lesser extent."⁴ It has also been put aptly that wide discretionary power undermines the rule of law.⁵ The fear of wide discretionary power as that vested in the President by this provision is justified in that, there is no guarantee that the President's opinion may be wrong for the public welfare, because opinion is a very subjective characteristic. Baron J.P tried to define what could be for the public welfare in the case of NKUMBULA V THE ATTORNEY-GENERAL⁶ in which he said that in order to determine what is in the public interest, there should be a question of balance and this balance should be of the interests of the society at large which in this case can be the people of Zambia and the interests of the particular section of society e.g. government. The question that is raised is whether what in the opinion of the President is for the public welfare is in real sense for the public welfare. It is felt that in most instances it is only for the convenience of the President or his government in circumstances in which they may not have straight answers. But in another way, the President has the prerogative of appointing a Commission of Inquiry and Lord Denning had this to

say about prerogative power.

"seeing that the prerogative is a discretionary power to be exercised for the public good, it follows that its exercise can be examined by the courts just as any other discretionary power which is vested in the executive."⁷

This position does not appear to be the case in Zambia so that the President's constituting of a Commission crudely put is beyond questioning. To assume therefore that one man in the name of the President can determine without bad faith, what is for the benefit of the public is a grave oversight on the part of the legislature that can prove fatal. However, on the other hand it has equally been argued that the provision is good for administrative convenience only in that although it has not been expressly stated, there is absolutely no proof that the President when forming such an opinion does not hold any consultation with his cabinet colleagues and other interested parties both in and outside government. Other people still persistently argue that if it was the intention of Parliament that the President should or can consult, why did Parliament not put such a provision in the statute? To that extent section 2(1) of Chapter 181 of the Laws of Zambia though not directly referred to as a constraint, it however, is referred to as the origin of the problems that come with the appointment and work of certain Commissions of Inquiry.

Another issue that is raised regarding the above discussed provision is on the appointment of Commissioners. Matters on which a Commission can be appointed to inquire range from accidents, salaries, Constitutional and even land matters, " some matters of inquiry can turn out to be highly technical both in approach and form, but the President is not restricted as to who should be a Commissioner on a particular Commission. Certain matters such as accidents would demand logically stated, people well vested in fields such as engineering so as to determine among other things, the mode of vehicle or machinery, durability and endurance and other matters incidental to that and yet notwithstanding such outlined technical aspects, the President can appoint virtually anybody as he pleases. Some of the "privileged" few people that are appointed on such Commissions do not even have the basic tit bits about what they are about to inquire into or if they have some idea, it is very scanty and dangerous to rely on.

Although section 10(1) provides for the engagement of experts to aid and assist the Commissioners, it is still a matter of concern as to why the government should spend more on these so called "experts" when it could save its finances by appointing experts as Commissioners from the very beginning. That aside, the danger of appointing these rather "incompetent" people to inquire into matters of national interest is a reflection of the lack of seriousness which the

authorities seem to attach to the work of a Commission of Inquiry. If people are not well acquainted with a specific field, the likelihood of producing material of low quality is high. It is as such said that the land of people appointed are intended to produce a poor report which the executive will attach little or no importance at all.

1.1 Section 2(2b)

"Every Commission shall specify the subject, nature and extent of the inquiry concerned, and may contain directions generally for the carrying out of the inquiry and in particular may contain directions as to the following matters:

(b) the appointment of a Chairman,"

The position of Chairman of the Commission is another matter that is deemed to affect the operations of some Commissions of Inquiry. The role of the Chairman has been a matter of conflict in certain Commissions in that other Commissioners have expressed the view that the Chairman may be biased and may influence the course of the Inquiry, especially on Constitutional matters. The first question asked is that one related to the role of the Chairman. Is he/she a titular head entitled only to preside over the Commission during the period of the Inquiry or is he /she an executive chairman thereby concerned with managing or executing the Commission's

affairs. There is admittedly no problem with the former position but in the latter case, Commissioners interviewed felt that if a chairman assumed the role of an executive head, this is likely to affect the operations negatively since he may prejudice the outcome of the report in that although all of them are appointed by the President, he/she is given an extra position of Chairman which is an elevation in ranking and allegiance is no longer only to the people of Zambia but also to the person of the President who appointed him Chairman. In fact, this provision is questioned as to whether read in stricto sensu it gives the President power to appoint the Chairman or whether it only gives the President power to outline the modalities of appointing a Chairman.

It is a common practice in most if not all Commonwealth countries to name a Commission after its Chairman e.g Mumba Salaries Commission.⁸ It is felt that a Chairman assumes a superior, godfather like posture over other Commissioners and he/she regards the Commission as a personal entity. This makes the other Commissioners feel inferior and operate more or less like workers of the Chairman, so that if a particular Commissioner is not in good terms with the Chairman, his contribution can be ignored thereby depriving the people an opportunity to benefit from his contribution or he/she may just deliberately withdraw his participation in the Commission's affairs without

necessarily asking for relief.

1.2 Section 18

"Any fees, remuneration or expenses payable under this Act shall be paid out of moneys appropriated by Parliament for the purpose."

This provision does not seem to be clear, it is rather vague and ambiguous. Its ambiguity lies in the fact that, it is not straight forward to deduce whether the fees, remuneration or expenses also cover the cost of the entire inquiry. The issue of finances have in most instances been the core of the problems that Commissions face during their work. Usually, the terms of reference are so wide that it requires the Commissioners to travel extensively around and outside the country, however, in most cases their work is restricted only to areas that are easily accessible because of lack of finances to reach certain areas. If the inquiry is intended to equip the government with solutions to problems, it is important that a thorough inquiry is done and so for this to be done, it is important that Commissioners are well funded. In situations of Constitutional Review Commission, it is felt that due to the complexity and sensitivity of the matter, the funding should come straight from government and not depend on donors. It is argued that if there is dependency on foreign donors, the likelihood of such donors influencing the report is unavoidable.

1.3 GENERAL

It has further been argued that although Commissions are in most circumstances appointed in "emergency" situations and without due preparation it is important that government should firstly lay the necessary ground work for the operations of such Commissions. The Commissioners are compounded and confronted with such problems like lack of officers, no or if available inadequate transport or all together totally unreliable transport. In the case of the Commission of Inquiry on strikes at Zambia National Provident Fund of 1984,⁹ although the Commission was appointed on October 19th, 1984, it was only allocated offices in mid February 1985. The vehicles that were given to the Commissioners were never roadworthy and if used, often broke down and it took very long to have them repaired for the Commission's operations.

The stenographers from government who were seconded to the Commission could not cope with the workload and requests for extra manpower fell on deaf ears. The problems outlined among others have a very heavy impact on the report to be produced because the operations of the Commission can only be sound if all the other factors like resources are available. If government does not have the resources, it is better not to appoint a Commission than appoint one that is ill-equipped and extremely demotivated.

ENDNOTES

- 1 MARTIN D AND JOHNSON P., THE CHITEPO ASSASSINATION
ZIMBABWE PUBLISHING HOUSE,
HARARE, 1985, Page 70.
- 2 IBID, Page 70
- 3 Op Cit Page 70
- 4 WADE H. W. R, ADMINISTRATIVE LAW, E.L.B.S. OXFORD, GREAT
BRITAIN, 1988, 6TH EDITION, PAGE 357.
- 5 Ibid Page 388
- 6 NDULO M. AND TURNER R., CIVIL LIBERTIES CASES IN ZAMBIA
AFRICAN LAW REPORTS OXFORD, GREAT
BRITAIN, 1984, Page 128.
- 7 Op Cit WADE H. W. , Page 393
- 8 COMMISSION OF INQUIRY INTO THE SALARIES, SALARY
STRUCTURES AND CONDITIONS OF SERVICE IN PUBLIC
SERVICE, GOVERNMENT PRINTER, LUSAKA, ZAMBIA, 1994.
- 9 COMMISSION OF INQUIRY REPORT ON ZAMBIA NATIONAL PROVIDENT
FUND STRIKES, GOVERNMENT PRINTER, 1988.

CHAPTER FOURRECOMMENDATIONS: CHAPTER 181 OF THE LAWS OF ZAMBIA

Almost all the problems that various Commissions of Inquiry confront in their line of operation have been attributed to the Inquiries Act, Chapter 181 of the Laws of Zambia. Certain interviewees felt that the statute did not provide for present circumstances under which it operates with some of them even referring to it as an archaic piece of legislation enacted under a different environment and operating in a complete different environment. It was suggested that it was better that the entire statute be reviewed and obviously amended.

However, although this view may be right in a particular perspective, we will in this Chapter only make reference to specific provisions that stood not as generally inhibiting the operations of some Commissions of Inquiry. It should be noted that this particular statute under review was enacted in 1967.

1.1 Section 2(1)

"The President may issue a commission appointing one or more commissioners to inquire into any matter in which an inquiry would, in the opinion of the President, be for the public welfare."

The issues that seem to bring controversy in the above provision, is the question of the President's ability to determine in his opinion what may be for the "public welfare". Arguments passed about this provision were that it was fatal for an entire nation to believe that one man can in his "own

opinion" determine what was in the public welfare. The danger cited was that the President may act in bad faith in the entire business so that it may be too late to realise and by then damage will have been done. This provision is seen as a concentration of too much power in one individual and Nwabuzor could not have stated this position better than when he said:

"With such concentration of power in one individual, it has proved a continual problem in the history of mankind to devise ways to avoid the probable absolutist and dictatorial exercise of these powers."¹

With such a danger, one suggestion posed was that for purely administrative reasons, the President can declare a certain matter to be one of public welfare, and then the appointing of the Commissioners can be by himself too but the selection of these people should be done by a purely different independent body to avoid any form of political interference. An example given is that in a reasonably and well balanced Parliament such a task can be left to a select committee of Parliament because it is most unlikely that such a composition that would constitute the front bench and the back bench as in government and the opposition would pick commissioners with a likely bias towards the appointing authority.

Besides, it is further argued that since Members of Parliament are the direct representatives of the people, they would exercise due diligence in a matter that is of public

welfare. The idea is that Parliamentarians will ensure that people with the right qualifications and of a proper representation in a cross-section in society sit on such an important body. If this be not the case, then the President should appoint the commissioners after he has selected them himself but the appointment which includes swearing in should only be affected after Parliament has ratified the appointments. This is intended to ensure that the appointees are properly scrutinised before they are allowed to sit on the Commission. It is feared that some of the commissioners may be appointed when they already have pre conceived position on certain matters for example political, social or otherwise. The idea is that since the matter to be inquired into is one of public importance, it is important that people of unquestionable character handle such matters or at least if they are of questionable character then the public will be able to judge what kind of people will represent them. A clear example of where such a system would be beneficial might be in matters of land.

In the Commission of Inquiry to look in land matters of the Southern Province of 1980, the cry of the peasants which precipitated the appointment of the Commission was that a lot of their traditional land had been grabbed from them and given to white settlers, so they wanted government to repossess this land and hand it back to them, therefore in appointing the commissioners, if the President picked a white settler or indeed anybody who had any interest in the land to the disadvantage of the peasants then the Parliamentary Select Committee can

scrutinise and screen such person and if established that such a person had an interest, it could then recommend to the President that such a person would inquire into such matter partially. As the statute is in its present form the President may appoint such a person and no one may dispute such an appointment. It is envisaged that such a system will ensure total transparency and accountability because after all the money that finances such Commissions of Inquiry is tax payer's money in most instances.

Another recommendation, almost connected to the above outlined is that if a Parliamentary Select Committee may not be the best, then it is better to have a constitutional organ which should comprise professionals and technicians to pick people who would sit on Commissions of Inquiry because the professionals will use their expertise in selection.

Another suggestion forwarded was that if the President selects the Commissioners, they should be subjected to public scrutiny, so that people are availed an opportunity to question them, but this seems rather unworkable since in most cases, Commissions of Inquiry are appointed at short notice without time for such procedures.

1.2 Section (2)(2b)

"Every Commission shall specify the subject, nature and extent of the inquiry concerned, and may contain directions generally for the carrying out of the inquiry and in particular may contain directions or to the following matters: (b) the appointment of a Chairman."

This is also another provision that has been the subject of controversy. Most people interviewed think that this particular provision is rather ambiguous and if not so then extremely abused. Read literally, does this provision confer upon the President power to appoint the Chairman, and if it does not, how should or who should appoint the Chairman? Secondly does it outline what role the Chairman shall play in the Commission of Inquiry's operations, and does it put limitations on the powers of such Chairman? The Zambian experience has been that when the President issues a Commission appointing commissioners to inquire into a certain matter, apart from just the appointment of ordinary commissioners, the President appoints a head who becomes Chairman of the Commission.

The argument advanced is that by appointing a Chairman, it becomes clear then to whom such a Chairman owes his allegiance. People interviewed felt that since as the statute is now, the President appoints the commissioners verily with confidence in them and believing them to have capacity to inquire into a particular matter. Is it not only prudent that such people among themselves elect their own Chairman? This, it is believed, will ensure that the Chairman is answerable to fellow commissioners and all of them together answerable to the President, unlike the existing position whereby the Chairman appears to owe his allegiance to the President. On the face of it, people feel that the provision does not even give the

President power to appoint the chairman rather it endeavours to give the President power to give directions as to the manner in which the Chairman should be appointed. That is why even some commissioners on various past Commissions of Inquiry talked to, felt that the President may have misconceived the provision thereby abusing it, and resulting in all Chairmen appointed by the President having been invalidly appointed.

Therefore the recommendation is that the provision should be explicitly drafted as to give the President power to only give directions as to formalities of electing the Chairman which should be done by commissioners among themselves without outside interfere. Further it is recommended that the powers of such Chairman be specifically provided for to avoid instances of exercise of power which is not within his parameters, it should be stated whether he is to be an executive Chairman concerned with the managing and executing the Commission's affairs or he is a titular head concerned only with presiding over the Commission during the period of its sittings. However, since Commissions of Inquiry are only ad hoc bodies, it is only plausible that such Chairman be only a titular head.

The other issue that is related to the above stated is appointment of judicial officers especially to head respective Commissions of Inquiry. As stated earlier, the appointment of a Commission of Inquiry is met with a lot of expectations by the people since it is felt that such a Commission will resolve a particular matter or at least find a solution to the resolution

of such matter. And the appointment of an Honourable Judge to head such a Commission assures the public of a very workable result, but alas, when the findings are not made public or if made public not implemented, the public tend to believe that such a Judge who was Chairman might have had something to do with such a report and so hold this judicial officer in low esteem or doubt his integrity. This tends to undermine the work of the Judiciary and compromise its position too. As Lord Devlin once stated:

"In our country the reputation of the Judiciary for independence and impartiality is a national asset of such richness that one government after another tries to plunder it. This is a danger about which the Judiciary itself has been too easy going."²

If a Judge sits on a Commission of Inquiry whose recommendations are never implemented, it would appear that the executive does not believe in the capacity of the Commission to bring forward workable recommendations. To the public, the Judge may even be accused of being a political stooge. It would appear that by appointing a Commission of Inquiry the government wishes to portray a non-partisan approach to a matter of public concern whilst the Judges manifest their sense of obligation towards the welfare of the state.³

It is therefore recommended that because of their primary function of adjudication in a court of law, it is important that Judges do not sit on Commissions of Inquiry because it may compromise their position and bring into question their

impartiality especially if a matter has pronounced political aspects.

1.3 Section 5

"It shall be the duty of commissioners, or where a single commissioner is appointed, of that commissioner to make a full faithful and impartial inquiry in accordance with the terms of the commission concerned and to report the result of the inquiry to the President."

There were no queries as regards this provision per se, although it was argued that this provision is not complete in that it does not give the President a correlative duty of either making the report public and/or implementing the recommendations. The President should be compelled by statute to make the report public because after all if it is not made public then it is a negation of the fact that the matter which was being inquired into was for the public good. However, it is difficult whether the President can be compelled to implement the recommendations of a particular inquiry. The argument of the executive in most instances is that it does have the capacity. An example is on salaries, the executive may give a reason that it does not have the financial capacity to implement the recommended salary scales. So then if this be the case why should the President even dare to appoint the Commission of Inquiry in the first place? That is why most people believe that Commissions of Inquiry are mere public relation gimmicks for the executive to quell volative situation.

It is believed that Commissioners recommend issues which they believe are in the public interest because they are the

ones who conduct the hearings and listen to the people air their interest. The whole issue appears paradoxical in that the officials who are endowed with the power to implement do not hear the witnesses. That is why Wade says:

"It seems absurd that one official should hold a public inquiry into the merits of a proposal and that another official should be entitled, disregarding the report of the first, to give a decision on the merits."⁴

That is why certain people feel that the Commissioners should present the report to Parliament since it has the capacity and holds an upper hand in deciding financial obligations of the executive therefore it has a better implementation capacity, or after the executive has seen the recommendations, it can then forward the same to Parliament with further recommendations or requests as how they hope to be helped in their ability to implement.

1.4 Section 16(1)

"For the purposes of obtaining information to decide whether or not to issue a commission under section two, the President may direct the Attorney-General to cause an investigation to be made into such matters as the President may specify and to convey to him the result of such investigation."

The President was accused by most of the interviewees in this story of having literally ignored this provision to the extent that it appears as though this provision does not exist at all. It is argued that this particular provision was deliberately put by the legislature to ensure that the

executive benefits from professional expertise before they can make a decision. Since the Attorney-General is a trained lawyer, it is anticipated that a person in such office may study a particular matter, analyse it and give the President a legal opinion as to whether, he (the President) needs to issue a commission or just act administratively by making a decision after consultation with his cabinet. It is felt by most people that since Commissions of Inquiry accrue political benefits rather than legal benefits, the Attorney-General has been as such sidelined. However, this has been described as being extremely myopic and naive on the part of the executive because as De Smith says:

"The maintenance of law and order, the security of the state and the ability of government to conduct its business in an orderly manner are clearly matters of judicial concern."⁵

Further than just being a matter of judicial concern, most tax payers and opposition party leaders talked to felt that it is cheaper or rather it could be cheaper if the Attorney-General was utilised in that he may in his report of investigation inform the President that a Commission of Inquiry is irrelevant and as such save the government a lot of money which would have gone to finance such a Commission. In order to rejuvenate this rather redundant provision, it is recommended that the wording be reviewed so that where it states, the President "may" direct, the "may" be replaced by a "shall" so that the President will be compelled to seek

the services of the Attorney-General because as it stands now, there is no proof that the President does not direct the Attorney-General.

GENERAL CONCLUSION

Before, we generally conclude, it should be understood that despite having tackled specific statutory provisions that ought to be amended, there are suggestions as to new matters that should be included in the statute if it is to be effective. Firstly, the statute does not categorise or rather does not state the modes of inquiry to be adopted in an inquiry. Although reference is made in section 13(1) that:

"Commissioners, in the discharge of any of their functions, shall not be bound by the rules of evidence or by the rules of procedure of any court or tribunal, but may conduct their proceedings in such manner as they think proper and admit any evidence written or oral, whether or not such evidence would be admissible in civil or criminal proceedings."⁶

This is a very blanket statement or put in another very wide approach. It should be understood that matters that are inquired into are not uniform. It is extremely misleading to think that the form that an Inquiry would take in an accident matter would be the same as in a matter of salaries and conditions of service. If this be, as it is the position, then the inquiry will never be fully fledged as the approach as in substance differs. It is therefore recommended that the statute would categorise what approach an inquiry should pursue.

An argument advanced for example is that, presently in Zambia, there is a problem on the manner of adoption of the next Constitution of the country under review by a Commission of Inquiry headed by State Counsel, Mr John Mwanakatwe. The argument is that Chapter 181 of the Laws of Zambia did not envisage an inquiry into the Constitution thereby rendering the statute incapable to give directions to the commissioners and the general public at large. The statute should therefore provide for a mechanism that is purely in a legal framework that will stand the test of time.

Further, on matters of the Constitution, Commissioners should not distillate the representations of people to a level of calling them " impracticable and justiciable" because such an approach elevates commissioners to the level of a Judge when their role is purely recommendatory and not to decide what should be adopted by the executive. From this, it can be seen that matters of Constitutional reviews do not have and are not of the same importance as are other matters that are inquired into.

In conclusion, it can be said that the problems that Commissions of Inquiry face are not only largely due to the statutes inadequacies but also due to the attitude of the executive towards the Commissions. It appears that the executive does not take the work of the commissioners seriously because they are not bound to do so. The executive is only quick to appoint a Commission of Inquiry if it appears that the public outcry to a particular situation appears volative and they cannot give straight answers. They appoint Commissions of Inquiry in the "heat of the moment" so that the

public believes that the government is equally concerned, but the government will turn back and frustrate the operations through poor funding and other related issues so that it takes long to produce its report and by that time the "heat " will have "cooled off". There are various examples that can be shown to prove this point, when in 1975, Herbert Chitepo, a Zimbabwean politician was killed, President Kaunda did not delay in appointing a Commission because Zambia was a prime suspect.⁷

In 1991 when then Vice President of Zambia, Levy Mwanawasa was involved in a tragic road accident and a lot of political capital was being made out of it and with suspicion on certain members of his government, President Chiluba appointed a Commission of Inquiry.

Even when there was a disquiet by civil servants in the country about their salaries and conditions of service, wary of the danger of public service unrest, the President, Frederick Chiluba appointed a Commission of Inquiry. It is clear that, after these Commissions are appointed, people believe that a solution is forthcoming but this is never to be. But in circumstances where they can exploit the findings of a Commission to their own political capital, there is so much excitement and the executive is more than ready to implement the recommendations. A clear example is the case of the Human Rights Commission appointed by President Chiluba in 1993. After this Commission presented its findings, there was a lot of excitement and enthusiasm to implement its findings. President Chiluba was even quick to state that:

"This is not a political gimmick as some people think. This is a serious matter and that is why the people of Zambia should be given the opportunity to see these tunnels."⁸

The President was speaking at the time the report on human rights abuse was presented to him. On the same day, pressmen were even given the opportunity to tour the underground security tunnels under State House dubbed, "torture chambers."

The other issue that should be brought to light is that the very nature under which the Commissions of Inquiry operate; that of being mere recommendatory, works well for the executive because the commissions have no right to compel the President to accept any of the recommendations. It is for this reason that in most cases, the executive will produce what they refer to as "main recommendations" and they react to these. Most people feel that since the terms of reference for each commission outline the line of operation, the recommendation presented and within the terms of reference should be regarded as important as any other.

Lastly, if the executive is not serious about any particular Commission of Inquiry, it is better that, no Commission is appointed at all, because there is a lot of abuse of tax payers' money which is heavily invested in these Commissions of Inquiry, a general waste of effort and complete abuse of scarce national resources. It is also an abuse of the persons who are appointed to serve on these commissions because they have other matters to

attend to apart from the laborious months or even years they spend on Commissions of Inquiry. The question asked to this end then is whether there is need for Commissions of Inquiry in light of their ineffectiveness over the many years of experience. A cross-section of people cynically state that there is no need for Commissions of Inquiry because it has never been the intention of the government to implement the Commissioners' suggestions. However, this approach is not the best in administration, stated rather plainly, simply because an instrument has been abused does not mean that we should discard it completely, because if we do away with Commissions of Inquiry, then the executive will have to make decisions on all matters and this may prove fatal especially on such matters as the Constitution.

It is therefore important for the government to reach a particular decision on a matter, public views are heard and taken into account when deciding. What is important therefore is the necessary legal framework to be put in place so that Commissions of Inquiry no longer became or continue to be used as a public relations tool for the politicians. It is anticipated then that with a proper legal framework to ensure that the right people serve on these Commissions and produce a report that is of substance and the executive acts on the same, the Commissions of Inquiry will become effective and serve their purpose which is basically and essentially fact-finding and to ascertain what facts may be relating to the matter in issue and for the government to use such facts for the public benefit.

ENDNOTES

- 1 E. NWABUZOR, AN INTRODUCTION TO POLITICAL SCIENCE FOR AFRICAN STUDENTS, MACMILLAN, LONDON, 1990
PAGE 115.
- 2 DE SMITH, JUDICIAL REVIEW OF ADMINISTRATIVE ACTION,
STEVENSONS AND SONS, LONDON, 1980, PAGE 33
- 3 Ibid. DE SMITH, Page 33
- 4 H. W. R. WADE, ADMINISTRATIVE LAW, E. L. B. S., OXFORD,
1988. 6TH EDITION, PAGE 964.
- 5 Op Cit. DE SMITH, PAGE 34
- 6 CHAPTER 181 OF THE LAWS OF ZAMBIA, GOVERNMENT PRINTER,
LUSAKA. 1967. PAGE 4
- 7 D. MARTIN AND P. JOHNSON, THE CHITEPO ASSASSINATION
ZIMBABWE PUBLISHING HOUSE,
HARARE. 1985. PAGE 70.
- 8 TIMES OF ZAMBIA, PRINTPAK ZAMBIA LIMITED, NDOLA, 7TH
SEPTEMBER 1995, PAGE 1

B I B L I O G R A P H Y

- 1 COMMISSION OF INQUIRY REPORT ON LAND MATTERS IN THE SOUTHERN PROVINCE, GOVERNMENT PRINTER, LUSAKA, ZAMBIA. 1985.

- 2 COMMISSION OF INQUIRY REPORT INTO THE SALAIES, SALARY STRUCTURES AND CONDITIONS OF SERVICE IN PUBLIC SERVICE, GOVERNMENT PRINTER, LUSAKA, ZAMBIA. 1994.

- 3 COMMISSION OF INQUIRY REPORT ON ZAMBIA NATIONAL PROVIDENT FUND STRIKES, GOVERNMENT PRINTER, LUSAKA, ZAMBIA. 1988.

- 4 DE SMITH, JUDICIAL REVIEW OF ADMINISTRATIVE ACTION, STEVENSONS AND SONS, LONDON. 1980.

- 5 HIRMER O., MARX, MONEY, CHRIST, MISSION PRESS, NDOLA. 1982.

- 6 INQUIRIES ACT, CHAPTER 181 OF THE LAWS OF ZAMBIA

- 7 MARTIN D AND JOHNSON P., THE CHITEPO ASSASSINATION, ZIMBABWE PUBLISHING HOUSE, HARARE. 1985.

- 8 MILIMO J. T. AND WANMALI S. (eds) ADOPTING IMPROVED FARM TECHNOLOGY. A CASE STUDY OF SMALL HOLDER FARMS IN EASTERN PROVINCE, ZAMBIA.

(WASHINGTON D.C. INTERNATIONAL FOOD POLICY RESEARCH INSTITUTE. 1991)

- 9 MVUNGA P. M. NATIONAL CONFERENCE ON LAND POLICY AND LEGAL REFORM IN THIRD REPUBLIC OF ZAMBIA: A PAPER
LUSAKA. UNZA. 1993.

- 10 NDULO M. AND TURNER K., CIVIL LIBERTIES CASES IN ZAMBIA,
AFRICAN LAW REPORTS, OXFORD,
GREAT BRITAIN. 1984.
- 11 NWABUZOR E., AN INTRODUCTION TO POLITICAL SCIENCE FOR
AFRICAN STUDENTS, MACMILLAN, LONDON. 1990.
- 12 OSEI-HWEDIE K. AND NDULO (eds) ISSUES IN ZAMBIAN DEVELOPMENT
OMENA NA NYANGWE. 1985.
- 13 TIMES OF ZAMBIA, PRINTPAK ZAMBIA LIMITED, NDOLA, 7TH
SEPTEMBER 1995.
- 14 WADE H.W.R., ADMINISTRATIVE LAW, ELBS, OXFORD, GREAT
BRITAIN, 1988.
- 15 WADE E.C.S. AND PHILLIPS A., CONSTITUTIONAL LAW, LONGMAN,
OXFORD