

PRO-ACTIVENESS OF THE HUMAN RIGHTS COMMISSION ON THE 24-HOUR PRE-TRIAL DETENTION IN ZAMBIA: A HUMAN RIGHTS ISSUE

Emmanuel Mukelabai Yula¹ Oliver Magasu²

¹ Postgraduate Student, Civic Education, Kwame Nkrumah University, Email: musonde2008@yahoo.com

² Department of Civic Education, Kwame Nkrumah University, Zambia, Email: magasuo@yahoo.com

Correspondence: Oliver Magasu Email: magasuo@yahoo.com

Abstract

This study assessed the pro-activeness of the Human Rights Commission on 24-hour pre-trial detention. The following objectives guided the study; to establish the pro-activeness of the Human Rights Commission on the 24-hour pre-trial detention in Lusaka District, to identify the challenges faced by the Human Rights Commission on the 24-hour pre-trial detention in Lusaka District and to establish strategies put in place by Human Rights Commission in safeguarding the 24 hour pre-trial detention in Lusaka District. The study adopted a qualitative approach and used a hermeneutics phenomenology research design. Data were generated through an interview guide. Findings: It was clear that the Human Rights Commission is responsible for educating and investigating human rights violations, investigating any maladministration of justice, and proposing possible measures to prevent human rights abuse. The findings also revealed that participants had a shallow understanding of the Criminal Procedure Code Act about the 24 24-hour pre-trial Detention. It was further established that the Human Rights Commission was reactive when it comes to the 24-hour pre-trial detention because of among other reasons, delay in the prosecution of criminal cases necessitated by poor investigations (unsubstantiated evidence), and administrative hiccups embedded in the investigative system. The study recommends the decentralisation of the Human Rights Commission office to the police station level, boosting the labour force at the Human Rights Commission and reintroduction and re-launching a continuous human rights-based education to all the investigative wings in the quest to appreciate Criminal justice-timely.

Keywords: 24 Hour Pre-Trial Detention; Pro-Activeness; Human Rights Commission; Criminal Procedure

1.0 INTRODUCTION

Pre – trial detention which is also known as jail, preventive, preventive detention or remand, is a process of detaining a person until their trial after they have been arrested or charged with a crime (Stevenson, 2018). Although from this definition, varied terminologies are used to refer to pre – trial detention, remand is commonly used in common law jurisdiction and preventive detention elsewhere. In the United States of America, remand is a rare except in official documents and jail is instead the main terminology. It is therefore important to note that detention before charge is commonly referred to as custody and continued detention after conviction is referred to as imprisonment.

Procedures in the investigative stage of criminal process, which is also known as the pre-trial phase, vary widely from country to country (OSISA, 2011). For instance, the common law from which emanates from England which Zambia's criminal procedure is based, is founded on the notion that the best way of detaining innocence is by contest between two parties, the accuser and the accused with the state filling the role of the accuser as opposed to the complainant. The judge is not involved in the investigation. Therefore, understanding the mechanisms related to custody time limit demands understanding of underlying legal tradition applicable in each country.

In Zambia, the Constitution (Amendment) Act No. 18 of 1996 in Article 18 (1) clearly states that "If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law". In embracing clarity and protection of the pre-trial detention, the (criminal procedure code Act) lawfully allows a suspect to be held in police custody or any confinement within 24 hours from the day of arrest.

However, there are allegations of prolonged pre-trial detention. For example, in 2017, Hakainde Hichilema and five aides in opposition by then, but currently serving as the republican president of Zambia, spent more than 100 days in jail/confinement from the day of arrest without being taken to court during the treason charge case (BBC News, 2017). Like Hakainde Hichilema, the former Patriotic Front deputy secretary general, Mumbi Phiri, spent 14 months in detention awaiting trial (Lusaka Times, 2023). If these allegations are true, then, it means their constitutional rights to timely pre-trial detention was denied. Despite the Human Rights Commission being given a clear role of investigating human rights violations and propose effective measures to prevent human rights abuse, it appears suspects are held in custody and have been denied a privilege to have their case heard by the courts of law within 24 hours. It is from this background that the pro-activeness of Human Rights Commission on the 24 hour pre-trial detention need to be investigated.

In this regard, the following questions will be addressed:

- i. What is the function of the Human Rights Commission?
- ii. How pro-active is the Human Rights Commission on the 24 hour pre-trial detention in Lusaka District?
- iii. What are the challenges faced by the Human Rights Commission on the 24 hour pre-trial detention in Lusaka District?
- iv. What ways are put in place by Human Rights Commission in safeguarding the 24 hour pre-trial detention in Lusaka District?

1.1 Theoretical Framework

The study found the libertarianism theory relevant in that the libertarians advocates for the protection of rights and freedoms of individuals. Libertarians like Boaz (1997) confidently defend the protection of fundamental freedoms and rights of individuals, the rule of law, free market and control the exercise of power exhibited by government. The libertarians value human dignity in all aspect of life. By virtue of being human being, man ought to enjoy all the liberties without any compromise nor deprivation. Since the world is now a global village, the liberties are usually the same and universal. Deprivation in this case refers to the act of hindering people from enjoying their liberties. Boaz (1997) further postulates that all individuals are naturally free and no one should at any time deprive one of his or her individual rights because the rights are not granted by any government, not granted by society nor are they granted by authorities. The loudest voice of libertarians is the call for enjoyment and protection of fundamental freedoms and rights of individuals. In this sense, the Human Rights Commission should be pro-active and reactive to ensure citizens enjoy their rights, particularly the 24 hour pre-trial detention, taking into account that not all rights are absolute.

2.0 LITERATURE REVIEW

2.1 Historical Overview

In the United Kingdom, there was a criminal case in which Tracie Andrews was suspected to have murdered her fiancé, Harvey. The allegations of the case were that on the first day of the last month of the year 1996, Tracie found a way out to terminate her fiancé for the reasons best known by herself. The suspect was later picked up by police and got detained. Her case kept trial pending for over six months which was over the six months limit of pre-trial detention. In this case, the suspect suffered before being heard as she was over detained. This case shows that there a number of systematic procedural and structural problems in the criminal justice system because some suspects are detained in police custody unlawfully.

Similarly, in London, the case of Steven Gerald Wright was among the seriously investigated murder case. The allegations of the case were that Steven Wright was suspected to have murdered five women, the suspect was arrested after discovering that murder cases kept surging just a few days after he had relocated to that place. The police officers successfully arrested Steven Wright on 19th December, 2006 at 05.Am. In this vein, one may emphatically argue that despite Steven Wright being found guilty and charged with life imprisonment, the trial was not administered timely and the pro-activeness of Human rights commission during the proceedings of the case may not be clearly appreciated and remain anonymous, because the suspect was punished before he was lawfully punished.

In the year 2010, Botswana recorded a murder and aggravated robbery case. The allegations were that a Botswanan man by the name of Poloko was convicted for both robbery and murder of Vijeyadeyi Kandavararam. The suspect was accused of having committed murder. The verdict of the case was pronounced on 28th July 2015 with a death penalty. The flow of the case clearly indicates that there was no timely pre-trial detention as the case was recorded in 2010 and the resolution was only made in 2015 (African News, 2015). This means that the suspect suffered 5 years before the case came to trial instead of 48 hours in line with the Botswanan criminal procedure (Working Group on Arbitrary Detention, 2022). One may absolutely get puzzled whether the Human rights commission of Botswana was really active to effect the 48 hour pre-trial detention policy. It ought to be understood that suspects are not guilty before any pronouncement by the competent courts, this therefore entails that pre-trial detention should never be used as punitive tool. In the murder case of Poloko, one may submit that the Human rights commission of Botswana seem to have slumbered in that the suspect was on pre-trial for over 5 years, the question that may be raised is ‘What role did the Human Rights Commission play? In this regard, it is of urgent need to find out the pro-activeness of Human rights commission on the timely pre-trial detention policy in Zambia.

In a case recorded in 1999 bearing judgement No. 23 of 1999, the allegations were that a woman was picked up by police constable officer and locked up because the son to the suspect went missing. She was incarcerated in police custody for 3 days and later told to look for the son. According to the Criminal Procedure Code Act, Chapter 88 of Laws of Zambia, no suspect ought to be in police custody exceeding the period of 24 hours without being heard by the competent courts. This was already punishment because the suspect already spent the maximum hours in police custody. One would wonder whether the case of this woman became an area of interest to the human rights commission.

In 2018, the New labour Movement Party President, Fresher Siwale got arrested and charged with the offence of defamation to the President. The allegations were that the suspect had raised questions regarding the identity and nationality of the former Republican President, Edgar Chagwa Lungu, sitting President by then. The suspect was locked up in police custody for over 7 days and was charged on the fourth day (Lusaka times, 2018). In this vein, it is absolutely difficulty to establish the reactiveness of Human rights Commission amidst such a prolonged detention. Could it be that the commission gave a blind and deaf ear to this case? Obviously, one would therefore want to determine the pro- activeness of Human Rights Commission on the 24 hour pre-trial detention. Evidently, the pro-activeness of Human

Rights commission regarding timely pre-trial detention policy may hardly be traced in the case mentioned above. This is despite a formal reporting mechanism the act prescribes. As such, it was imperative to make the pro-activeness of human Rights Commission on the 24 hour pre-trial detention known.

In 2016, Mwaliteta and four other UPND officials were arrested and charged with aggravated robbery. The allegations were that on the 14th day of August, Mwaliteta jointly intercepted records of election results. In the words of the former inspector general of police, Kakoma Kanganja, it was alleged that three returning officers who were coming from the Copperbelt aboard a Zambia Air Force plane and upon their arrival at Lusaka City Airport, they were attacked and robbed off the Gen 12 (Document used to record counted votes), a hand bag containing various documents such as a blackberry phone and sum of K 350 cash (Lusaka Times, 2017). After arresting Mwaliteta, the case was firstly heard in June, 2017 after being arrested in August, 2016. This translates that Mwaliteta and other UPND officials were detained for 10 months without trial (Lusaka Times, 2017). The question one may ask is, where was the Human Rights Commission to remind the prosecution team to effect the 24 hour pre-trial detention? Could it be that the commission gave a blind eye and deaf ear to this form of prolonged detention against the 24 hour pre-trial detention act?

Another case involved the former Patriotic Front deputy secretary general, Mumbi Phiri together with her colleague Shebby Chilekwa the former Zambian President Edgar Lungu's barber man were arrested and charged with murder. The allegations of the case were that on October 6, 2019, Mumbi Phiri and Shebby chilekwa acted jointly and murdered Lawrence Banda who belonged to the UPND in opposition by then. The flow of the case triggered quite a number of anxieties during its genesis in that the first appearance of Mumbi Phiri was to be made after 14 days from the day of arrest as the case was to be presented before Kaoma Magistrate Court for mention on 10th march, 2022 (Lusaka Times, 2023). One may absolutely wonder whether the human rights commission heard of this case and decided to keep quiet or maybe this case never reached their information desk as the case needed their wholly engagement in the protection of the rights of the two suspects. So far, the pro-activeness of Human Rights Commission was not known with regards to the protection of the 24 hour pre-trial detention.

2.2 Studies on Pre-trial Detention

Studies such as the one by OSISA (Open Society Initiative for Southern Africa (2011) in Malawi revealed that pre-trial detention is slowly losing its way. The increase in the number of pre-trial suspects may directly mean that suspects have been forced to police custody longer than it is supposed to be. Also, when the number of pre-trial detainees skyrocket, it is a sign of burdensome to the judiciary as cases pile up one after another. When cases are not handled in good time, the suspects get to feel the discomfort and frustration which are tagged along prolonged detention Smith (2022).

Two decades and half ago, a study was done in the United states of America, the main intention of the study was to explore the Crisis of Pre-trial, based on the study, it was seen that the American judges were allowed to detain suspects in line with the 3142 of the Bail Reform Act of 1984. The responsibility vested in the American judges were aimed at making sure that suspects do not shun trial or escape trial when time is due. Despite having allowed the judges to detain suspects or defendants as they wait for trial, the Americans registered displeasure towards the authenticity of pre-trial detention in the realisation of fairness in the proceedings of judicial matters (Klein, 1997). The study further argued that pre-trial detention in the USA was trapped in crisis because defendants did not have adequate time to look for legal representatives, they are limited to accessing their best legal representatives because their movements are controlled by the state. Contrarily, it is possible to argue that the problem was not really embedded in the pre-trial detention policy, but in the bodies such as the commission.

Following the report submitted by Martufi and Peristeridou (2020), the European countries have been spotted out to be hit by the over-use of pre-trial detention. The European countries are reportedly to violate

the liberties of citizens. In this case, the pre-trial detention is no longer a protective aspect during the preceding of a case, the pre-trial detention is no longer shielding suspects, it has become a punitive tool as people get pressured and mistreated when waiting for commencement of trial. Therefore, it is imperative to establish reactivity of the commission pre-trial detention.

In Uganda, the study conducted by Gukiina (2018) reveals that continued lengthy pre-trial detention is the order of the day in the Ugandan judicial proceedings. It was further established that the Ugandan judicial system keeps the suspects longer than usual in the confinement facility. The cause that was highlighted as potential to lengthy pre-trial detention was the missing of investigation and prosecution files. Arguably, this may not be enough to subject suspects to prolonged pre-trial detention simply because prosecution files are missing, does it mean all prolonged pre-trial detentions in Uganda are linked to the missing of files? This calls for this study in Zambia.

Just like any other country, studies conducted in Zambia regarding fair trial clearly appeals that a fair trial could only be seen if there is impartiality and independency in the administration of case proceedings in the courts of law. Impartiality in this case may mean having access to neutral judges, judges that may not be linked nor related to you in any possible way (Shubayi, 2007). Contrarily, in Zambia, criminal proceedings may be dealt with in an impartial judge, but this may not grant the suspect a fair trial. The question that may be asked could be this, does it mean that suspects subjected to un-fair trial were handled by non-impartial judges? It is impractical and illogical to prove that all suspects in Zambia experiencing non pre-fair trial were and are being handled by non-impartial judges. Some scholars further builds the argument by stating that it doesn't take good laws to see good results, instead it only takes good stake holders and agents of human dignity in the involvement of criminal proceedings. This gives a call to this study.

Kankondo (2010) observes that it is disregardful to pin point independence and impartiality as tools to determine fair pre-trial/ trial, instead judges are not Demigods and get to be moved by the involvement of the media into the case through reports. This basically entails that the availability of the media to make reports over a court case may expedite the proceedings of the case by the courts of law. Arguably, the preceding statement may be untruthful in some way in that it is not the availability of media reports that quicken the hearing of one's case, the question to be asked is 'how many cases have been reported and publicised in media platforms and are still awaiting trial? 'Some cases have been reported over and over, but there is no commencement of trial within reasonable time. If it was true that the media does quicken the trial proceedings, would the media manage to film and report all cases across the ten provinces of Zambia? It ought to be noted that the media often take keen interest in cases of renowned people. In this vein, it was worth to be curious about the pro-activeness of Human Rights commission on the 24 hour pre-trial detention.

3.0 METHODOLOGY

The study used a qualitative approach because it has no intentions of quantifying the phenomenon. According to Bryman (2008), the approach is used when the study does not have any intention to quantify the given phenomenon. In this approach, the tenet is to describe the given phenomenon using non quantifiable figures, but relying on words and other textual tools. Importantly, this approach refutes the fact that there is a singular reality of world view. A qualitative approach can never be discussed leaving out subjectivity, relatively small sample and non-quantifiable.

Creswell (2003), further adds that a qualitative approach investigates the phenomenon based on the views of participants. Participants have a core agenda of describing the phenomenon according to their lived experience. The sample size was seventeen (17) participants, comprising of ten police officers from five police stations (two from each police station), the participants in these police stations were the Officer In charge and the Criminal Investigation Officers (CIO). Five (5) were former suspects from Kabwe, one

official from the Human Rights Commission and an official from National Prosecution Authority. Data were generated through an interview guide and analysed using thematic analysis.

4.0 FINDINGS

4.1 The Pro-Activeness Of Human Rights Commission On The 24 Hour Pre-Trial Detention In Zambia

To establish the pro-activeness of the commission on the 24 hour pre-trial detention in Zambia, the researchers began by asking participants to establish the functions of the commission. The question was:

What is the function of the Human Rights Commission?

From the responses, it was clear that the function of the commission was to promote and protect human rights, investigate human rights violations, rehabilitate victims of human rights abuses, educate the community on human rights and legal changes. This means that it is the mandate of the commission to ensure the 24 hour pre-trial detention was adhered to by law enforcement agencies.

A follow up question was then raised and the question was:

How pro-activeness is the Human Rights Commission on the 24 hour pre-trial detention in Zambia?

Participants noted that the Human Rights Commission has of late experienced a breakdown in the protection, and promotion of justice with regards to the rights of suspects awaiting trial. Notably, suspects stay much longer in detention than the prescribed detention. The researchers further probed the understanding of the 24 hour pre-trial detention. Participant D1 from the Human Rights Commission had this to say:

Detention before trial becomes unlawful when it exceed what is provided for in the law.

Participant S2 had this to say:

We keep suspects in police custody for not more than 72 Hours. The 24 Hour Pre-Trial detention is usually upheld when a suspect is held in Police Custody awaiting Court Hearing. I think the Instrument that supports the detention of Suspects for not more than 24 hours is found in the Police Act if I'm not mistaken.

Participant C1 from X Police Station had this to say:

So, pre-trial detention is when someone is detained in police custody awaiting trial so as to determine whether the suspect is guilty or not. If a case is straight, a suspect is detained for not more than 48 hours, but serious cases like murder takes time in order for us to gather enough evidence so as to sustain a conviction. I have never heard of the 24 hour pre-trial detention.

Participant K1 had this to say:

To my knowledge, the 48 hour pre-trial detention is more pronounced than the 24 hour I am not aware of the 24 hour pre-trial detention.

It was clear from the views of the participants that it was the mandate of the commission to protect those whose rights were violated and in this case, those detained for more than 24 hours without being taken for trial. Notably, some participants exhibited little knowledge with regards to the 24 hour pre-detention.

4.2 Challenges faced in upholding the 24 Hour Pre-trial Detention in Lusaka District

In establishing the challenges faced in upholding the 24 Hour Pre-trial Detention, the proceeding question was asked. The following four themes emerged on the question that sought find out about the challenges faced by the Human Rights Commission on the 24 Hour Pre-trial Detention in Lusaka District:

4.2.1 *Prolonged Feedback*

Police officers observed that criminal dockets took long to be processed by the National Prosecution Authority.

Participant S1 had this to say:

When we send cases to the National Prosecution Authority, it really takes long to get feedback from NPA (National Prosecution Authority)

Participant P 2 had this to say:

Within 24 hours a docket need to be sent to NPA-National Prosecution Authority. After sending the docket to NPA, NPA informs the police through radio message, so, every day, we have a list of criminal cases “cause list”. Those who have made it to appear in court, we inform them about their appearance in court. At the same time, it is now the duty of the prosecutor/ dealing officer to organise the witnesses to come to court. Once the docket is out, the case is no longer in our hands as police. It is now the responsibility of the National Prosecution Authority. We shouldn't be blamed for over detention.

It is clear to note that Suspects are prolonged in detention. This shows that the 24 Hour Pre-trial detention is not ineffective in any way. The flow of cases from the Police station to the National Prosecution Authority upon docket submission take many days to be ratified and cause listed. Furthermore, the Government hospitals are not quick in attending to criminal cases in good time that may require medical examination in the generation of a satisfactory medical evidence against Suspects.

4.2.2 *Poor Communication Mechanism*

Participant E1 from W Police Station had this to say:

Recently, we just received a correspondence from a member, he wrote to the Human Rights Commission and the response came through social media.

Participant K1 from Z Police Station had this to say:

At times, the Human Rights Commission may hear that someone has been unlawfully detained after five to six months when the suspect has already suffered

From the submissions, it is clear that communication between Zambia Police and Human Rights Commission is not well defined. Therefore, communication breakdown was a challenge.

4.2.3 *Logistical Constraints*

Three (3) participants out of the seventeen (17) said transport was the major hindrance .Participant E1 from W Police Station had this to say:

We have one vehicle at the Police station and this station has 12 police posts and they all depend on the same vehicle, there isn't any other vehicle for the Criminal Investigation Department.

It is evident that investigations of violation of human rights were hindered by lack of transport.

4.2.4 *Poor Accessibility to Reports*

This is what Participant E1 from W Police Station had to say:

Sometimes, there are complicated cases where you need to do a search, get some print outs and active report from Airtel or MTN. The Airtel and MTN work at their own pace. For example, we had a criminal case here recently and we wanted to finish the case in good time, but we were challenged, we sent an Officer to conduct a search warrant to some networking company, and we were pushing them to give us a report quickly, but they refused to work at our pace and demanded ample time to do their work, so, we had to wait until the print outs were ready and by then, over 48 hours had elapsed

From the above participant's views, institutions capable of providing reports pertaining to criminal evidence are not very active in providing such reports in aiding a quick gathering of information-evidence.

4.3 **Ways Put in Place to Safeguard the 24 Hour Pre-Trial Detention**

In establishing ways put in place in safeguarding the 24 Hour Pre-trial Detention, the following question was asked: *What ways have been put in place by Human Rights Commission to safeguarding the 24 hour pre-trial detention in Lusaka District?* Six themes emerged as presented.

4.3.1 *Enhance Manpower*

Participant S1 Y Police Station had this to say:

We need man power. Like in my department, I'm the only one and my colleague over there is the only officer in her department

It is worth noting that the institutions working towards the appreciation of timely pre-trial detention are understaffed. The work load is way beyond the absorption of man power .Hence, there is need to recruit more officers.

4.3.2 *Expedite Medical Examination*

Participant S1 and S2 noted that:

The University Teaching Hospital need to be fast in issuing medical reports in criminal cases that may require medical reports".

Participant S4 had this to say:

"The post-mortem results need to be very quick".

So far, the Government Hospitals are not issuing medical reports at a good pace. In this vein, The Government Hospitals need to quicken their medical examination exercise so as to provide criminality evidence in court.

4.3.3 *Decentralise the Office of the Human Rights Commission*

Participant E1 had this to say:

I think our colleagues from the Human Rights Commission, should find a way of penetrating into our affairs in terms of handling Criminals. If they can decentralise their services to a point where they can have some representatives at police station level working as liaison and coordinating with us, so that we get helped on a daily basis.

Participant K1 had this to say:

We don't have officers who are directly linked to our Police from the Human Rights Commission. It would be helpful having a Human Rights Desk at a police station. It would be very easy to recognise the rights of suspects. Now, it takes time for the human rights commission to hear that someone has been over detained

Participant E2 had this to say:

Human Rights are inborn and inalienable entitlements. For us to promote Human Rights, we need to work together with other security wings such as the police.

The human Rights Commission need to have their services spread across all over Police Stations. Otherwise, their services are too centralised at one place thereby making it difficult to execute a close supervision and guidance regarding the rights of suspects at pre-trial stage.

4.3.4 Heighten Inspections

Participant K2 observed that:

I think the Human Rights Commission need to be visiting Police stations frequently to check suspects that are detained at police stations

4.3.5 Quicken the Cause- List Process at National Prosecution Authority

Participant E1 from W Police Station had this to say in line with the National Prosecution Authority:

There are capital offences like murder, treason and aggravated robbery where you cannot release someone on police bond, these are cases where we need the National Prosecution Authority to speed up the process. Any capital offence is not bondable at a Police Station, we have no control over it in terms of over detention, we have to continue detaining suspects until the matter is called in court.

Arising from the above views, commission is not active towards the authorisation of criminal cases awaiting trial within time limit. As such, the National prosecution Authority need to speed up the authorisation of criminal cases to trial.

4.3.6 Decentralisation of Prosecution Powers to Police Station Level

Participant E1 from W Police Station observed that:

We have one legal section at Lusaka Division, they handle all the dockets from all the police stations. We do not have a legal Office at Police Station level. Those days when we had the prosecution team at police station level, the processing of cases was faster because a case would move from a Police Station to Court, but this time around, a docket has to be sent to legal and finally to National Prosecution Authority

Participant E2 had this to say:

When the police had prosecutors, things were faster. The police officers would just command cases to be heard within a stipulated time limit in that cases would move from CID to prosecution the same day. Things are moving too slow, the

government need to control the long procedures. The government may attach a prosecutor to the police so that each police station might have a prosecution team

For any criminal case to proceed to trial, the National prosecution Authority need to approve the case, in this vein, Participants from some Police Stations observed that the authorisation of Criminal Cases to court was quicker before the inception of the National Prosecution Authority in that each Police Station had some Prosecutors and would prosecute criminal cases in good time, but the National prosecution Authority has brought about an impediment with regards to the pace of Criminal cases to trial.

5.0 DISCUSSION

5.1 *What is the function of the Human Rights Commission?*

Arising from the findings of the study, it is clear to note that participants portrayed divergent views on the understanding of the 24 hour pre-trial detention. Notably, the participants observed that the Human Rights Commission is charged with a responsibility of educating, investigating human rights violation, investigating any maladministration of justice and to propose possible measures to prevent human rights abuse. The views of the participants are in line with the Human Rights Commission Act, 1996 under part two; article 9. Similarly, Lind (2021) stipulates that the United Nations through the Human Rights Commission plays a pre-eminent task in making sure that all forms of Human Rights are adhered to. As such, the functions of the Human Rights Commission is broad to some extent as it borders on issues related to all forms of Human Rights. It ought to be understood that rights to some extent act as a regulatory measure towards any given society. Hence, the need for security and conducive environment to exercise the enjoyment of rights granted to by the state. In this view, some participants felt that the Human Commission has a critical role in making sure that the rights of suspects are not compromised at Pre-trial stage, especially when a suspect is waiting to appear before a competent court. From its mandate, one may further argue that the Human Rights Commission safeguards all forms of human rights inclusive of suspects at Pre-trial. However, the findings McGreal (2015) show that the Human Rights Commissions are miles away from protecting the rights and fundamental freedoms of potential victims to human rights violation because there is a detachment between the rights of suspects and the role of the human rights commission.

5.2 *Challenges Faced in Upholding the 24 Hour Pre-Trial Detention*

In conformity with the findings of the study, diverse problematic issues were revealed in line with the 24 Hour Pre-trial Detention. The study observed that there was a breakdown of communication among the Human Rights Commission, National Prosecution Authority and the police on the 24 hour pre-trial detention. Participants felt much need to be done as there is delay in getting feedback from the Director of Public Prosecution Office after sending a docket for further scrutiny and litigation ratification. On the other hand, the study also established that since the inception of the National Prosecution Authority, the way to trial has been prolonged compared to the time when investigative wings could prosecute criminal matters independently. It must be noted that there is literally nothing good in the absence of communication in that officers need a collective and combined effort from the Human Rights Commission in understanding all forms of Human Rights better. In this vein, we argue that there is no flow of information and guidance from the Human Rights Commission to the law enforcement agency such as the police on pre-trial detention. Significantly, the Zambian Human Rights Commission of Zambia may not be fully aware of the complaints of suspects in the detention facilities in that there is no friendly and convenient communication.

We may argue that the Zambian Human Rights Commission may not be in receipt of human rights violation complaints at pre-trial stage as the accessibility of any human rights violation at pre-trial stage is hinged on the ability of the victim to make an effort to send a written communication to the Zambian Human Rights Commission. Therefore, the findings of the study are in agreement with Inutu (2017) who observes that the Human Rights Commission of Zambia receives written information from suspects who have been mistreated and denied a fair and timely trial. This implies that the commission may not be aware of the 24 hour pre-trial detention if the concerned or the person subjected to injustices on the way to trial fails to

write a complaint letter to the Human Rights Commission at the time of the violation of rights and freedoms provided for in the Criminal Procedure Code Act. However, we may argue that the communication between the Human rights Commission of Zambia may deny and disadvantage the un-educated and un-informed Suspects the opportunity to complain and a letter to the commission for further arbitration of the case as they may lack writing skills (Freedman, 2015).

The UN observes that the most prevalent issue impeding the pro-activeness of the commission towards the protection of forms of human rights are poor democratic tendencies and weak institutions. Like the findings of this study, it was established that some institutions work at their pace in giving comprehensive reports to Law enforcement Agencies so as to advance the prosecution of some criminal cases that may require evidence based reports linked to suspects at that particular time. This therefore entails that the nature of some cases may require joint efforts from the law enforcement Agency and other institutions that may play vital role in the substantiation of a Criminal Case. In an event where potential supportive agencies seem reluctant, the investigative efforts by Law enforcement Agencies are highly underrated and frivolous. The findings of the study further established that the investigative Law Enforcement agencies may try to initiate and advance the proceedings of a criminal case to court, but may just never complete the proceedings of a criminal case to court within a prescribed time limit as some criminal cases require ample time to fully investigate and conclude. In this regard, the credibility of the 24 Hour Pre-trial Detention to the proceedings and prosecution of Criminal matters is inexplicable.

5.3 Ways Put in Place in Safeguarding the 24 Hour Pre-trial Detention

Arising from the findings of the study, the officers at the commission were overwhelmed. This entails that one officer has to attend to many tasks, to some extent, the officers are overwhelmed with criminal cases and may opt to neglect other cases as they are too many cases seeking attention and arbitration. In this line, the findings of the study suggested that there is palpable need of hiring more personnel so as to expedite the flow of criminal cases at an early stage. In the absence of inadequate manpower, the flow of criminal cases may be quite slow and tedious on the way to trial. The findings of this study pinpoints the accessibility of justice and the engagement of more officers in expediting the 24 Hour Pre-trial Detention replicates the findings of Ngulube (2011). However, the study is diverting from the findings of (Grote 2023) in that pre-trial detention length was linked to the condition of the case. On the other hand, the Zambia Law Development Commission (2023) resonates very well with the findings of the study in that all criminal matters ought to be given the same legal status without considering the degree of criminality. Any matter levelled against a suspect before the commencement of trial is a mere allegation.

The findings of the study established that offices of the Human Rights Commission may achieve more if there are to be centered at every police station in order to undertake comprehensive reports and easy the communication from the suspects suffering any form of injustice while at pre-trial. In this vein, we argue that the Human Rights Commission of Zambia may not have the opportunity to hear and be in receipt of complaints from abused suspects in good time while at pre-trial detention in that their offices are far away from the information centre. In this case, participants deemed it fit to draw the offices of the Human Rights Commission of Zambia closer to the police stations so as to let the commission act as a watchdog, adviser, protector, and possibly extract primary information linked to any abuse while a suspect was and is on the way to trial. The prime concern is hinged on prosecuting suspects within the criminal procedure prescribed time limit. It must be understood that when a case is dealt with within the confinement of the law, suspects may not get bothered to scramble for a bail. In most cases, suspects hurriedly apply for a bail in fear of the injustices likely to prevail at pre-trial due to some inconsistencies between the investigative wings and the National Prosecution Authority with regards to the authorisation of criminal cases to trial. As such, the core value is to straighten and awaken necessarily instruments with regards to the time limit allocated to the processing of criminal cases while a suspect is on pre-trial detention.

Additionally, the study established that there is urgent need of heightening the inspection conducted by the Human Rights Commission of Zambia across all the investigative wings. In this vein, when the level of inspection is heightened, the commission may in good time observe maladministration of justice, protect and secure a timely pre-trial detention. On the other hand, some participants considered restructuring the prosecution powers back to the Police. Contrary to the findings of the study, Amnesty International (1999) argues that the Police are ancient perpetrators of Human Rights abuse during pre-trial detention and other investigative operations. As such, they may not be the best wing to be entrusted with prosecution powers with reference to the renegade witnessed in the past. In this case, giving prosecution powers to the investigative wing may refer to the justice system to revert to the execution of prosecution powers to the investigative wings. In other words, Criminal Cases may be prosecuted by the investigative wings such as the Zambia Police, and Drug Enforcement Commission unlike sending criminal dockets to the National Prosecution Authority subject to ratification. Contrarily, suspects may continue to suffer much worse in the hands of the police as it was in the 1990s (Amnesty International, 1999).

6.0 CNCLUSION AND RECOMMENDATIONS

6.1 Summary of the Findings

The majority of the participants (Police officers and prosecutors) acknowledged the pivotal role that ought to be carried out by the Human Rights Commission of Zambia regarding the administration of justice to suspects at Pre-trial stage through to trial. In observing justice, the participants highlighted that the Human Rights Commission of Zambia is charged with the responsibility of educating, investigation of maladministration of justice and safeguarding Human Rights and fundamental freedoms of citizens inclusive of those who may have their rights and fundamental freedoms derogated (suspects) in some way. Additionally, the study established that the Human Rights Commission of Zambia is understaffed to thoroughly, consistently and closely interact with the investigative wings and the would-be offenders. The capacity ratio between the Human Rights Commission and the investigative wing - suspect was imbalanced. The study also establish that there was need of strengthening the interaction of the Human Rights Commission of Zambia and the would-be suspects and the investigative wings in quest of embracing justice towards the prosecution of suspected matters by decentralising the office of the Human Rights Commission of Zambia. Also, the findings of the study discovered that the majority of police officers were not conversant with the provisions of the Criminal Procedure Code in line with the 24 Hour Pre-trial Detention. The study further established that the National Prosecution Authority takes long to approve the prosecution status of criminal cases. However, the study further concluded that the delay in the prosecution of criminal cases is caused by the administrative setback between the police officer and the main police station where the docket emanated from and directed to for further amendments. As a result of these findings, the Human Rights Commission was reactive rather than being pro-active with regards to the 24 hour criminal justice.

6.2 Recommendation

Since the study established that there was some degree of ignorance towards the provisions of the Criminal Procedure Code Act in congruence with the 24 Hour Pre-trial Detention, and as it was established that police officers only received Human Rights based education when undergoing training at Lilayi college. There is urgent need to intensively and extensively re-introduce and re-launch a continuous human rights based education to all the investigative wings so as to better the understanding of officers and possibly improve their efficiency in line with Criminal investigative operations in readiness for prosecution, and trial.

REFERENCES

- Africa News (2015). *Botswana hangs man convicted of murder and robbery in 2015*. www.africanews.com [Visited on 26th October, 2022].
- Amnesty International (1999). *Applying the Law Fairly or Fatally? Police Violation of Human Rights in Zambia*. www.refworld.org [Visited on 10th September, 2023]
- BBC NEWS (2017). *Zambia opposition leader Hakainde released*. www.bbc.com [Visited on 25th August, 2022].
- Boaz, D. (1997). *Libertarianism*. www.book.google.co.zm. [Visited on 18th March, 2024]
- Bryman, A. (2008). *Social Research Methods. 3rd Edition*. New York: Oxford University Press
- Crime Investigation (2022). *Steven Wright-The Suffolk Strangler*. www.Crimeinvestigation.co.uk [Visited on 1st October, 2022].
- Freedman, R. (2015). *Failing to protect: The UN and the Politicization of Human Rights*. Oxford University Press.
- Garcio, J.P. (2009). *Education Policy Making in Kenya: The Case of Paradigm Change in a Developing Nation*.
- Grote, R. (2023). *Protection of individuals in the Pre-trial Procedure*. hrlibrary.umn.edu [Visited on 7th July, 2023].
- Gukiina, P. (2018). *A critical analysis of pre-trial detention in Uganda*. www.ir.kiu.ac.ug [Visited on 10th October, 2022]
- Inutu, A. (2017). *A Critique of the Efficacy of the Communications Procedure of the African Commission of Human and Peoples' Rights*. www.prisonstudies.org. [Visited on 18th March 2024]
- Kankondo, S.J. (2010). *Media and the judicial process: contending with trial by media*. www.unza.zm [Visited on 9th October, 2022].
- Klein, D.J. (1997). *The pre-trial detention Crisis: the causes and the cure*. *Urban Law Annual Journal of Urban and Contemporary Law*, Volume 52 Tribute to judge Theodore Mcmillian.
- Kuh, R. H. (1978). *Trial Technique-How to Avoid Improper Pre-trial and Trial Publicly*. *Criminal Law Bulletin Volume: 14, Issue3*. Available at www.ojp.gov [visited on 8th July, 2023]
- Lind, A. (2021). *The Power of the Human Rights Council: A comparative study of Afghanistan and Russia*. www.divaportal.org.net [Visited on 22nd May, 2023].
- Lusaka Times (2017). *The Trial of Obvious Mwaliteta has Kicked Off*. www.Lusakatimes.com
- Lusaka Times (2022). *Mumbi Phiri formally arrested and charged with Murder*. www.lusakatimes.com [Visited on 30th December, 2022]

- Lusaka Times (2023). *Former PF Deputy Secretary Mumbi Phiri freed as State enter Nolle Prosequi*. www.lusakatimes.com [Visited on 24th April, 2023].
- Martufi, A. & Peristeridou, C. (2020). *The purpose of pre-trial detention and the quest for alternatives*. *European Journal of crime, criminal law and Justice*. www.brill.com [Visited on 6th October, 2022].
- McGreal, C. (2015). *70 Years and half a Trillion Dollars Later: What has the UN Achieved?* www.guardian.com [Visited on 4th September, 2023]
- Ndulo, M. (2017). *DPP Undermining Judicial System*. www.diggers.news [Visited on 08th September, 2023]
- Ndulo, M. (2018). *Excessive bail conditions make a mockery of presumption of innocence*. www.diggers.news [Visited on 8th October, 2022].
- Ngulube (2011). *Pre-Trial Detention in Zambia*. www.prisonstudies.org. [Visited on 18th March, 2024]
- Opportunity Agenda (2023). *Promote justice in Pre-trial Services & Practices*. www.rmingthesystem.org [Visited on 7th July, 2023].
- OSISA (2011). *Pre-trial Detention in Malawi: Understanding Caseflow Management and Conditions of Incarceration*. OSISA
- Pirzado, A.P. (2022). *Teacher's Understanding and Practices in Teaching Human Rights Concepts in Pakistani Schools*. www.researchgate.net [Visited on 3rd September, 2023]
- Shubayi, C. (2007). *Fair trial and the presumption of innocence in Zambia*. www.unza.zm [Visted on 8th October, 2022].
- Smith, T. (2022). *The practice of pre-trial detention in England & Wales- Changing law and changing culture*. [Www.Link.springnger.com](http://www.Link.springnger.com) [Visited on 3rd October, 2022].
- Stevenson, M. T (2018). *Distortion of Justice: How Inability to Pay Bail Assets Case Out comes*. *The Journal of Law, Economics and Organisations*
- United Nations (2022). *Human rights Council*. www.ohchr.org.com [Visited on 24th August, 2022].
- Yang, S.C. (2021). *The USA Pre-trail system: Balancing individual rights and public interests*, *Journal of economic perspectives Vol.35, No.4 pp49-70*.
- Working Group on Arbitrary Detention (2022). *Preliminary Findings from its visit to Botswana (4th to 15th July, 2022)*.
- Zambia Law Development Commission (2023). *Zambia Updates the Human Rights Council on The Universal Review 2023*. www.Zambianlawdevelopmentcommission Zambia LII. (1980). *Mainza and others V People (HP 1173)*. [Www.ZambiaLii.org](http://www.ZambiaLii.org). [Visited on 23rd September, 2022].