

THE HUMAN RIGHTS COMMISSION SUMMARY STATEMENT OF ITS INVESTIGATIONS FINDINGS ON THE 4th TO 5th OCTOBER 2018 UNIVERSITY OF ZAMBIA (UNZA) STUDENTS UNREST: ISSUED IN LUSAKA BY THE COMMISSION CHAIRPERSON, MR. MUDFORD Z. MWANDENGA, ON 29th JANUARY 2019

1.0 Introduction

The Human Rights Commission (HRC) has completed its independent investigations into the Students protest and the Zambia Police Service operation at the University of Zambia (UNZA) Great East Road Campus which took place on 4th and 5th October 2018 during which a female student lost life while another suffered multiple bodily injuries and property was either damaged or lost.

The detailed investigations report has been submitted to key stakeholders, who include relevant Government Ministries and Offices, UNZA Management, Police Public Complaints Commission, the Inspector General of Police and other affected or concerned parties for their information and/or action on the findings and recommendations made by the Commission.

2.0 Main Objectives of the Investigations

The main objectives of the investigation by the HRC was to establish the following:

- (i) Whether there was a student unrest on the 4th and 5th October, 2018 at UNZA as alleged;
- (ii) Whether the death of Vespers Shimuzhila was in violation of the right to life as provided for under Article 12 of the Constitution of Zambia;
- (iii) Whether the said student unrest resulted in the injuries to students and loss of property;
- (iv) The manner in which the unrest was handled by the Zambia Police Service;
- (v) Whether the loss of life, injuries to students and loss of property was lawful or justifiable under the circumstances; and
- (vi) Who (if any) was responsible for the loss of life, injuries sustained by students and loss of property.

3.0 Investigations Methodology

The HRC employed a combination of personal observation, scene visits and inspections, examination of relevant documents, personal as well as group interviews with witnesses in order to come up with its findings, conclusions and recommendations.

Those interviewed included, but not limited to, the students, the UNZA Security, UNZA Management, UNZA Lecturers and Researchers Union (UNZALARU), UNZA Clinic Management, University Teaching Hospital (UTH) Management as well as the Zambia Police Service.

4.0 Constitutional and Statutory Powers of the HRC

The HRC is an autonomous National Human Rights Institution (NHRI) established under Article 230 (1) of the Constitution of Zambia (Amendment) Act No. 2 of 2016. The constitutional mandate of the HRC is to ensure that the Bill of Rights is upheld and protected.¹ Article 230 (3) further mandates the HRC to, inter alia-

- “ (a) investigate and report on the observance of rights and freedoms; and**
- (b) take necessary steps to secure appropriate redress where rights and freedoms are violated.....;**

The mandate and powers of the HRC are also stipulated under Section 9 of the HRC Act, Chapter 48 of the Laws of Zambia. Therefore, the investigation, conclusion and recommendations herein were made within the above stated constitutional and legislative framework.

5.0 Protection of the Right to Life

The right to life is a fundamental human right enshrined in various international and regional human rights instruments such as under Article 3 of the Universal Declaration of Human Rights (UDHR), Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR) and under Article 4 of the African Charter on Human and Peoples’ Rights. Further, the right to life is entrenched in the Bill of Rights under Article 12 of the Constitution of Zambia as follows:

“12. (1) A person shall not be deprived of his [her] life intentionally except in protection of right to life, execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he [she] has been convicted”.

¹ Article 230 (2) of the Constitution of Zambia (Amendment) Act No. 2 of 2016.

Clearly, the right to life is not absolute. There are circumstances under which its deprivation may not legally be deemed as a violation of human rights under Article 12 of the Constitution of Zambia such as when someone has been sentenced to death by the courts of law as stated above. Further, Article 12 (3) of the Constitution provides circumstances under which the right to life may be lawfully taken away.

It provides that “...a person shall not be regarded as having been deprived of his life in contravention of this Article if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case-

- (a) *for the defence of any person from violence or for the defence of property;*
- (b) *in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
- (c) *for the purpose of suppressing a riot, insurrection, mutiny or if he dies as a result of a lawful act of war; or*
- (d) *in order to prevent the commission by that person of a criminal offence.”*

It is extremely important to take note of the constitutionally prescribed derogations to the right to life to assess whether or not the death of Vespers Shimuzhila constituted a violation of human rights or not as prescribed under the Constitution.

6.0 Findings of the Investigation

Some of the salient findings of the HRC investigations were the following:

1. That there was and still remains no proper channel of communication between the Bursaries Committee and the student populace especially on schedule of payment of allowances following the ban of the Student Union by the Hon. Minister of Higher Education, **Hon. Prof. Nkandu Luo, MP**.
2. That it was true that some students who were protesting the delayed payment of the balance of K2, 000 meal allowance marched to the Great East Road on 4th October 2018 and started throwing burning tyres on the road but were quickly sent back into campus by some vigilant police officers who had been alerted about the protest by the University of Zambia Security Officers. There was no motor vehicle or property reported to have been damaged as a result of the conduct of the protesting students;
3. After the protesting students had been repelled into the Campus, relative calm had returned, particularly after the Vice Chancellor, **Professor Luke Evuta Mumba**, had addressed the students at night and assured them that their allowances were going to be paid by 8th October 2018. The Government started paying students their balance of meal allowances a day after the protest, on 5th October 2018.

4. The Police were seen driving into UNZA Premises around midnight on 4th October 2018 and officers were seen jumping off a Green Nissan Police Vehicle and two other Land Cruisers, one of them labelled, “Simon Mwansa Kapwepwe Police Station”.
5. According to witnesses, gunshots were heard in UNZA Campus and police officers were seen throwing suspected hand held-grenades and firing tear gas canisters into students’ rooms through windows. A total of six (6) students’ rooms where tear gas canisters were fired into were gutted by fire.
6. The HRC heard that as the fire in **October Hostel 2 Room 21** was being quenched by some students, some police officers repeatedly tear gassed the students who were quenching the fire and also rescuing their colleagues that were trapped in the rooms, causing **October Hostel 2 Room 3**, to also catch fire.
7. **October Hostel 2, Room 25**, which was occupied by eight (8) female students, was heavily affected by flames and fumes from **Room 21** which was on fire. Some of the eight (8) female students escaped by climbing down through the window while the 23 year old Evertyn Choongo, jumped from the room, which is on the third level of the building and suffered multiple fractures, including a broken lower spine. Another student, Trudie Kalimbwe, who was the last to leave room 25 alive, suffered burns on her hands and hair before escaping through the door. Regrettably, Vespers Shimuzhila, could not escape and was found unconscious by fellow students who braved the reported continued tear gassing. She was rushed to UNZA Clinic where she was pronounced as *brought in dead* and her body was transferred to Levy Mwanawasa Hospital before being transferred to UTH Mortuary.
8. During the morning of Friday 5th October 2018, after the police operation at UNZA, some students and UNZA security personnel went round the campus premises and rooms to assess the damage caused by the police operation during the previous night. A total of 26 spent canister cans, which included 23 long range spent canister cans and three (3) empty hand-held grenades, were found and collected. Spent canister cans were found in all the rooms that caught fire.
9. UNZA Clinical Medical Officers confirmed that a total of 23 students, 15 female and eight (8) male, were treated for varying degree injuries and for inhalation of tear gas during the police operation at UNZA. Of the 23 victims, nine (9) were treated for physical injuries while 14 were treated for inhalation of tear gas.

10. Medical Doctors interviewed and others who witnessed the post-mortem on the body of Vespers Shimuzhila informed the HRC that the Preliminary Report of the post-mortem indicated that Vespers Shimuzhila died of ***“suffocation due to carbon monoxide intoxication”***.

According to medical experts, “carbon monoxide poisoning is caused by inhaling combustion fumes or smoke inhalation during a fire, particularly in an enclosed or partially closed place. Carbon monoxide replaces oxygen in the red cells and prevents it from reaching tissues and essential organs such as the heart, thereby causing unconsciousness or even death”.

11. Almost all the witnesses interviewed wondered where the Police Service wanted the students to be or to run to other than into the UNZA Campus Premises and, in particular, their rooms where they were being teargassed from, resulting into some rooms being gutted by fire thereby causing loss of life, injuries and property.

The Commission’s Observations, Conclusions and Recommendations

By virtue of the powers vested in the HRC pursuant to Section 10 (2) (d) as read together with Section 13 (1) (b) of the HRC Act, and arising from the investigations findings, the following observations, conclusions and recommendations are hereby being made:

1. That the late **Vespers Shimuzhila** died as a result of ***“suffocation due to carbon monoxide intoxication”*** as confirmed by the medical evidence through a post-mortem. It is therefore beyond any reasonable doubt that Vespers Shimuzhila did not die from a natural cause. Further, from all the evidence submitted by a wide range of witnesses during investigations, it can be concluded that the invasion of the UNZA Campus Premises and subsequent throwing of suspected hand grenades and firing of tear gas canisters into students rooms by the Zambia Police Service, caused the death of Vespers, the injury of other students as well as the loss of, and damage to University and Students’ Property. The Commission considers the firing of tear gas canisters in students’ rooms extremely unprofessional, an act of excessive use of force which resulted into a grave violation of the right to life, destruction and loss of property and undermining the right to education of the affected students whose education materials and equipment were either lost or damaged during the police night operation.

2. It is clear from the totality of the evidence obtained that the police acted in an extremely brutal manner depicting a combative warfare situation against unarmed students who at that time no longer posed any real danger or violence to the police officers or to any other member of the public or property. Therefore, to that extent, the police overnight aggressive operation at UNZA from 4th to 5th October 2018 could not be deemed as **“use of force to such extent as is reasonably justifiable in the circumstances,”** which is provided for under Article 12 of the Constitution of Zambia.
3. The investigations findings provided reasonable grounds to believe that the death of Vespers Shimuzhila did not fall under any of the human rights derogations provided for under Article 12 (3) of the Constitution of Zambia and various regional and international human rights law. It is regrettable that the Zambia Police Service conduct in this case amounted to breach of their own constitutional mandate and obligation *to protect life and property* and *to uphold the Bill of Rights*. Therefore, appropriate criminal charges should be preferred against all the police officers (including the senior police officers who were in-charge of the operation) for the ensuing loss of life, body injuries to several students and damage to property;
4. The State being the primary duty bearer of human rights with the trio obligation of *respecting, protecting* and *fulfilling* the rights of all people in Zambia should be held vicariously liable for the actions of the police officers who are its agents;
5. Further, the estate of the late **Vespers Shimuzhila** should consider instituting legal proceedings against the State and its agents (police officers involved) for the arbitrary loss of her constitutionally guaranteed and birth right to life in order to secure adequate compensation;
6. The Zambia Police Service is a disciplined member of the armed forces and officers work under strict orders or instructions, and in an organized and clear channel of command, with specific officers in charge of every operation. To that effect, those who ordered the attack of students into their rooms are already known by the police. The HRC therefore calls upon the Zambia Police Command to own up and take responsibility over the death of Vespers Shimuzhila and injuries sustained by Everntyn Choongo, Trudie Kalimbwe and others as well as for the loss of property;
7. The Commission wishes to commend the Government of the Republic of Zambia for promptly evacuating **Everntyn Choongo** to South Africa for specialist treatment and for taking care of all medical and incidental costs.

The Government executed its obligation of facilitating access to medical care in this respect and must be commended for its responsiveness. In this regard, the HRC recommends that the Government should continue paying all medical and other incidental expenses towards the treatment of **Everntyn Choongo** until her full recovery and rehabilitation. The State should further compensate **Everntyn Choongo** for the serious injuries she suffered including a fractured lower spine resulting in her paralysis. The state should also extend the compensation of medical and incidental expenses to other students who were injured during the UNZA Police operation.

8. On a balance of probability, all the six rooms that caught fire and other rooms that had window panes damaged as well as loss of various personal effects of students can be attributed to the actions of the Zambia Police Service. Therefore, the State should compensate all the students that lost various property during the UNZA Zambia Police Service operation from 4th to 5th October 2018. To this effect, UNZA management must compile a list or report on the lost and damaged students' property during the stated police operation. Affected students are also at liberty to consider instituting legal action against the State individually or severally;
9. There should be an effective mechanism of resolving UNZA disturbances between the Zambia Police Service and UNZA management which must be mutually respected by both parties. Information gathered by the HRC was that the Zambia Police Service was advised to limit their operation to keeping vigil around UNZA Campus Premises to maintain law and order outside Campus but leave UNZA Security Officers to deal with internal security issues, until or unless advised otherwise depending on the situation.
10. Students should desist from engaging in behaviour that is disruptive to other members of the University Community as well as the general public. They should always seek to address their grievances in a more civil manner that respects the rights and freedoms of others. Although the HRC did not receive a submission relating to any damage to property or injury caused by students during the protest under review, students should be reminded that members of the public whose vehicles they damage or target to damage during protests are the ones paying tax to the national treasury from which their meal allowances are drawn or paid. Therefore, students violence against members of the public is criminal, unreasonable and unjustifiable in a democratic and civilised society;

11. The Government through the Ministry of Higher Education and the Bursaries Committee must be proactive in redressing students' grievances relating to payment of allowances, which historically lead to disturbances. It is regrettable that it seems it has become a customary practice that the Government will always swiftly pay students their allowances only after a protest;

12. The Minister of Higher Education should lift the ban on Students Union at all Higher Learning Institutions such as UNZA. The ban is not only a violation of the fundamental freedom of association guaranteed under Article 21 (1) of the Constitution but also a violation of Section 27 (1) of the Higher Education Act No. 4 of 2013 which provides that, ***“There shall be a students’ union in a higher education institution.”***

The student unrest of 4th October, 2018 demonstrated that banning student unions is not an effective remedy to averting student unrest. To the contrary, it makes the management of students' welfare difficult as it breaks the communication channel between the students, UNZA management and the Government.

In concluding, the HRC wishes to stress that the Government of the Republic of Zambia has an inescapable mandate and obligation to ensure that whenever human rights violations occur within its jurisdiction, appropriate remedies are provided to the victims and/or to their families and perpetrators of human rights violations are punished in accordance with the existing national and international human rights laws to which it is a State Party.