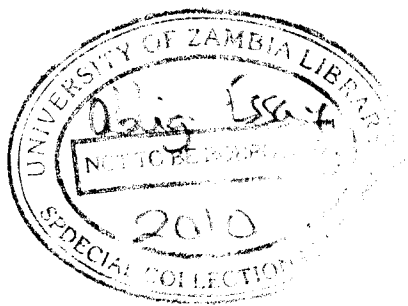


**THE ROLE AND EFFECTIVENESS OF THE POLICE PUBLIC COMPLAINTS
AUTHORITY IN DEALING WITH COMPLAINTS AGAINST THE POLICE IN
ZAMBIA**



BY

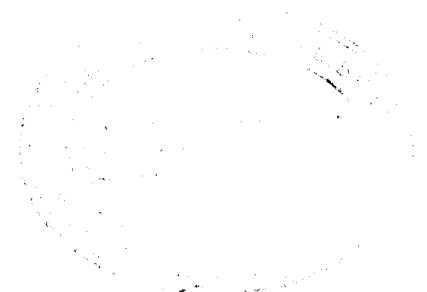
DESMOND MOONGA MWANZA

25031015

UNZA

2010

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW



**THE ROLE AND EFFECTIVENESS OF THE POLICE PUBLIC COMPLAINTS
AUTHORITY IN DEALING WITH COMPLAINTS AGAINST THE POLICE IN
ZAMBIA**

BY

DESMOND MOONGA MWANZA

25031015

Being a final year dissertation submitted to the University of Zambia, School of law, in
partial fulfillment to the requirements for the award of degree of Bachelor of Laws (LLB)

April 2010

UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

I recommend that this Directed Research essay prepared under my supervision by

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AUTHORITY IN DEALING WITH COMPLAINTS AGAINST THE POLICE IN
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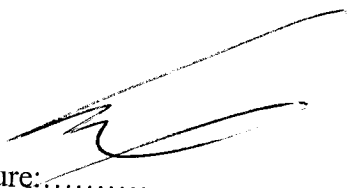
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DECLARATION

I, Desmond Moonga Mwanza, Comp. No. 25031015, do hereby declare that I am the author of this Directed Research paper entitled: **THE ROLE AND EFFECTIVENESS OF THE POLICE PUBLIC COMPLAINTS AUTHORITY IN DEALING WITH COMPLAINTS AGAINST THE POLICE IN ZAMBIA**, and confirm that it is my own original work. I further declare that due acknowledgement has been given where other people's work has been used. I verily believe that this research has not been presented in the school or indeed in any other learning institution for academic purposes.

Date: 08/04/2010

Student's signature: 

DEDICATION

To my dear beloved wife Muleya, my children Emmy, Patrick, Moonga and Gloria, this research work is dedicated to you, for it could not have been accomplished without your spiritual love and invaluable tolerance of my prolonged absence from home and ever busy schedule.

ACKNOWLEDGEMENTS

Appreciation is due to Ms. Lillian Mushota my supervisor for the time and advice spared and genuinely rendered to me and Ms. Dorothy Jolezya Zimba of the Police Public Complaints Authority for her immeasurable suggestions and intimate interest in the study. Mr. Chipeta the Librarian at National Archives for the unrelented effort in providing and searching for materials more so all the Annual Reports for the Authority used in the research.

Other thanks also goes to all friends, workmates and my boss for giving me valuable assistance in different ways and allowing me time off to attend to my research work.

In the same vein my indebted gratitude goes to dad, mum, sisters and brothers.

ABSTRACT

The Role and Effectiveness of the Police Public Complaints Authority (PPCA) is discussed in this directed research under the Zambian Police Act Chapter 107 and its subsequent Zambia Police (Amendment) Acts No.14 of 1999 and No.15 of 2008. Further reference is made to the Force Standing Orders and Force Instructions as guides that were traditionally used in handling and dealing with complaints made by members of the public against Police action or misconduct. The research also looks at the nature of complaints which necessitated the establishment of the Authority. An attempt is also made to discuss similar watchdog institutions in the United Kingdom, South Africa and New Zealand and the Permanent Human Rights Commission in Zambia.

The research starts by analyzing the legal basis for the establishment of the Authority. In Chapter two the legal framework giving authority and scope of police functions as given by the Constitution of Zambia and the Zambia Police Act is discussed. The rationale for the establishment of the Authority is also discussed including the law that led to the creation of the Authority. Secondly Chapter three reviews the law governing the operations of the Authority. This encapsulates the composition of the Authority, its role and the nature of cases it deals with and how it disposes them off. The power of the Authority is also investigated including the category of complaints and complainants analyzed. This Chapter goes further to discuss different categories of recipients of complaints on behalf of the Authority and how proceedings are conducted including the maintenance of a register of complaints.

Thirdly in Chapter four an analysis of similar watchdog institutions in other jurisdictions will be made. Their role, organization structure, composition, independence including the nature of cases handled and its effectiveness will be discussed.

In Chapter five, the Authority's annual reports will be analysed from 2002 to 2006. The failure to conclude cases on time, lack of sufficient information, knowledge, and communication of complaints and the effectiveness and inadequacy of the Zambia Police (Amendment) Act No.14 of 1999 is discussed. The research is completed by a summary, conclusion and recommendations in chapter six. The recommendations will focus more on the gaps in the law establishing the Authority, and qualities of a good police complaints Authority highlighted.

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1. The Constitution of Zambia, Chapter 1 of the Laws of Zambia.
2. Zambia Police Act Chapter 133 of the Laws of Zambia
3. Zambia Police Act Chapter 107 of the Laws of Zambia
4. Zambia Police (Amendment) Act No. 14 of 1999
5. Zambia Police (Amendment) Act No. 15 of 2008
6. Police and Prison Services Commission Regulation Act Chapter 259
7. South Africa Police Service Act of 1995 (Amendment) Act No. 68 of 1995
8. Interim Constitution Act No. 200 of 1993 of South Africa
9. Police Reform Act of 2002 of United Kingdom

LIST OF CASES

1. Getrude Munyoshi and Attorney General and Catherine Ngalabaka SCJ
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2. Maybin Phiri v Attorney General 1994/ HP / 5203 (unreported).
3. Patrick Mulomboi and Constable Conrad Bwalya v The Inspector-General of
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4. Isaac Mwanza and Sub/Inspector Patrick Mulomboi and Constable Conrad
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CHAPTER ONE

INRODUCTION AND BACKGROUND TO THE STUDY

1.0.0 INTRODUCTION

This study will examine the Police Public Complaints Authority (PPCA) in its dealings when handling complaints raised and reported by members of the public to the Authority against police actions and inactions as they perform their duties and obligations. The Authority was established in when the Zambia Police Act¹ was first amended in 1999. This was prompted and incorporated in the public service reforms of 1995 which included the Police .The aim was to rebuild the falling standards both ethically and professionally arising from indiscipline, incompetence, inefficiency, acute lack of accountability and human rights abuses which brought the police into ridicule and condemnation from the public and civil organizations.

This study includes the reviewing of the Zambia Police Act Cap 107, and its two amendment Acts No.14 of 1999 and No. 15 of 2008.The provisions of the Force Standing Orders and procedures as regards complaints made by the public against the police² before the establishment of the Authority, the Police and Prisons Service Commission Regulations Act Cap.259 in relation to handling of police matters. The study also reviews other policy documents, cases handled by the Authority and the Authority's annual reports. The study goes further to discuss the role of the Authority in dealing with complaints made by members of the public against police actions or inactions, the remedies to the public and their rights in this area.

¹ Zambia Police (Amendment) Act No.14 of 1999, S.57B.

² Zambia Police Force Standing Orders, order 72

Finally, the effectiveness of the Authority (PPCA) is examined and recommendations are made about future prospects.

1.0.1 BACKGROUND TO THE STUDY

In any given society it is evident that the presence of the police is inevitable. The global function of the police is that of policing. This entails such functions as protection of life and property, maintenance of law and order, prevention and detection of crime as well as the enforcement and regulation of traffic rules³. These aforementioned functions also ably apply to the police in Zambia as enshrined in the constitution⁴. The primary functions of police officers are to maintain peace and to see to it that laws are obeyed and the vulnerable persons are protected⁵. However, these functions have to be performed within the confines of the law.

From the foregoing, it is important to mention that the police have a mammoth task to perform in order to safeguard the community and promote human rights. The central ethic of police forces is to provide protection for and service to the community. The police force is one of the two most important and powerful institutions of government. Its officers hold coercive powers second only to the defense forces, but in contrast to soldiers and other armed forces, police are visible manifestation of state power and a body with which civil society has extensive day to day interaction⁶.

³ Mutulwa R. Sibasuku, Policing the Police: In search of Public control over the police, A thesis submitted to the university of Zambia in partial fulfillment to the requirement for the award of the Bachelor of laws degree (LLB), Lusaka, 1982-83 p.1

⁴ Constitution of Zambia, Cap 1 of 1996, Art 104.

⁵ Francis C, Nsokolo, Police Duties and Powers of Arrest, A Discussion paper presented at the Human Rights sensitization workshop for law enforcement officers at lake Kariba inns, December, 2002

⁶ Benjamin Bowling Coretta Phillips Alexandra Campbell, Martin Docking Policing and Human Rights, Eliminating Discrimination, Xenophobia, Intolerance and the Abuse of power from police identities, conflict and cohesion paper No. 4 United Nation Research Institute for Social Development, UN Publishers U.S.A, May 2004 p.35

Therefore, it is common knowledge to assume without investigation that the police and the public or citizenry are in constant contact either directly or indirectly in order for the above functions to suffice. However, as much as the police are tasked to protect and service the community, the police in performing their duties and obligations for the public do to several extents move away from their core business and consequently infringe upon the rights, interests, liberties and entitlements of the individuals or groups of people. This arises because the police hold the monopoly on the state sanctioned use of violence against citizens⁷.

For these reasons, the Zambia Police has been the source of public outcry and concern. Almost every day complaints and reports are made about police corruption, unnecessary and excessive use of violence, armed robbery, indiscipline, and fatuousness in dealing with the public and unnecessary delays in attending to complaints. Undoubtedly much discord exists between the police and the public⁸.

The period 1973 and 1990 saw policing in Zambia become thoroughly politicized to the extent that indiscipline rocked the police ranks, resulting in incompetence, inefficiency and acute lack of accountability. Human rights violations by the police officers increased. There were glaring incidents of abuse of power by police officers extra judicial killings, torture and unlawful detentions of suspects were on the upswing. These attracted widespread condemnation of police powers especially by civil organizations⁹.

⁷ Supra note 6

⁸ Supra note 3

⁹ Francis Xavier Musonda, History and Reformation of Zambia Police Service ,UNZA Press, University of Zambia, Lusaka 2002 p.23

In 1994, due to the rising cases of police abuse, incompetency and corruption, the government decided to transform the police force from a military oriented organization to a more civil one. In 1995, the newly appointed Inspector-General Francis Ndhlovu launched the police reform programme and formulated a mission statement in which the police pledged to respect individual freedoms and rights, and to facilitate democratic governance. The reforms whose implementation aimed at changing from force to an efficient and accountable institution later translated in a five year strategic development plan which contained such radical initiatives as the creation of an Independent Police Public Complaints Authority to hear serious police abuses¹⁰.

Clearly, out of these reforms the Zambia Police Act, was amended in 1999 and a body called the Police Public Complaints Authority¹¹ was established to act as a watchdog institution over the police with the aim of receiving all complaints against police actions or inactions.

It is also important to note that, prior to the establishment of the Police Public Complaints Authority in 1999, complaints against the police were reported or made to the police itself serve for instances when individuals intended to take complaints of a criminal or civil nature to court¹²

Therefore, this research will be undertaken in order to determine what role the Police Public Complaints Authority plays and whether there has been any effectiveness in its operations since its inception.

¹⁰ Ibid p.24

¹¹ Supra note 1

¹² Supra note 2

1.0.2. STATEMENT OF THE PROBLEM

It appears clear that even after the establishment of the Police Public Complaints Authority, numerous complaints about police actions and inactions are still being echoed and registered by the public through the Authority and other relevant bodies.

The reforms and amendments undertaken by government to establish the Police Public Complaints Authority must not only reflect in appropriate policies and enabling legislation, but must also be evident in the dealings of the Authority. The functions of the Authority (PPCA) thus to receive all complaints against police actions, to investigate all complaints against police action which result in serious injury or death of a person and to submit its findings and make recommendations to appropriate bodies are to be analyzed in order to ascertain the role and effectiveness of the Authority (PPCA).

This route is undertaken in the light that even after the establishment of the Authority as a watchdog institution over the police, public member's complaints against police actions or omissions have persisted. This is clear as viewed from numerous information reviewed from the publication of Legal Resources Foundation, the Authority's annual reports, newspapers and other reliable sources.

Finding an acceptable system to deal with and respond to complaints from the public about police behavior ought therefore to be a high priority for both government and the police¹³. This expression no doubt calls for serious government involvement and that this can only suffice

¹³ John Baxter and Lawrence Koffman, Police. The Constitution and the Community, Professional Books limited. 1985 p.301

where there is political will. It is therefore against this background that the study seeks to set an insight and critically assess the role and effectiveness of the Authority.

1.0.3. RATIONALE FOR SELECTING THE STUDY

The Police Public Complaint Authority as a form of a watchdog institution over police actions is new compared to the traditional methods of reporting complaints against police to the police itself. This system comes with its own short comings which include:-

- i. The Authority's failure to investigate and to promptly conclude complaints on time.
- ii. Lack of sufficient information and knowledge on the part of the complainants on procedures for lodging complaints and remedies expected.
- iii. Lack of consistent communication system between the Authority and the complainants.
- iv. The effectiveness and adequacy of legislation introduced in 1999 the Zambia Police (Amendment) Act is not well known among the police and public. Therefore, there is a knowledge gap and it is the intention of the research to fill this gap.
- v. Difficulties experienced by complainants to follow up their complaints.

1.0.4. PURPOSE OF THE STUDY

The general objective of the study is:

To examine the role and effectiveness of the Police Public Complaints Authority.¹⁴

1.0.5. OBJECTIVES OF THE STUDY

The study will be guided by the following objectives:

¹⁴ Supra note 11

- i. To review the law and amendments leading to the creation of the Authority (PPCA)¹⁵ and focus on procedures followed in handling and dealing with complaints made to it by the public.
- ii. To analyze in depth the role of the Authority (PPCA)¹⁶.
- iii. To critically analyze the effectiveness of the Authority (PPCA) in relation to the organization structure and institution capacity.
- iv. To determine the independence of the Authority (PPCA)
- v. To determine the efficacy of the findings and recommendations of the Authority and make recommendation that may help enhance the Authority in order to achieve its mandate.

1.0.6. RESEARCH QUESTIONS

- i. What role does the Police Public Complaints Authority perform?
- ii. How effective is the Police Public Complaints Authority in dealing with complaints against the police?
- iii. How are complaints made to the Authority?
- iv. How are complaints handled by the Authority?
- v. Is the Police Public Complaints Authority a “toothless bulldog”?

1.0.7. SIGNIFICANCE OF THE STUDY

This study endeavors to explore the role and effectiveness of the Police Public Complaints Authority in dealing with complaints against police actions or inactions¹⁷. The strength of the institution is critical as it is created to watch against several abuses committed by the police who

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

are supposed to protect the community as custodians of the law in a country preaching democratic values. It must be noticed that for good governance to exist, checks and balances, separation of powers and the rule of law must exist as conditional precedents to achieving the control of administrative actions such as those of the police which may be arbitrary. It is therefore in the aim of this study to investigate and evaluate the reason for the creation of the Authority.

A study of this scope would proceed to show that, there is need to have an independent body or institution well equipped in order to enhance protection of human rights abuses by police and review the seemingly failed professionalism.

1.0.8. RESEARCH METHODOLOGY

This study will be a qualitative research. The research will focus on powers and action or inactions of the police and the role and effectiveness of the Police Public Complaints Authority including the analysis of the amendment Acts creating the institution. The techniques to be used for data collection will involve desk review of important materials with regard to the police and Authority (PPCA), i.e. Constitution of Zambia, Zambia Police Act, the two Zambia Police (Amendments) Acts, Police and Prison Service Commission Act, annual returns, newspapers, periodicals, publications, browsing the internet and decided cases. Structured questionnaires will be administered to the Zambia Police, staff at the Authority under study (PPCA), Ministry of Home Affairs, Legal Resources Foundation and members of the public. Random sampling will be used on the public. The researcher will also rely on scheduled interviews

1.0.9. ORGANIZATION OF THE STUDY

Chapter one gives a background to the study. This chapter carries with it the statement of the problem, rationale for the study, purpose of study, objectives, and research questions, significance of the study, methodology and synopsis of the research.

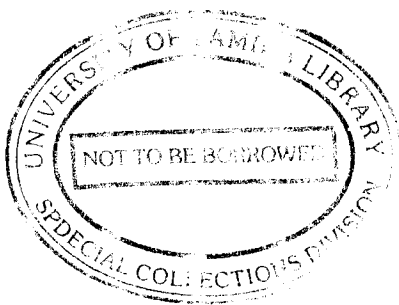
Chapter two reviews the literature of those who have written on the subject matter and it involves both published and unpublished material relating to actions and inactions that necessitated the formation of the Police Public Complaints Authority as a watchdog institution over the police, the legal framework giving authority to the police, historical background of dealing with complaints against police and the legal basis for the establishment of the Authority.

Chapter three analyses the law creating and governing the Authority, organization structure, composition and independence of the Authority. The role of the Authority and type of cases dealt with and focus on procedures followed in handling and dealing with complaints made to it. Further, amendment Act No.15 of 2008 and its relationship to Police and Prisons Service Commission Regulations Act are considered.

Chapter four presents the analysis of similar watchdog institutions in other jurisdictions such as United Kingdom, South Africa and New Zealand. The Permanent Human Rights Commission in Zambia as a sister institution to the Authority is also briefly analyzed.

Chapter five analyses the performance of the Police Public Complaints Authority since inception to date. This was done by looking at the annual reports from 2002 to 2006 and other relevant material and information received during the study.

Chapter six makes conclusions and recommendations which should benefit the Authority in order for it to be effective, as well as help the police command and officers in general to understand its role and also to enlighten members of the public the nature of cases it deals with and the recourse and remedies they can have when they have a complaint reported against the police.



CHAPTER TWO

LEGAL BASIS FOR ESTABLISHMENT OF THE POLICE PUBLIC COMPANIES AUTHORITY

2.0.0 INTRODUCTION

The foregoing chapter discussed the purpose and objectives of the study that is to determine the role and effectiveness of the Authority in dealing with complaints against the police. In this chapter, we consider the legal basis for the establishment of the Authority. This will include the reviewing of the law giving force to the Zambia Police Service and the specific law creating the Authority namely the Zambia Police (Amendment) Acts of 1999 and 2008. It is said that, police questions touch each one of us so intimately in our day to day life, in our personal liberty and in our self respect. The character of the nation is so profoundly influenced by the nature of the control to which it is subjected and that a due appreciation of the scope of police functions, a proper knowledge of the origin and extent of the power and duties delegated to the police service must possess a more than academic interest.¹⁸

Therefore, in order to understand how police actions and inactions arise which later necessitated the creation of the Authority, it is important to first understand and appreciate how and where the police in Zambia draws its authority to carry out its mandate. In this regard the Constitution of Zambia, the Zambia Police Act and the Force Standing Orders will be referred to. An attempt will also be made to evaluate the procedure of how complaints were made and dealt with before the establishment of the Authority and also find reasons that necessitated the creation of the Authority when there was already in place a system of dealing with police complaints under the

¹⁸ W.L. Melville Lee (Captain), A History of Police in England, Methuew and Co. 36 Essex Street W.C. London 1901 p. ix.

Force Standing Orders. The Authority's role will be discussed and a further review of the cases it handles will be looked at.

2.0.1 LEGAL FRAME WORK GIVING AUTHORITY TO THE POLICE

The Constitution of Zambia as the Supreme Law of the land creates the Zambia Police Force now 'Service' and gives it such functions as parliament may by law prescribe and that it shall among other things be professional, disciplined, competent and that its members must be of good character.¹⁹

The general functions of the police are to protect life and property, to preserve law and order, to detect and prevent crime and to cooperate with the civilian authority namely members of the executive, legislature, judiciary and other security organs established under the Constitution and with the population in general.²⁰

With these parameters and functions set by the supreme law of the land, it entails that the police must perform and conduct itself over and above other disciplines as they are the active guardians of law and order in the country. In the same vein, the Zambia Police Act conforms to the Constitution as it relates to police functions.²¹ In addition the Force Standing Orders also endorses the traditional functions of the police as enshrined in the Constitution. Even with the above provisions prescribing the boundaries within which the police have to work or operate, several actions and inertia have arisen which are outside the set standards of police operations and hence call for redress. For example, the police have many times deprive people of their

¹⁹ Supra note 4. Art 103

²⁰ Ibid Art 104

²¹ Zambia Police Act Cap 107, S. 5.

liberties on grounds not authorized by law as enshrined in the Constitution,²² such as detention of suspects without any charges being preferred against them on grounds, that they are helping the police with investigations or indeed the use of the new phenomenon of hostage taking or demand of ransom by enforcement officers. This happens when parents, spouses and relatives are taken hostage by law enforcement officers and detained without any charge for offences committed by their children, spouses or relatives. This is done to force the person who committed the offence to show himself up to the police station.²³

Such activities or acts were observed in the case of Getrude Munyoshi and Attorney General (Respondent) v Catherine Ngalabaka,²⁴ where the plaintiff was a mother of a young man aged 21. The plaintiff was employed as a Council Constable by Luanshya Municipal Council. On 20th September, 1994, the appellant a woman constable in the Zambia Police Force (as it then was) picked the plaintiff and took her to her house and searched the house for items purportedly stolen by her son. Nothing was found in the house thereafter; the woman police constable took the plaintiff to Luanshya Police Station and detained her until 17:00hours. On 21st September, 1994 the plaintiff was detained again. The plaintiff, who was sick ling, was again detained in police cells for three days and later conveyed to remand prison without being charged with any criminal offence.

²² Supra note 4 Art 13 (1) (2)

²³ Peter Chitengi (Judge), The Human Rights Concept as viewed from the Bench. A discussion paper presented at the sensitization programme for law enforcement officers at Lake Kariba Inns at Siavonga in December, 2002.

²⁴ SCJ Judgment No. 23 of 1999 Order of parties cited as in the Supreme Court on Appeal

In another case of *Maybin Phiri v Attorney General*,²⁵ the second plaintiff was kept as hostage at Choma Police Station for days and later taken to Namwala by police in search of her husband who was alleged to have stolen some K9, 000,000= from Zambia Railways Corporation Limited.

The two cases cited above illustrate cruel, inhuman treatment and torture inflicted on individuals. Though these cases were taken to the High Court for specific alleged contraventions of the Constitution, they amount in themselves to cases that border on police action which is beyond their mandate, which no doubt would agitate for complaints against the police. It must be noted that at the time of the above two cases, the Zambia Police Act was not yet amended to establish the Authority though the Force Standing Order which provided for procedure for making complaints against the police was in place.

These however, are not the only cases as was noticed by the Legal Resources Foundation that countrywide they have received several reports of human rights abuses committed by police officers in their daily duties ranging from police torture, brutally, unjust arrest and detention, shielding criminals who commit murder, arresting innocent people for questioning and also extra judicial killings. Arresting spouses, siblings, parents, neighbours, friends and any other relatives of a suspect in order to lead the police to wanted suspects or in order to make suspects to turn themselves in was alarming, and that at least one of the three cases of such kind were reported to the Foundation in a month.²⁶

²⁵ 1994/HP/5203 (unreported)

²⁶ The Legal Resources Foundation News, January 2003, No. 47 p.7

2.0.2 COMPLAINTS AGAINST POLICE

These were complaints made by members of the public against the police to the police itself, which would be promptly and thoroughly investigated. The above provision envisaged that the importance of this duty could not be too strongly emphasized as the good name of the police force depended largely on the confidence that would be felt by the public that a complaint against a police officer would always receive a full, unprejudiced and impartial hearing. All complaints however trivial would be recorded in the manner prescribed that immediately on receipt of a complaint, whether verbal or in writing; the officer receiving the report would open a Complaint Against Police Docket,²⁷ and would enter the details of the complaint and the officer or officers complained against. The officer receiving the complaint would ascertain from the complainant whether he intended to leave the matter in the hands of the Inspector-General or whether he himself intended to institute civil or criminal proceedings.²⁸

2.0.3 HANDLING COMPLAINTS AGAINST THE POLICE

If the complainant wished the matter to be dealt with by way of police procedure, the complaint was dealt with according to the Force Standing Order as it may have been prudent and appropriate to do so.²⁹ However, if the complainants expressed his intention of instituting criminal or civil proceedings himself, the nature of the complaint would be recorded and the Inspector-General, through the Officer Commanding the Division, would be informed, and such action as proposed would be followed. In every case left in the hands of the police for investigation, the procedure was in accordance with the Force Standing Order and the officer

²⁷ ZP Form 186

²⁸ Supra note 12.

²⁹ Ibid

appointed to conduct the inquiry would take immediate steps to commence the inquiry and receive by way of statements of witnesses and of the officer complained against if he elected to make a statement,³⁰ and all evidence having any bearing on the matter would be included in the record contained in the Complaint Against Police Docket,³¹ when statements were being recorded from the complainant no other party to the proceeding would be required to be present. Where a complaint was received by the Officer in Charge of a police station he would forward the Complaint Against Police Docket to the Officer Commanding the District or Officer Commanding Division who would then appoint an investigating officer and furnish him with the Complaint Against Police Docket, which would contain any instructions that he may deem necessary.³² However, where the complaint was received by the Inspector-General it would be forwarded to the Officer Commanding the division concerned who would prepare a Complaint Against Police Docket and take necessary action and then appoint an investigating officer. An officer appointed to conduct inquiries would whenever possible, be a superior police officer when a complaint was against a subordinate police officer and a subordinate officer when the complaint was against a member of the other ranks. Therefore, the appointed officer would not be of the same rank as, or junior, to the officer complained against. In addition an officer appointed to investigate the complaint could, whenever possible, come from a police station different from that of the officer complained against.³³ This statement intended to avoid bias or conflict of interest.

³⁰ Ibid

³¹ Supra note 26.

³² Supra note 28.

³³ Ibid

At the conclusion of the hearing of evidence the officer inquiring into the complaint would draw up and sign a summary of the evidence, findings and recommendations in triplicate. Thereafter, the docket consisting of the original complaint, statements of evidence and three copies of the summary, findings and recommendations, would be submitted to the Officer Commanding the Division. If the original complaint was made to Inspector-General, the Officer Commanding the Division would endorse all copies of the summary with his observations and recommendations and would submit the complaint docket to the Inspector-General.³⁴ In the case of dockets submitted to the Inspector-General, the docket will be referred to the Officer Commanding the Division who would comply with the directions contained therein. Where disciplinary action was to be taken, he would give instructions regarding the framing of charges and personally appoint the officer to handle the matter, ensuring that such officer is in no way connected with the previous investigation.³⁵ At the end, the complainant would be informed of the result of the inquiry by the Inspector-General, if the complaint was made to him and in all other cases by the Officer Commanding the Division. A copy of the letter would be filed in the Complaint Docket. Completed Complaint Dockets would be filed at the Divisional Headquarters and a register of Complaints Against Police would be maintained at all formations, except police posts.³⁶

2.0.4 COMPLAINTS OF CRIMINAL NATURE AGAINST POLICE OFFICERS

On the other hand, offences committed by police officers which were apparently criminal from the start and actually reported as a crime, had to be treated as such and investigated in accordance with the Force Instructions which entails that, if a complaint or report of commission of a criminal offence is made at a police station, the officer receiving it will cause brief

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid

particulars of the complaint or report, as made, to be recorded at once in the occurrence book and investigations instituted³⁷ and would not be the subject of an inquiry as prescribed by Force Standing Orders.³⁸ Therefore, where evidence revealed a prima facie case, the officer concerned would be arrested and charged accordingly and brought before a magistrate.

It is clear therefore that, apart from offences against discipline, under the Zambia Police Act, other offences such as, desertion which is of a criminal nature would immediately a decision had been made be investigated like any other ordinary crime and prosecuted before a magistrate's court.³⁹

2.0.5 THE LAW LEADING TO THE CREATION OF THE AUTHORITY (PPCA)

From the existence of the Zambia Police Force in October, 1964 as was enshrined in Cap 133,⁴⁰ up until 1999 complaints against police were reported and dealt with by the police itself.⁴¹ However, it is clear that the system was not effective as it lacked checks and balances. This is so because the police against whom complaints were made could not be the best judges or arbiters to decide their own causes. Because of continued glaring incidents of abuse and misconduct committed by police actions and inactions and several complaints raised by the members of the public, it was inevitable that there was need to create an independent body which could watch and handle complaints made by the public against the police.

³⁷ Force instructions

³⁸ Ibid

³⁹ Ibid

⁴⁰ Zambia Police Act Cap 133

⁴¹ Supra note 32.

It is important to note that, to create such an institution with the muscle and mandate to perform to its expectations, there was need to put in place a law supporting such institution.

Therefore, in the year 1999 the Zambia Police Act was amended in order to provide for the establishment of the Authority.⁴² Introducing the Zambia Police (Amendment) Bill in Parliament, the then Minister of Home Affairs Doctor Peter Machungwa, explained that the bill was intended to improve the fight against crime through the involvement of the community and to also promote human rights of individuals, during the performance of police duties. The minister went on to state that:

“...it is in the same spirit of striving to entrench the culture of governance and respect for human rights that the bill seeks to establish an independent Police Public Complaints Authority.”⁴³

Further and going by some debates of the National Assembly and giving reasons for the need to create a watchdog institution to oversee against police abuse, it was said, in order to keep the wide powers of the police in check, watchdog institutions play an invaluable role. They are primarily aimed at providing a culture of governance and respect for human rights particularly in the area of monitoring police abuses.⁴⁴ From the above quotations, it is crystal clear that Government wanted an institution independent from the police to superintend and check e abuses and misconduct by the police.

⁴² www.Police accountability Co. 2a / file.

⁴³ Parliamentary debates of the third session (resumed) of the eighth National Assembly, 9th Nov. -9 Dec 1999

⁴⁴ Ibid

2.0.6 ZAMBIA POLICE (AMENDMENT) ACT

On 23rd December, 1999 the Zambia Police Act,⁴⁵ was promulgated by the President assenting to the new Zambia Police (Amendment) Act.⁴⁶ This new Act established the Police Public Complaints Authority.⁴⁷ The new amendment Act has to be read together with the Principal Act referred to as the Zambia Police Act.⁴⁸

The Act creating the Authority also gives the composition of members, its functions, powers, the lodging of complaints and to whom they may be made if not made direct to the Authority including the proceedings of the Authority.

2.0.7 CONCLUSION

In this chapter a discussion of the legal frame work giving authority to police operations has been done. Also the legal basis for the establishment of the Authority has been identified and few scenarios of abuse highlighted. Included also is the traditional way of dealing with and handling complaints made against the police.

Therefore, in chapter three a discussion of the organization structure, composition, power and independence of the Authority will be made. The Authority's functions and the procedures it follows in handling and dealing with complaints made to it will be explored.

⁴⁵ Supra note 21

⁴⁶ Supra note 14

⁴⁷ Ibid

⁴⁸ Supra note 43

CHAPTER THREE

REVIEWING THE LAW GOVERNING THE POLICE PUBLIC COMPLAINTS AUTHORITY

3.0.0 INTRODUCTION

In this chapter we are going to review the law that governs the operations of the Authority. The composition of the Authority, organization structure and institutional capacity will also be determined. The Authority's role will be discussed and its independence analysed. The establishment of the Authority dates back to the enactment of the Zambia Police (Amendment) Act, of 1999.⁴⁹ This Act established an institution which is mandated to oversee the operations of the police. However, this function can only be performed by the Authority when a complaint is made to it by an aggrieved party⁵⁰

3.0.1 COMPOSITION OF THE AUTHORITY

The Act provides that there shall be part time members appointed by the Minister, being the Chairperson, Vice Chairperson and the other three members. The Act states that the Chairperson shall be a person who has held, or is qualified to hold the office of judge of the High Court.⁵¹ This clearly means that such a person must be well vested with the law in order to guide the Authority properly.⁵²

⁴⁹ Supra note 46

⁵⁰ Ibid see 57C

⁵¹ See Sec. 57H of the Zambia Police (Amendment) Act No 14 of 1999

⁵² Ibid sec. 57 c

However, on the position of the Vice Chairperson and the three other members no qualification or experience is attached.⁵³ It is difficult to draw any conclusion for the above situation but it is clear that the power lies within the Minister to make such appoints.⁵⁴ From the above position, there is no doubt that, members at the Authority serve under the whims of the Minister, who appoints then and hence may remove them.⁵⁵

The Minister as a sole appointing authority can either through his mandate, weaken or make strong and efficient the operation of the Authority. This points to the fact that, as the law stands, the appointing of members to the Authority by the Minister does not promote the principles of checks and balances, as the same Minister in this regard is the same person under whom the police service falls who are supposed to be watched by the institution whose membership he decides.

The Minister also appoints the Secretary who is a full-time serving public officer who is responsible for the management and administration of the Authority and for the implementation of any matters referred to the Secretary by the Authority.⁵⁶ From this position given by the Act⁵⁷ it entails that the Authority reports through the Secretary to the Minister. The other point which can be derived from the above provision of the law is that, the Act does not set any qualifications for the Secretary save that such a person must be a serving officer. Surely this is an important institution for which qualifications must be set and a qualified person must be appointed in order

⁵³ Ibid sec 57c (2)

⁵⁴ Ibid

⁵⁵ See sec. 57c (a) (b) (c) "The minister may remove a member if (a) the members is absent without reasonable excuse from three consecutive meetings of the Authority of which a member has had notice; (b) the member is found guilty of an offence involving dishonesty; or (c) the member fails to perform the duties of the members office (21)

⁵⁶ Ibid 57 D

⁵⁷ Supra note 47

for it to deliver and meet its mandate. Attached to the fact that the Authority operates at the discretion of the Minister is that, he also determines the allowances and remunerations that are paid to the members. This however does not include the Secretary as he or she is paid as a public officer.

3.0.2 THE ROLE OF THE AUTHORITY

The Authority is established and mandated by the Act,⁵⁸ to receive all complaints against police actions; or to investigate all complaints against police actions which result in serious injury or death of a person,⁵⁹ and to submit its findings, recommendations and directions to;

- (i) Director of Public Prosecution for consideration of possible criminal prosecution,
- (ii) The Inspector-General for disciplinary action or other administrative action; or
- (iii) The Anti-Corruption Commission or any other relevant body or authority

In addition the Act states, where the Authority directs the Inspector-General, the Anti-Corruption Commission, relevant body or authority under subsection (1) the Inspector-General, Anti-Corruption Commission, relevant body or Authority shall give effect to such directions.⁶⁰

First and foremost, the Act talks about receiving all complaints against police actions. The Act does not specify the kinds of actions referred to. Nevertheless, the actions perceived here are those bordering on police behavior and conduct against members of the public which result in human rights abuses and unprofessionalism as set out by the Constitution and other relevant laws. Some of these have been listed in several annual reports as including unlawful detention, brutality, torture, police inaction, debt collection, unprofessional conduct, abuse of authority and

⁵⁸ Ibid

⁵⁹ See sec. 57 G (1) (a) (b) (c)

⁶⁰ Supra note 56

death in police custody.⁶¹ Therefore, if the action or inaction committed by the police is based on discipline, then administrative action in terms of the Zambia Police Act⁶² and Police and Prison Service Commission Regulations Act⁶³ can be invoked. The nature of offences which the Authority may receive and deal with are those which border on human rights abuses as is advertised by the Authority on nation radio,⁶⁴ and as stated by the Act⁶⁵ and annual reports.

3.0.3 POWERS OF THE AUTHORITY

The Authority has been given powers to investigate all complaints referred to it under the Act, from the following categories of complainants;

- (i) An aggrieved person directly affected by police action. This is a person who himself has suffered abuse at the hands of the police.
- (ii) An association acting in the interests of its members and
- (iii) A person acting on behalf of an aggrieved person, body or organization.⁶⁶

3.0.4 COMPLAINTS BY INDIVIDUALS

Complaints made by individuals are those that directly affect them from police action. If an individual suffers injustice which is tantamount to abuse of human rights he then can make a complaint to the Authority. There are three ways in which a complaint can be made to the Authority⁶⁷

⁶¹ Police Public Complaints Authority Annual Reports 2003 - 2006

⁶² Supra note 21

⁶³ Police and Prison Services Commission Regulations Act Cap 259

⁶⁴ Police Public Complaints Authority Advertisement on the Zambia National Broadcasting Corporation Radio Two

⁶⁵ Supra note 59 sec 57G (i) (b)

⁶⁶ Ibid sec 57H(i)

⁶⁷ Ibid sec. 57I(1)-(5)

3.0.5.1 COMPLAINTS MADE TO THE SECRETARY

Firstly, a complaint can be made to the Secretary of the Authority.⁶⁸ Such a complaint made by an individual is direct to the Authority and it shall include the name, physical and postal address, complainant's age and a detailed statement of the facts of the incident or circumstances giving rise to the complaint. Where a complaint is made orally, the recipient of the complaint shall reduce it into writing. The complaint shall also bear the signature or thumb print of the person making it.⁶⁹

An example of a complaint made direct to the Authority is one case of Isaac Mwanza against Sub-Inspector Patrick Mulomboi and Constable Conrad Bwalya Police officers of Vubu Police Post, Emmasdale area.⁷⁰ In this case the complainant Isaac Mwanza wrote a letter to the Authority and complained of being detained without any offence and the officers were written to by the Secretary to respond to the allegation. After the Authority sat, it found the officers with a case and directives were made to dismiss the officers from the service. However, their termination was appealed against in the High Court, and the decision was quashed. It is important to note that, at this stage what is necessary to know and demonstrate in this case is how a direct complaint by an individual is made to the Authority through the Secretary and not the details and outcome of the case..

3.0.5.2 COMPLAINTS BY ASSOCIATION ACTING ON BEHALF OF ITS MEMBERS.

These are complaints made on behalf of affected persons through their organizations. The researcher could not envisage how this could happen. Nevertheless, through the interviews

⁶⁸ Supra note 55

⁶⁹ Supra note 64

⁷⁰ PPCA/19/2003

conducted with the Secretary at the Authority, an example was given citing complaints made by the Legal Resources foundation though not specifically representing its members per se and those complaints made by the Legal Aid Clinic for Women.

3.0.5.3 COMPLAINTS MADE ON BEHALF OF AGGRIEVED PERSON, BODY OR ORGANIZATION

A complaint May be made on behalf of someone. Such situations could be where a minor or juvenile has been affected by police action or inaction. The other scenario would be acting on behalf of a mentally retarded or physically disabled person who may not be able to make a complaint on his own behalf. Even in this situation, the procedure to lodge the complaint remains the same as indicated in the Act.⁷¹

3.0.5.4 COMPLAINTS MADE ON BEHALF OF AGGRIEVED BODY OR ORGANISATION

For the above circumstances, there is confusion as to how these categories of complainants can make complaints to the Authority as regards the classified nature of complaints handled by it. What seems to be a problem is, how among the complaints listed a body or organization would suffer abuse at the hands of the police For example, a body or organization can not suffer the following injustices namely, unlawful detention, brutality or torture, debt collection, and death in police custody. However, one may be quick to say that, police inaction, unprofessional conduct and abuse of authority may to some extent affect a body or organization.

⁷¹ Supra note 67

3.0.5.5 COMPLAINTS MADE TO THE PRINCIPAL OFFICER

Complaints against police action or inaction can also be made to the principal officer of a Local Authority.⁷² A Principal Officer though not defined in the Act, is either a Town Clerk or Council Secretary in charge of a Local Authority as defined under the Local Government Act. It is evident that since inception, the Authority is only found and housed in Lusaka, though its operations extend to the whole country. On this premise, in order to serve the masses that may have Complaints Against Police, the Act has allowed its complaints to be made to the Principal Officer. The procedure enshrined in the principle Act⁷³ is followed by the recipient of the complaint. Once a Principal Officer has received a complaint he shall within fourteen days submit it to the Secretary.⁷⁴ This provision impresses on the Principal Officer to submit a complaint within fourteen days. However, it does not say what consequences or implications may arise if the complaint is not submitted within the stipulated period and who indeed should bear the cost of submitting the complaint.

3.0.5.6 COMPLAINTS MADE TO THE POLICE

The above method existed as a traditional way of making complaints against police before the establishment of the Authority.⁷⁵ However, the new system differs with the old one as it only makes the police a conduit for making complaints by aggrieved persons and not for them to investigate and deal. This nonetheless lives much to be desired as the question begs to what extent the police may be transparent and willing to receive and forward complaints that may affect their own officers.

⁷² Ibid

⁷³ Ibid

⁷⁴ Supra note 68 sec 57J

⁷⁵ Supra note 28

3.0.5.7 COMPLAINTS RECEIVED BY THE INSPECTOR – GENERAL

The Inspector-General may receive complaints direct from the members of the public through the Police Public Relations Officer or from officer-in-charges of police stations or police posts, who may submit the same within seven days to him. Once the Inspector –General has received the complaints he may also within seven days send them to the Authority through the secretary.⁷⁶

3.0.6 PROCEEDINGS OF THE AUTHORITY

The Act,⁷⁷ states that no specific procedure is followed by the Authority in conducting its business. However, the Act has given powers to the Authority to regulate its own procedure. The above assertions therefore, indicate in the affirmative that there is no standard procedure followed by the Authority in conducting its business. This therefore entails that, if there is a change of members, new members are not obliged to follow the procedure adopted by the previous members. This brings a problem among the complainants especially for those whose cases may not have been resolved by the previous members. The same section,⁷⁸ of the Act gives powers to the Chairperson to determine the place and time for the meeting and performance of the Authority's functions. This provision does not give any alternative to what should happen if the Chairperson is not available to determine the place and time for the meeting.

Besides the above issues, the Act also provides that three members shall form a quorum.⁷⁹ It must be remembered that the number of members which constitute the Authority is five,⁸⁰ however, during an interview at the Authority, it was discovered that since April and July 2003

⁷⁶ Supra note 73 sec. 57K(1)(2)

⁷⁷ Ibid sec. 57L(1)

⁷⁸ Ibid sec. 57L (2)

⁷⁹ Ibid sec 57(3)

⁸⁰ Supra note 52

the Authority lost two members namely the Vice Chairman and a mere member through death and no replacements have been made to this date.⁸¹ This position was also reflected in the Authority's annual report.⁸² Despite this position, the Authority continues to operate with three remaining members, as the Act stipulates.⁸³ Even with this position and the critical role which the Authority has to perform no explanation was offered to the researcher for not replacing the two deceased members as the Minister could not be reached and interviewed at the time, as he was reportedly busy each time an appointment was sought. This therefore affirms the position taken that, the appointment of the members of the Authority is solely within the ambit of the Minister a situation which is undesirable.

While still analyzing the proceedings of the Authority, it is critical to discuss the process of arriving at a decision. The Act⁸⁴ provides that a decision shall be based on the majority rule of members voting at a meeting. This is not understandable in that, the nature of the Authority's functions and cases dealt with need to be investigative. In any case, these meetings described by the Act are not explained, hence one can only conclude that they are the ones arrived at once a determination has been made on a case.

3.0.7 REGISTER OF COMPLAINTS

As was practiced in the traditional way of making and handling complaints against police officers, a complaint register was kept at all police stations.⁸⁵ Once a matter had been disposed

⁸¹ Interview: Face to Face oral interview held on 26/01/2010 with Dorothy Jolezya Zimba Executive Secretary Police Public Complaints Authority

⁸² Supra note 60 see PPCA Annual Report of 2003 p.3.

⁸³ Supra note 79

⁸⁴ Supra note 76 sec. 57L (6)

⁸⁵ Supra note 28

off, the Act establishing the Authority has also made a provision for a register of complaints to be kept,⁸⁶ to allow members of the public to inspect it upon payment of a prescribed fee. The reason for this is to allow people to follow up their cases in order to know how their cases have been concluded. This also is meant to make people have confidence by seeing that, cases reported are dealt with and hence encourage them to report similar cases. The Act also allows the Authority to submit annual reports to the Minister,⁸⁷ on any matters concerning its functions. From the inception of the Authority to date only six annual reports have been produced and submitted to the Minister.⁸⁸ It was explained from the interview that from 2007 to 2009 the reports could not be produced because the reporting system was changed and that all departments had to send their reports to the Ministry for consolidation.⁸⁹

3.0.8. SUBSEQUENT AMENDMENT OF THE ZAMBIA POLICE ACT

After the amendment of the Zambia Police Act⁹⁰ in 1999, nine years later, the Zambia Police Act was again amended.⁹¹ This amendment was necessitated by reviewing sections 57F, G (1) and H (2). In terms of section 57F, the new amendment removed the payment of remuneration serve for allowances to be paid to the members of the Authority.⁹² This is a positive amendment because members of the Authority are appointed on part-time basis and therefore entitled to allowances only. To support this move, it is unquestionable that part-time members only work

⁸⁶ Supra note 83 sec. 57P

⁸⁷ Ibid sec. 57Q(1) – (3)

⁸⁸ Supra note 82 PPCA Annual Reports from 2002 – 2006

⁸⁹ Supra note 81.

⁹⁰ Supra note 44

⁹¹ Supra note 65

⁹² Zambia Police (Amendment) Act No. 15 of 2008

as and when there is an assignment to perform. On the other hand, an amendment on section 57 G (1) was quite detailed in that, three quarters of the section was amended.⁹³

The amendments made to section 57G (1) (c) (i) above removed the power of the Authority to direct the Director of Public Prosecutions, Inspector-General of Police and Anti-Corruption Commission or any other relevant body or authority and to take specific action against the police. The amendment was properly done as the previous section contravened the Constitution which states that powers conferred on the Director of Public Prosecutions shall be vested in him to the exclusion of any other person or authority.⁹⁴ As opposed to the earlier provisions of section 57 G, the new amended section provided as follows. The functions of the Authority are among other things to submit its findings and recommendations to

- (i) The Permanent Secretary to the Ministry of Home Affairs;
- (ii) The Police and Prisons Service Commission
- (iii) The Inspector-General; or
- (iv) Any other relevant body or authority as the circumstances of the case may require.

The reasoning for these amendments, was to rationalize on who should receive the findings and recommendations of the Authority and in the same vein harmonize the relationship of the Authority with the relevant institutions that deal with the police.⁹⁵ The Act has gone further to amend and insert⁹⁶ at the end of paragraph (c) a new paragraph,⁹⁷ which entails that the Authority shall have power to recommend to the Police and Prisons Service Commission the punishment of any police officer found by the Authority to have erred in the performance of their

⁹³ Supra note 14

⁹⁴ Supra note 22 Article 56 (5)

⁹⁵ Supra note 91

⁹⁶ Ibid sec. 57 H(d)

⁹⁷ Ibid

duties or to have used excessive power against any person ,provided that the punishment to be meted out against an erring officer shall be determined in accordance with the Police and Prisons Service Commission Regulations.⁹⁸

The above provisions are not limitations of the powers of the commission which states, “the commission shall not discipline or terminate the appointment whether by dismissal or otherwise of any officer in the Force except in accordance with the provision of these regulations.”⁹⁹

3.0.9. CONCLUSION

In this chapter, a discussion of the law creating the Authority has been made. Therefore, in relation to its operations, a discussion of how it handles and deals with complaints made to it is important. Further, the composition of the Authority in terms of membership has been explored. The mode of making complaints by members of the public has also been made including the different categories through which these complaints can be made. Therefore, other than making complaints to the Secretary, there are other three ways to do so. Also discussed are the provisions of the Zambia Police (Amendment) Act No. 15 of 2008 and the Zambia Police (Amendment) Act No. 14 of 1999.

Supra note 63
Ibid

CHAPTER FOUR

ANALYSING SIMILAR WATCHDOG INSTITUTIONS IN OTHER JURISDICTIONS

4.0.0 INTRODUCTION

The previous chapter reviewed the law that governs the operations of the Authority. This includes the composition, organization structure and institutional capacity of the Authority. It also looked at the role and independence of the Authority. In this chapter, we shall take a look at other jurisdictions in relation to similar watchdog institutions. Among the jurisdictions are the United Kingdom, South Africa and New Zealand. Also to be considered is a brief look at the Permanent Human Rights Commission in Zambia.

4.0.1 THE INDEPENDENT POLICE COMPLAINTS COMMISSION IN UNITED KINGDOM(IPCD)

Like Zambia, the United Kingdom has an institution that watches over the police service as they conduct their operations and how they treat the citizens they are supposed to protect. The duties and functions performed by the police in the United Kingdom are not different to those performed in Zambia.¹⁰⁰ However, it must be understood that before the Independent Police Complaints Commission came into being, there was in place a Police Complaints Authority.¹⁰¹ This however was replaced by the said Commission which has more power. The commission was established by the Police Reform Act of 2002.¹⁰² The commission began to work on 15th April, 2004. The primary statutory function of the Commission is among other things to increase public confidence in the police complaints system in England and Wales by

¹⁰⁰ See Supra note 20

¹⁰¹ www.parliament.uk/.../snha-02056pdf

¹⁰² Police Reform Act of 2002 Part 2 Sections 2 – 12 and schedule 2

investigating the most serious complaints and misconduct against the police and by handling appeals from people who are not happy with the way in which their complaints have been handled.¹⁰³

The Independent Police Complaints Commission is a public body funded by the Home Office in England and Wales but by law entirely independent of the police, interest groups and political parties responsible for overseeing the system for handling complaints made against police forces and whose decision or cases are free from government involvement.¹⁰⁴

4.0.1.1 THE ROLE OF THE INDEPENDENT POLICE COMPLAINTS COMMISSION

The Commission deals with serious complaints. These include deaths in custody, shootings and fatal traffic incidents. It also receives appeals from members of the public about the way their complaints are dealt with by the local investigators and over seen by an Independent Police Complaints Commission Commissioner. The Commission investigators have all the powers of the police themselves while managed investigations are carried out by the police professional standards department, under the direction and control of the Commission. Commission investigators are not police officers.¹⁰⁵

On the other hand, members of the public can also complain about the individual conduct of any police officer or any member of police staff. For example, if one thinks an officer was rude to a member of the public, failed to investigate a crime properly or caused damage to ones

¹⁰³ Supra note 100

¹⁰⁴ www.ipcc.gov.uk/

¹⁰⁵ Ibid

properly.¹⁰⁶ Additionally, the Commission can also elect to supervise the police investigation into a particular complaint and will independently investigate the most serious cases itself while some of the Commissions investigators are former police officers, the Commissioners themselves cannot have worked for the police by law.¹⁰⁷

However, on the converse, complaints about the overall policies and procedures of a police force, as well as other issues relating to quality of service of operation decisions do not fall within the remit of the Commission.¹⁰⁸ Such decisions should be made to the Chief Constable of the police force concerned, or the local police authority for example if a member of the public thinks that there are not enough police assigned to his area, that the police should prioritize the investigation of crimes differently or that a part of how the police works need to change.

Therefore, the Commission's job is to make sure that complaints against the police are dealt with effectively. It sets standards in the way the police handle complaints and, when something has gone wrong, it helps the police learn lessons and improve the way it works.¹⁰⁹

4.0.1.2 ORGANISATION STRUCTURE OF THE INDEPENDENT POLICE COMPLAINTS COMMISSION

The Commission is overseen by the Chairman and Commissioners all of whom must not have been worked for the police service in any capacity previously. The Chair is a Crown appointment and commissioners are public appointments. The Commissioners are supported by the Chief Executive and its staff.

¹⁰⁶ Ibid

¹⁰⁷ Ibid

¹⁰⁸ Ibid

¹⁰⁹ Ibid

The Commission claims to be committed to getting closer to the communities it serves. Its Commissioners and staff are based in the Commission's regional office. The Commission structure is split between Commissioners and executive consisting of more than 420 people who fulfill roles in support of work of the Commission as well as employing its independent investigators to investigate serious cases.¹¹⁰ The Commission has staff performing a number of other functions. Case workers handle the majority of complaints that are referred to the organization. The procedure is that they will record the details of the complaint and have an assessment of a case and recommend a method of investigation which is then passed to the Commissioner to sign off.¹¹¹

4.0.1.3 COMPLAINTS BY MEMBERS OF THE PUBLIC AGAINST THE COMMISSION

There are several ways in which a member of the public can make a complaint against the police. He can personally visit the Commission offices, write a complaint letter, or e-mail the complaint. This he can do as personally affected or complain on behalf of a member of an organization. While this is the position, the Commission can only deal with complainants about the behaviour of police officers and staff.¹¹² On the other hand, the Commission can initiate and institute investigations on their own motion. However, besides these situations, the police force may also refer matters voluntarily to the Commission and the Commissioners can call in any matter where there may be serious public concern.¹¹³ Once matter has been referred, the Commission will make a mode of investigation decision to determine how it should be dealt with. This is done by

¹¹⁰ Ibid

¹¹¹ Ibid

¹¹² Ibid

¹¹³ Ibid

case workers or investigators who submit an assessment to a Commissioner. The assessment will involve judging available information and may mean the Commission investigators are sent to the scene.¹¹⁴

The following are some of the situations in which a member of the public may have a right to make a complaint.¹¹⁵

- When one believes that he has been treated badly by a police officer or a member of staff working for the police.
- When one believes a member of police was rude to him or used excessive force
- When one was present when the alleged inappropriate conduct occurred, close enough to see or hear the inappropriate conduct or have been adversely affected by the incident or are acting on behalf of any of the above for example a member of an organization who has written permission by an individual to make a complaint on their behalf.¹¹⁶

4.0.1.4 INVESTIGATION OF COMPLAINTS BY THE COMMISSION

According to the Police Reform Act, it tabulates the ways in which investigations are done. Therefore, on referral of an issue, the Commission makes a mode of investigation decision to determine how it should be dealt with. There are three types of the Commission's investigations. Firstly, there is what is known as supervised investigations. This is where an investigation is conducted by the home or outside force under their director and control. The Commission sets the terms of reference and receives the final reports. The second is called a managed investigation where an investigation conducted by the home or outside force under the director

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Supra note 101 sec. 10

and control of the Commission. Lastly is what is referred to as an independent investigation which is led by the Commission's own investigation team and overseen by a Commission's Commissioner.¹¹⁷

The above stages of investigation give an elaborate and wholesome procedure which no doubt can help to achieve good results.

4.0.1.5 INDEPENDENCE OF THE COMMISSION

Officially the Commission is said to be independent from political parties and interest groups. Its eighteen Commissioners can not be former police officers. Decisions made are supposed to be free from government interference.¹¹⁸ However, Commissioners are appointed by the Home Secretary and funding comes from Home Office. It was therefore said that, if you were Home Secretary, would you appoint people who might seriously undermine confidence in law and order, policing is very political after all. Moreover, most of the investigators are former or current police officers. How then does it remain impartial, when its investigators have spent so much time on one side of the thin blue line?¹¹⁹

From the above explanation, the independence of the Commission is therefore watered down by the fact that, its members in the name of Commissioners are appointed by the Home Secretary and at the same time the Commission is funded by the same department of the State.

¹¹⁷ Ibid

¹¹⁸ Ibid

¹¹⁹ Ibid

4.0.1.6 SUBMISSION OF REPORTS

The Commission must submit annual reports to the Secretary of State which must be published and laid before Parliament. The Commission may make reports to the Secretary of State from time to time on matters which it considers to be drawn to his attention by reason of their gravity or other exceptional circumstances.¹²⁰

4.0.1.7 HAS THE INDEPENDENT POLICE COMPLAINTS COMMISSION BEEN EFFECTIVE

It has been reviewed that, committee reports on the Commission questions the effectiveness of the Commission and notes a lack of clarify about who has responsibility for monitoring implementation of the Commission’s recommendations.¹²¹ But when it comes to how effective the Commission actually is, that is where the questions start to be asked. Systems for checking the quality of its work are conspicuously absent.¹²² There is no external independent scrutiny and the Commission has no formal internal processes to monitor its work, exposing it to potential allegations of incompetence or bias. One would think that any organization that makes recommendations would have a mechanism in place to monitor if they have been implemented.¹²³ Not only does the commission have no such mechanism, no one else seems to have the responsibility for such monitors.¹²⁴

According to a report entitled police watchdog criticized by members of Parliament, the public accounts committee called on the Police Complaints watchdog to tighten up procedures. It said

¹²⁰ Ibid
¹²¹ News.parliament.uk/2009/03/committee
¹²² Ibid
¹²³ Ibid
¹²⁴ Ibid

the Commission should introduce a “robust” quality framework and also bring in external scrutiny of a sample of its cases, to give the public assurance about how it handles investigations and appeals increased workload.¹²⁵

4.0.2 THE INDEPENDENT COMPLAINTS DIRECTORATE OF SOUTH AFRICA(ICD)

The previous topic referred to the United Kingdom watchdog institution as the Independent Police Complaints Commission.¹²⁶ However, in South Africa, a similar institution with the mandate to watch over the police is called the Independent Complaints Directorate (ICD).¹²⁷ The Directorate is a policy oversight body that oversees the South African Police Service (SAPS) and Municipal Police Services. Its mandate stems from the South African Police Services Act which amended the Constitution. Since its inception in 1997, its role adheres to section 222 of the interim constitution¹²⁸ which provides for the establishment of an independent mechanism under civilian control the object of ensuring that complaints in respect of offences and misconduct allegedly committed by members of the South African Police are investigated in an effective and efficient manner.¹²⁹ It operates independently and its mission is to propel proper police conduct of the South Africa Police Service.

¹²⁵ Ibid

¹²⁶ Supra note 120

¹²⁷ www.saps.gov.za/.../icd.htm

¹²⁸ Interim Constitution Act No. 200 of 1993

¹²⁹ Ibid

4.0.2.1 THE ROLE OF THE INDEPENDENT COMPLAINTS DIRECTORATE

An examination of the roles of the Directorate suggests that, in many ways it combines the roles and responsibilities many of the different types of oversight bodies have.¹³⁰ The aim of the directorate is therefore to provide an accessible complaints processing mechanism and investigation of complaints of death of persons in police custody or as a result of police action (such as shooting, assault), the involvement of police members in criminal activities such as assault, theft, corruption, robbery, rape and any other criminal offences, police conduct or behaviour which is prohibited in terms of the South Africa. Police Service Standing Orders or police regulations, such as neglect of duties or failure to comply with the police code of conduct, dissatisfaction or complaints about poor service given by the police, failure to assist or protect victims of domestic violence as required by the domestic violence Act or misconduct or offence committed by members of the Municipal Police Services.¹³¹

Nevertheless, even with the mandate given to the Directorate, there are other cases which it can not deal with. Therefore, the Directorate can not deal with complaints of incidents which occurred before its establishment that is before April, 1997 and those which take place more than a year before they are reported to the Directorate, unless there are exceptional circumstances.¹³²

4.0.2.2 STRUCTURE OF THE DIRECTORATE

The Directorate as an independent organization from police has its own structure. It is headed by the Minister for Safety and Security who is appointed by the President in terms of section 91(2) of the Constitution of 1996 as amended. At the function level the Directorate is managed by the

¹³⁰ www.csvf.org.za/...papidcsb.htm.

¹³¹ Ibid

¹³² Ibid.

Executive Director who is nominated by the Minister for Safety and Security¹³³ in terms of section 51 of the South African Police Services Act. He is appointed subject to the laws governing the public service. The Executive Director is assisted by the Chief Financial Officer and three programme managers.¹³⁴ The Directorate also has offices at provincial headquarters. In addition the Directorate has satellite offices in districts. The Directorate has therefore a total of 257 staff members stationed at national and provincial offices.¹³⁵

4.0.2.3 WHO AND HOW MAY A COMPLAINT BE LODGED

Any person either a victim, witness, or representative of a non governmental and community based organization can make a complaint. A complaint may be lodged in person, by telephone, per letter or e-mail to any Directorate office. A complainant must fill in a complaint registration form¹³⁶ which can be obtained from any Directorates office also accessible on the Directorates website.

4.0.2.4 HOW COMPLAINTS ARE DEALT WITH

When it concerns deaths in custody, police misconduct failure to investigate, failure to assist or bad treatment or action. A report of complaint is made to the Directorate investigation wing. Discussion of the case is done and arrangements for attending the scene of crime and obtaining statements are done.¹³⁷

¹³³ South African Police Services Act of 1995 as (Amended) by Act No. 68 of 1995

¹³⁴ www.icd.gov.za/icd.info.manual.pdf

¹³⁵ Ibid

¹³⁶ Form 1

¹³⁷ Supra note 133

4.0.2.5 INDEPENDENCE OF THE DIRECTORATE

Though the Directorate is said to be independent from the South African Police Service and established as an independent institution under an Act of Parliament.¹³⁸

The Directorate is not in itself independent. Firstly, it is headed by a Minister of Safety and Security.¹³⁹ The Minister also appoints the Executive Director as guided by Public Laws. The Directorate is also funded by Government.

4.0.2.6 CHALLENGES OF THE DIRECTORATE

The major challenges of the Directorate are that, it is constituted under the South Africa Police Act,¹⁴⁰ which also makes reference to the interim Constitution. The South African Police Service is not compelled to comply with the Directorate's recommendation or to report back. There is need to separate legislative framework that would ensure accountability. To tackle this problem the Police Service has plans underway for new legislation to be instituted during the first quarter of 2010.¹⁴¹ The other problem is that the budget allocated to the Directorate is little and hence there is need to increase the budget. It has been noted, that, there is need to review the current Directorate structure, staffing, its financial performance, provincial offices and satellite offices.¹⁴²

¹³⁸ Supra note 127

¹³⁹ Supra note 133

¹⁴⁰ Ibid

¹⁴¹ www.freedomhouse.org/inc/contet/pu
¹⁴² www.pmg.org.za/briefing/20009925-in..

4.0.2.7 THE INDEPENDENT POLICE CONDUCT AUTHORITY (IPCA)

In New Zealand, the Independent Police Conduct Authority is an official government body with the following duties. To receive complaints about the conduct of police officers, oversee the investigation of complaints made to the Authority or to the police, examine investigation reports and where necessary, conduct its own investigation, resolve complaints by conciliation where possible and recommend disciplinary or other action.¹⁴³

The Authority is supposed to be independent from the New Zealand Police. However, this independence has been questioned for instance, the Authority is headed by a Judge and staffed by many retired police officers. It has been argued that this may introduce an interest favour against complainants.¹⁴⁴

4.0.3 THE HUMAN RIGHTS COMMISSION

The Human Rights Commission was established in 1997 after the enactment of the Human Rights Commission Act.¹⁴⁵ The amended Republican Constitution provided for the establishment of a Permanent Human Rights Commission.¹⁴⁶

This was necessitated by investigations and report on abuse of human rights made and recommended by the Muyama Human Rights Commission.

¹⁴³ [Wikipedia.the freeencyclopedia](https://en.wikipedia.org/wiki/Independent_Police_Conduct_Authority)

¹⁴⁴ [en.wikipedia.org/wiki/independent.p...](https://en.wikipedia.org/wiki/Independent_Police_Conduct_Authority)

¹⁴⁵ Act No. 39 of 1996

¹⁴⁶ Supra note 20. Art 125

4.0.4 COMPOSITION OF THE COMMISSION

The Commission consists of the Chairperson, Vice Chairperson; and not more than five other members.¹⁴⁷ The tenure of office for Commissioners is three years. Commissioners are appointed by the President, subject to ratification by Parliament.¹⁴⁸ The Chairperson and Vice Chairperson shall be person who have held, or are qualified to hold, high judicial office.¹⁴⁹ A Commissioner shall be appointed for a period not exceeding three years and may be removed from office for inability to perform the functions of the office, whether arising from infirmity or body or mind, incompetence or for misbehaviour.¹⁵⁰ The Commission is executively run by the Director and Deputy Director and other staff.¹⁵¹

4.0.5 FUNCTIONS AND POWERS OF THE COMMISSION

The Commission performs some of the functions namely; to investigate human rights violations, investigate any maladministration of justice.¹⁵² The Commission has power to investigate any human rights abuses, on its own initiative; or on receipt of a complaint or allegation.¹⁵³ It also has powers to summon or order attendance of any person or authority, production of documents, question any people or require any person to disclose any information and recommend punishment of any officer found to have perpetrated an abuse of human rights.¹⁵⁴

¹⁴⁷ Supra note 144 sec. 5 (1)

¹⁴⁸ Ibid sec 5(2)

¹⁴⁹ Ibid sec 5(3)

¹⁵⁰ Ibid sec 7(1) (2)

¹⁵¹ Ibid sec 18

¹⁵² Ibid sec 9 (a) – (d)

¹⁵³ Ibid sec 10(1)(a) – (d)

¹⁵⁴ Ibid sec 10 (2) (a) – (d)

4.0.6 HOW COMPLAINTS ARE MADE TO THE COMMISSION

Complaints or allegations made to the Commission may be made orally or in writing and are to be addressed to the Secretary. An oral complaint should be reduced into writing. A complaint should be made within a period of two years.¹⁵⁵ In addition, proceedings of the Commission are subject to the regulation of its own procedure and shall meet for the transaction of business at least once every three months at such a place or time.¹⁵⁶

4.0.7 INDEPENDENCE OF THE COMMISSION

The constitution of Zambia guarantees that, Permanent Human Rights Commission shall be autonomous.¹⁵⁷ This however is not the case because the President appoints the Commissioners. The other problem is that it is also funded by the Government. The other important point is that, while it can institute its own investigations, it is not mandated to institute prosecution of offenders.

¹⁵⁵ Ibid sec 11 (3)

¹⁵⁶ Ibid sec 14 (1) – (2)

¹⁵⁷ Supra note 145 Art 125 (2)

CHAPTER FIVE

ANALYSIS OF THE PERFORMANCE OF THE POLICE PUBLIC COMPLAINTS AUTHORITY SINCE INCEPTION

5.0.0 INTRODUCTION

In the previous chapter, we have discussed similar watchdog institutions in other jurisdictions namely United Kingdom, New Zealand and South Africa. In the discussion a number of issues were considered among them their role, composition, organization structure, the nature of complaints they deal with, how complaints are made and who is eligible to make such complaints. An attempt was also made to look at how effective they have been and some of the challenges they have faced. In addition, a look was also taken at the Permanent Human Rights Commission in Zambia. Therefore, the preceding chapter will look at the performance of the Police Public Complaints Authority and analyze its operations.

5.0.1 STRUCTURE OF THE AUTHORITY IN 2002

The law establishing the Authority states that, the structure of the Authority shall consist of five members namely the Chairperson, Vice Chairperson and three other members who shall be appointed by the Minister of Home Affairs.¹⁵⁸ The Act¹⁵⁹ also provides that a Secretary shall be appointed by the Minister, both the members and the Secretary is appointed for a period of three years.¹⁶⁰ As at December, 2002 when the Authority started operating, the organization structure consisted of five members and the Executive Secretary. This meant that, the Secretary operated

¹⁵⁸ Supra note 85

¹⁵⁹ Ibid

¹⁶⁰ Ibid

single handedly without any support staff.¹⁶¹ During this period the Authority did not hear any complaints because only one complaint was received.¹⁶² This position at this time can not be surprising because the Authority was just starting its work, though the structure should not have been the way it was.

5.0.2 CONSTRAINTS FACED BY THE AUTHORITY

During its first operational year, the Authority had serious and several constraints as has been alluded to above. However, other constraints, also were that, the Authority had no office accommodation as a result the operations of the Authority were at a stand still, despite the appointments of the members and the Secretary,¹⁶³ coupled with the above problem was the fact that the Authority had no vehicle and the secretary relied on assistance from Home Affairs Research and Information Department. The other critical issue was that, of funding. During the period K31, 000, 000 was allocated and only K14, 697,000 was actually released to the Authority through monthly recurrent department changes.¹⁶⁴

5.0.3 STRUCTURE OF THE AUTHORITY IN 2003

In the following year 2003, the number of members remained the same as mandated by the Act,¹⁶⁵ until in April and July, 2003 the Vice Chairperson and a member died. However, in

¹⁶¹ PPCA Annual Report of 2002. p.3

¹⁶² Ibid

¹⁶³ Ibid

¹⁶⁴ Ibid

¹⁶⁵ Ibid

terms of staffing, the organizational structure changed and consisted of three members, Executive Secretary, typist, driver and cleaner.¹⁶⁶

5.0.4 CONSTRAINTS AND CASES HANDLED BY THE AUTHORITY

During this period, the Authority through the Ministry of Home Affairs acquired an office accommodation rented on a property in Kabulonga. In terms of transport, the Authority received a re-conditioned vehicle in April 2003 and it was used for local operations. As for funding, this continued as a constraint as only K71 million was approved but only K58 million was released.¹⁶⁷ At the end of the year the Authority received 369 complaints from all over the country.¹⁶⁸

During this period some complaints were concluded and eight police officers were dismissed from the Zambia Police Force as a result of detaining members of the public unlawfully. Seven police officers were cleared of allegations against them while six were disciplined by the Inspector-General of Police.¹⁶⁹ The eight police officers dismissed applied for judicial review in the High Court and judgment was passed in their favour, but the Authority appealed in the Supreme Court and judgment to date is still being awaited.

Among such cases where police officers were dismissed by the Inspector-General and appealed against is that of Patrick Mulomboi and Constable Conrad Bwalya v The Inspector-General of

¹⁶⁶ PPCA Annual Report of 2003, p.3

¹⁶⁷ Ibid p.4

¹⁶⁸ See Appendix 2 table 1 for classification of cases handled

¹⁶⁹ Ibid

Police, The Attorney General, The Chairperson Police Public Complaints Authority,¹⁷⁰ where the High Court quashed the decision of the Authority and declared the action taken by the Inspector-General of Police in effecting decision as null and void “*abi initio*” as the said Authority had did not have powers under section 57a (i) (c) under which it purported to act. This period saw the Authority organize a sensitization workshop for Commanding Officer in Livingstone sponsored by the Norwegian government and the Authority presented a document on its operation. This was the first workshop where the Authority introduced itself to the Police Service and members of the public.

5.0.5 STRUCTURE OF THE AUTHORITY IN 2004

In 2004, the members who operated were the Chairperson, and two members due to the demised of two other members the previous year who were not replaced.¹⁷¹ The staffing levels reverted to what was experienced in 2002 when the Executive Secretary remained alone. This so happened when the typist went on leave and eventually was transferred back to the Ministry of Home Affairs together with the driver while the cleaner went for greener pastures as donor funds on which she was paid run out. Again the Secretary operated single handedly.¹⁷²

5.0.6 CONSTRAINTS AND CASES HANDLED

Accommodation for the Authority remained a problem as they had to move from Kabulonga due to increased rentals forcing them to relocate to another rented property.¹⁷³ As for transport the

¹⁷⁰ 2004/HP/0609

¹⁷¹ PPCA Annual Report 2004 p.2.

¹⁷² Ibid

¹⁷³ Ibid

Authority received a donated motor vehicle which added to the one already in existence. Funding had not improved and only saw K152, 154,000 released out of K314 million. It is adversely affected most activities. However, the American Embassy donated \$50,000 in form of public awareness, education materials, radio and TV advertisements.

Complaints received in the year under review came from different parts of the country. 178 cases were heard and 14 were concluded and three officers were dismissed from the Zambia Police while six were disciplined by the Inspector –General of Police. Twenty seven police officers were cleared of allegations leveled against them.¹⁷⁴ Public awareness was held in form of drama in Ndola, Solwezi, Mongu, Lusaka, Kasama and Mansa with a total of twenty two performances to police officers and the general public. The Authority also conducted a seminar for Senior Police Officers in Siavonga from 8th to 13th November 2004. Also three sensitized workshops were held in Ndola, Kitwe and Chisamba.¹⁷⁵

5.0.7 THE OPERATIONS OF THE AUTHORITY IN 2005

In this period the numbers for members increased to four after a Vice-Chairperson was appointed. The number of support staff went back to four as in 2003 due to replacements which were made.¹⁷⁶ In terms of accommodation, the Authority in July 2005 moved to its present location at Kent Building a government complex provided by the Ministry of Works and Supply. Transport improved as three new 4 x 4 vehicles were purchased. In terms of funds K1,224,452,407 was released. Funding was changed as grant aided though through the Ministry

¹⁷⁴ See Appendix 2 table 1.2

¹⁷⁵ Supra note 172

¹⁷⁶ PPCA Annual Report 2005 p. 2.

of Home Affairs. In this year, 380 complaints were received and eighty two were concluded. 31 police officers were cleared of allegations and eight were disciplined by the Inspector-General while one officer was dismissed for assaulting an inmate.¹⁷⁷

During the year the Authority conducted sensitization workshop for Members of Parliament at Mulungushi International Conference Centre. Another workshop was conducted for police officers. A public awareness campaign in Chipata was conducted with five drama performances to police officers and general public through Radio phoning in program in English ¹⁷⁸ and advertising activities in the provinces. By the end of the year only one sitting took place due to non availability of members as their membership had not been renewed after a three year term had elapsed.¹⁷⁹

5.0.8 THE AUTHORITY IN 2006

The composition of the Authority in 2006 came back to normal with five members. In terms of staff, the number increased and included the Executive Secretary, data entry operator, typist, registry clerk, cleaner and driver.¹⁸⁰

Transport increased to five vehicles while funding slightly increased with a grant allocation through Ministry of Finance of K1,304,041,821¹⁸¹. Complaints received were 267 from all provinces. 210 complaints were received and 54 decisions were made, 16 of the concluded case

¹⁷⁷ See Appendix 2 table 1.3

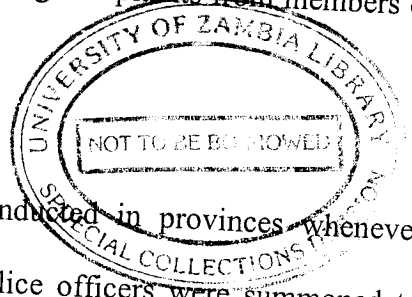
¹⁷⁸ Supra note 175 p.3

¹⁷⁹ Ibid

¹⁸⁰ PPCA Annual Report 2006 p.2 - 3

¹⁸¹ Ibid

were for the year 2006 and the rest for the previous year.¹⁸² There were no dismissals but it was recommended that ten police officer be reprimanded for unprofessional conduct, while fifty police officers were cleared of allegations against them.¹⁸³ Activities taken in this period included visiting Western, Lusaka, Central and Southern provinces in which the Authority had an opportunity to meet District Commissioners. Local authorities and police officers in District of provinces were visited to sensitize them on the provision of the amended Act No. 14 of 1999 for them to understand how to go about their duties concerning the members of the public. The Authority could not conduct sittings when they visited the provinces because members had to divide themselves.¹⁸⁴ This notably confirms the fact that the composition of the Authority is very small. However, in December, 2006 the Authority visited the Copperbelt province to conduct sittings in the area to dispose off some of the outstanding complaints from members of the public.¹⁸⁵



The Authority resolved that in future, sittings will be conducted in provinces whenever sensitization meetings were being held, because whenever police officers were summoned to come to the Authority, they failed since the police Service Headquarters had no provision for lodging and transport arrangements, hence it was only logical for the Authority to conduct sittings in provinces.¹⁸⁶

In 2006, the Authority had distributed brochures to all the provinces and advertised on Zambia National Broadcasting Corporation television on the location of the Authority as well as the

¹⁸² See Appendix 2 table 1.4

¹⁸³ Supra note 180

¹⁸⁴ Ibid p.5

¹⁸⁵ Ibid

¹⁸⁶ Ibid

phone in programme was another element of sensitization of members of the public.¹⁸⁷ From 2007 to date no annual report was produced as the reporting system was changed as earlier alluded to and as such information could not be found from the misplaced draft at the Authority.

5.0.9 HOW THE AUTHORITY INVESTIGATE CASES

Having looked at similar watchdog institutions including the Permanent Human Rights Commission in Zambia, it is clear from their organization structures and the law governing them that they provide for an investigation department. This entails that, there are officers within the institution who when a complaint is made they make a formal inquiry. This therefore, always and gives an opportunity to the institution to get the best of information in order to make proper findings and subsequently make relevant submissions and recommendations to the necessary institutions. In the case of the Authority in Zambia, this is not the case as the Act,¹⁸⁸ is silent on the issue and the structure does not provide for such department. What happens is that, when a complaint is received the members together with the Secretary after determining that a matter is a proper one, they summon witnesses and request for relevant documents and hear the case. This way of doing things can not bring the desired results as people summoned may only bring documents which may favour their case. An investigation is a skill hence it needs people who are trained in order to achieve the best results sought. During an interview with the Chairperson at the Authority¹⁸⁹ he agreed that this was a serious flaw that the institution needs to address in order to make for better results.

¹⁸⁷ Ibid

¹⁸⁸ Supra note 164 interview

¹⁸⁹ Interview: face to face oral interview held on 4/01/2010 with Francis. Ndhlovu, Chairman Police Public Complaints Authority

5.0.1.0 FAILURE FOR THE AUTHORITY TO PROMPTLY CONCLUDE COMPLAINTS ON TIME

It has been reviewed through the annual reports that during each year of operation very few cases were concluded by the Authority. This of course was as a result of fewer visits to different parts of the country to follow up complaints. For example, in the year 2005 only one sitting was conducted due to non availability of members as their membership had not been renewed or new fresh appointments were made.¹⁹⁰ This is very unfortunate and disheartening for an institution so important not to function because one individual in the name of the Minister of Home Affairs who is vested with powers to appoint members could not do his job.¹⁹¹ Apart from this situation in all the years under review including 2007 to 2009, the issues of inadequate funding, staffing levels and transport have been cited as factors which have hampered the performance of the Authority and added to its failure to conclude cases on schedule. While the Authority gives a time limit of two years,¹⁹² within which complaints can be lodged, it does not otherwise give a time frame when such a complaint can be expected to be concluded.

5.0.1.1 LACK OF SUFFICIENT INFORMATION AND KNOWLEDGE BY COMPLAINANTS ON PROCEDURES FOR LODGING COMPLAINTS AND REMEDIES EXPECTED

During the research, it was discussed that many of the members of the public lack information and knowledge on the existence of the Authority. This was discovered when random oral interviews were administered around Lusaka to 100 people. Those interviewed consisted of businessmen, employees of government and private companies, bus drivers and passengers alike

¹⁹⁰ Supra note 178

¹⁹¹ Supra note 50

¹⁹² Supra note 85 sec 57 I(i)

and marketers at Matero, Chawama and city market. Out of those interviewed, 75 percent of the people interviewed indicated that they did not know about this institution. However, the 15 percent who knew about it did not know where it was housed and that they did not know the nature of complaints dealt with and how to lodge such complaints. If this is how ignorant people may be about the institution in Lusaka what about in far frang areas where the Authority can not reach. This position attest to the few cases reported and dealt with by the Authority amounting only to 1443 since inception in 2002 to 2006 a period of five years for the whole country.

5.0.1.2 LACK OF COMMUNICATION BETWEEN THE AUTHORITY AND COMPLAINANTS

This is another problem that exists and that it is a serious one and has inhibited the operations of the Authority. Communication is done through letters that are sent to the complainants. However, according to the Secretary at the Authority,¹⁹³ she confessed that though this is done, it sometimes takes time to send these letters due to the stifled budget which is as little as has been highlighted in the annual reports. In other instances, communication is only made when the Authority has traveled to a particular area for other duties. On the other hand once complainants have presented their cases and they have been heard, they sit and wait and do not make any follow ups as they experience various problems more so if they come from places far from Lusaka. For many once they have been heard they feel they have done their part and what remains is for the Authority to do theirs also.¹⁹⁴

¹⁹³ Supra note 80

¹⁹⁴ Ibid

5.0.1.3 EFFECTIVENESS AND INADEQUACY OF THE LAW (AMENDMENT) ACT NO. 14 OF 1999

The enactment of the (Amendment) Act No. 14 of 1999¹⁹⁵ has not shown enough force in helping the Authority to effective by enhancing and securing individual fundamental human rights and freedoms of members of the public from police abuse. The sensitization of partners, general public, other stake holders, receiving of complaints against police human rights abuses investigating abuses, making directives and recommendations to relevant bodies has not been fully achieved.¹⁹⁶ As has been alluded to already, the Authority operates as a department of the Ministry of Home Affairs and that it lacks independence as appointments of the members and the Secretary is done by the Minister alone.

It is evident that, even when the Authority's mission statement subscribes to the investigation of human rights abuses by the police, neither the (Amendment) Act nor its organization structure provides for an investigation unit or investigators to perform this duty. Hence one wonders whether hearing a complaint amounts to an investigations.

It is also not clear as to who determines what the budget for the Authority should be, as it is financed through grant aid from the Ministry of Finance through the Ministry of Home Affairs. The other aspect is that, the Authority has no position of financial officer and one wonders how finances are accounted and budgeted for especially so that they are not even adequate. Clearly this is a very serious lapse in the organization structure. Also to be noted is that, while an

¹⁹⁵ Supra note 187

¹⁹⁶ Ibid

attempt has been made by the Act,¹⁹⁷ to extend the reporting centres to include Local Authorities and Police Stations no serious intentions has been provided to create satellite officers with officers from the Authority. It is evident that, the Act does not give any obligation on the Principal Officer at the local Authority to receive the complaints. Worse still, making of complaints against the police through the Inspector-General or officer in charge of police stations or posts would defeat the purpose of the Authority as this will endorse the traditional way of dealing with complaints against police which failed as the police could not pursue their own brethren. Like it was reported in the newspaper that, negative attitude by police worries the (PPCA). The (PPCA) has expressed concern at the attitude of some senior police officers in Western province against the Authority while these are not the only views observed. It is true to a large extent that both the police and the public alike do not know well the legislation that established the Authority¹⁹⁸ and this has contributed greatly to its ineffectiveness.

5.0.1.4 CONCLUSION

This chapter has given a wide discussion which includes a look at other jurisdictions in terms of watchdog institutions against the police such, as the Independent Police Complaints Commission, Independent Complaints Directorate and the Independent Police Conduct Authority.

Also discussed was the Permanent Human Rights Commission in Zambia. An in depth analysis of the Police Public Complaints Authority has been made using the Annual Reports. Some of the issues leading to the ineffectiveness of the Authority have been discussed and some gaps that are in the Act establishing the Authority identified.

¹⁹⁷ Supra note 66

¹⁹⁸ Times of Zambia, June 22, 2004

CHAPTER SIX

CONCLUSIONS AND RECOMMENDATIONS

6.0.0 INTRODUCTION

This chapter wraps up the research findings by spreading out the cardinal issues and subjecting them to a critique and also comparison with other jurisdictions with similar watchdog institutions like the Police Public Complaints Authority. The chapter is completed by recommendations for future improvements to the current legal system. The research paper has laid out the research as it was empirically obscured and understood.

6.0.1 CONCLUSIONS

This section of the research paper attempts to lay down the findings of the research in a manner as objective as possible. The findings in this research and conclusions as they follow were personally investigated and researched by the author. In most errands to the Authority and Ministry of Home Affairs, the author discovered that the people targeted for interviews were difficult to find and did not have enough time to share their experiences, disclose information and even fill in the questionnaire. This was due to their perpetual busy schedules, as they were mostly reported out of office for other official duties. However, with the help of all the Annual Reports and minimal meetings with the Secretary of the Authority who was the first Executive Secretary involved in starting up the operation of the Authority, she understood my research objectives and was very helpful and made this research smooth and interesting. In setting out the conclusion and recommendations, the author wish to state all the sentiments presented in this research paper and the analysis of issues was and still is according to the happenings and particular situation at the time of the research.

6.0.2 AN ANALYSIS OF THE LAW REGULATING THE OPERATIONS OF THE AUTHORITY

In Zambia, the law regulating the operation of the Authority in monitoring and overseeing the operations of the Zambia Police Service to secure individual fundamental human rights and freedoms from police abuse and to see a reformed police service is the Zambia Police (Amendment) Act No. 14 of 1999 and No. 15 of 2008.¹⁹⁹ The instruments examined in this paper do recognize that in order to have a strong watchdog institution to oversee the operations of the police. It is important to have an independent institution. It holds true that, an institution operating within the police circles can not perform a watchdog role perfectly, as it can not investigate its own brethren. Therefore, it is right that an institution well independent from the police service performs this duty. It is inevitable to say that civilian oversight or review of police action is a relatively new phenomenon and is still evolving in many jurisdictions. Attention has been put in creating such institutions and sustaining their work.²⁰⁰ In Zambia the Act under section 57B establishes the Authority. The power to monitor and provide oversight to the police service is provided in section 57 G (1). Under this section, the functions of the Authority are tabulated as: -

- (i) To receive all complaints against police action;
- (ii) To investigate all complaints against police actions which may result in serious injury or death?

These two provisions do not however clearly bring out the circumstances of what these police actions are. For example, Do these include commissions or omissions and hence in what nature and form. In other jurisdiction like the United Kingdom and South African, the Acts creating

¹⁹⁹ Supra note 86

²⁰⁰ www.humanrightsinitiative.org.progr...

these institutions specifically indicates what and what not amounts to actions by police on which complaints can be brought. For instance, if an area is not adequately patrolled residents there from can not make a complaint as this can be dealt with as an administrative matter for the police.

It is also important to note that,²⁰¹ Act No. 14 of 1999 was not clear in section 57 G (1) (c) when it purported to give power to the Authority to submit its findings, recommendations and directions to the Director of Public Prosecutions and the Anti-Corruption Commission. Clearly the office of Director of Public Prosecutions can not be subject of any person or institution as is enshrined in the Constitution. On the part of the Anti-Corruption Commission, this can not be envisaged as to how possible this could work as the Commission independently investigates and prosecutes its own cases. The simple reason is that, according to the nature of complaints the Authority is mandated to receive though not clear nothing is in the realm of the Anti-Corruption Commission. This however, was resolved when the Zambia Police (Amendment) Act of No. 14 of 1999 was subsequently amended by Act No. 15 of 2008.

The Act, in section 57 also provides that the Authority shall investigate all complaints. Complaints referred to here are those in section 57G which unfortunately are not clear.

²⁰¹ Supra note 198

6.0.3 THE WEAKNESS OF THE LAW REGULATING THE AUTHORITY'S OPERATIONS.

Although there is the Zambia Police (Amendment) Acts of No. 14 of 1999 and 15 of 2008 governing the operations of the Authority in the country. It is evident from the research that there are missing links in the Acts. While the Act, tabulates police actions against which complaints can be made, these are too general and do not afford police officers and members of the public specific matters on which to guard and complain against. In other jurisdictions alluded to in the research these are specifically tabulated. This therefore creates a gap in the law in the sense that, it is unclear on very pertinent issues for which the Act was promulgated. For example, the South Africa Independent Complaints Directorate has a list of offences for which a member of the public can lodge a complaint such as death in police custody or assault. The other inadequacies or gaps in the Acts are that, while the Act subscribes to the fact that it can carry out investigations, the organization structure does not provide for such unit. In any case the Authority does not have its own investigators as it so happens in other jurisdictions as alluded to earlier.

Apart from the above gaps noted, the following issue also lacks in the law. While the Act talks of powers to investigate complaints, there is no corresponding power for the Authority to initiate its own investigations without necessarily waiting for a complaint. This can not be the spirit of an institution which aims to provide an oversight on another powerful institution of government like the police. Comparing this to other jurisdictions and the Permanent Human Rights Commission in Zambia this power is in the preserve of the institution. While it is important to note that the Act empowers the Authority to submit its findings and recommendations under the amendment

Act No. 15 of 2008. There is no mechanism put in place to ensure follow ups and monitoring as to whether these findings and recommendations are adhered to. In any case recommendations sent to the Permanent Secretary Ministry of Home Affairs and the Inspector -General may land on deaf ears as they supervise the police officers against whom such complaints are made and hence they may have interests of their own to serve. From this analysis it is concluded that Zambia lacks a comprehensive statute to enhance and enforce the watchdog mandate adequate enough to minimise and defend human rights abuses against the public.

6.0.4 THE POLICE PUBLIC COMPLAINTS AUTHORITY NOT YET A STABLE WATCHDOG

It has been discovered in the research that there are gaps in the Act which makes the operations of the Authority ineffective. The other problem noticed is that the Authority has not been considered to be very important. This is so because, during the research it was discovered that, even after the death of two members in April and July, of 2003 no replacements were made. This is a serious problem because the only person who makes appointments is the Minister and he runs the show alone. As for the United Kingdom, the Independent Police Complaints Commission is overseen by a board of 12 commissioners who are appointed by the Home Secretary.

The other problem which the Authority faces is that, it has no recommended organization structure. This was noticed from the Annual Reports of 2002 to 2006 where staff levels kept on fluctuating. As a result at certain times the Executive Secretary had to run the Authority single handedly. According to the last Annual Report of 2006, staff numbers were raised up to 6. Also

of importance to note is that during the research, annual reports for the period alluded to and interviews conducted with the Executive Secretary revealed that, the same constraints have been experienced year in and year out since inception. Prominent among them are:

- (i) Lack of adequate funding to provide for the operations to be successfully accomplished
- (ii) The need to have adequate staff to perform day to day operations of the Authority which should include both administrative and technical staff.
- (iii) Lack of operational guidelines.

With these constraints running through and through no organization can operate effectively so is the case with the Authority under study.

The other problem alluded to in the annual reports is that, when officers are summoned to the Authority, they find it difficult to come because of costs and lodging as the police has no such facility? This was also echoed by the Chairman of the Authority Mr. Ndhlovu when they toured Namwala in Southern Province when he said; this is also an opportunity for the delegation to familiarize itself with the environment in which police officers operate. We are aware that it can be difficult for our officer's and members of the public to travel when they are summoned over a complaint. That's why we have to travel.²⁰²

6.0.5 RECOMMENDATIONS

Having highlighted various problems facing the Police Public Complaints Authority in its operations as a watchdog institution over the police service, it is the wish of the author of this research paper to recommend a few key things that are seen to be relaxed and should be

²⁰² Zambia Daily Mail 201 January 2010

strengthened to enhance the law dealing with the operation of the Authority in Zambia, so that both the Authority, police officers and members of the public are clear and legally handled. Therefore the law must be sufficient and easy to understand.

6.0.6 THE ZAMBIA POLICE (AMENDMENT) ACT OF NO. 14 OF 1999

In order to have an effective and efficient system it is important to have proper and sound guidelines. Therefore, an independent and effective police complaints system is of fundamental importance for operation of a democratic accountable police service. Independent and effective determination enhances public trust and confidence and ensures that there is no impunity for misconduct or ill-treatment. For this reason therefore, there is need to make the Authority in Zambia independent by amending the Act to allow the Minister to appoint a board which should run the Authority. As it stands, the Authority is solely run by the Secretary who has a very lean staff structure. As opposed to the United Kingdom and South African the institutions are run by boards and this is to allow for some independence though it is not full independence as the government still finances the institutions. While the issue of independence is cardinal, the Act empowering the Authority should also be streamlined especially in terms of providing clear explanation of cases against which complaints can be made against the police. Therefore, section 57 G (1) should be enhanced in paragraph (a) and (b).

On the other hand, the law should be re-visited in order to allow the Authority to initiate its own investigations. This is important in that, it is not all people who may be aware of the existence of the Authority and have the means to make complaints. Besides, if the Authority has to show its independence and that "it has teeth to bit" it should be able to certainly initiate its own

investigations. This situation is seen in other jurisdictions including our own Human Rights Commission.

6.0.7 QUALITIES OF A GOOD POLICE COMPLAINTS AUTHORITY

As has been alluded to already, a good complaints Authority should have a structured process for on going scrutiny oversight of complaints. It should be understood, open and accessible. The Authority should be independent, meaning there should be no institutional or hierarchal connection between the investigation and the officer complained against and there should be practical independence.

Adequacy of investigations entails that there should be capacity of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible. It also has to be prompt meaning that investigations should be concluded promptly and in an expeditious manner in order to maintain confidence in the rule of law. Clearly, enough has to be done in terms of the law and administrative arrangement of the Authority. As it stands, the Authority can be termed to be a “toothless bulldog” as abuses have increased and are continued to be committed by the police.

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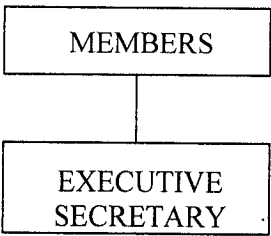
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APPENDIX 1

Table 1
Organization Structure for 2002



During the period under review the Authority did not hear any complaints because only one complaint was received

Table 1.1
Organization Structure for 2003

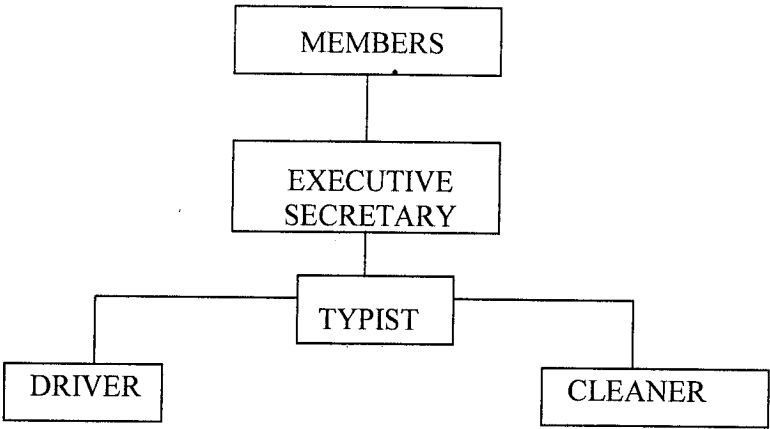


Table 1.2
Organization Structure for 2004

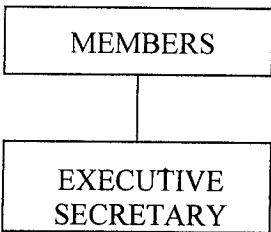


Table 1.3
Organization Structure for 2005

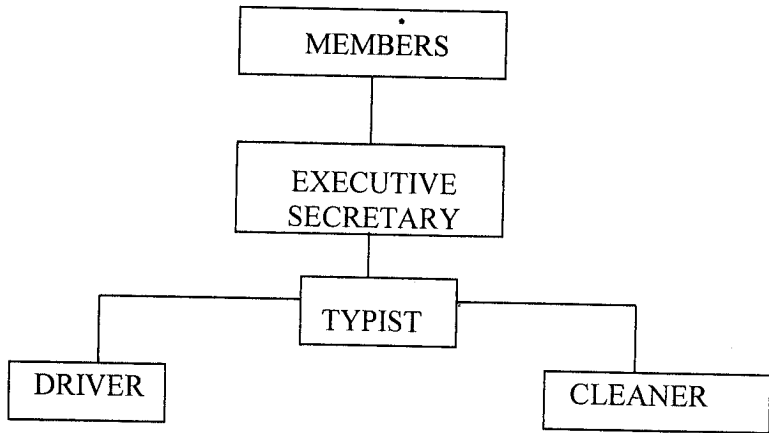
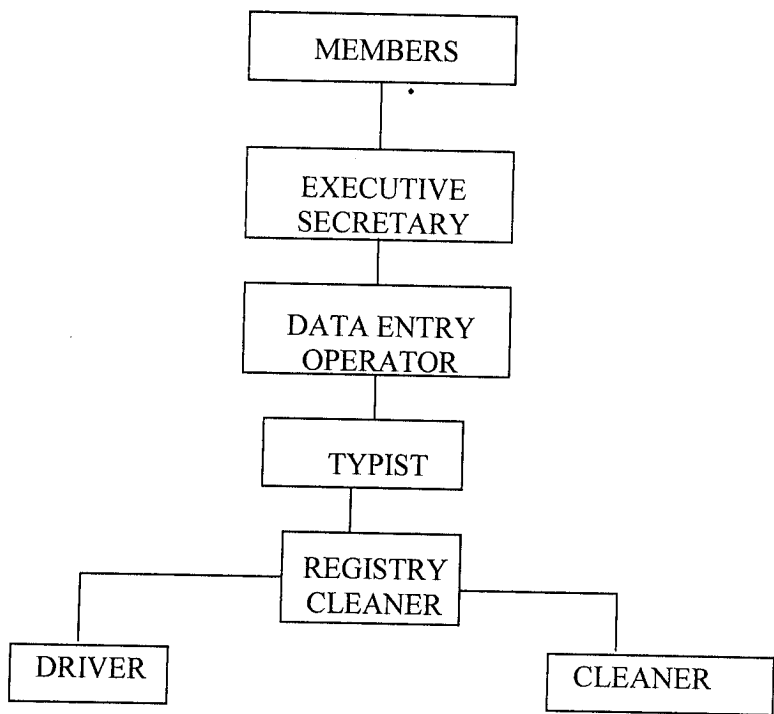


Table 1.4
Organization Structure for 2006



Source: Police Public Complaints Authority Annual Reports 2002-2006

APPENDIX 2

Table 1 2003

Nature of cases	No. of complaints received	Pending	Finalized
Unlawful detention	83	76	7
Brutality / Torture	56	45	11
Debt collection	8	7	1
Police inaction	45	35	10
Unprofessional conduct	138	101	37
Abuse of Authority	32	19	13
Death in police custody	7	4	3
Total	369	287	82

Table 1.2 2004

Nature of cases	No. of complaints received	Referred	Pending	Finalized
Unlawful detention	171	7	161	3
Brutality / Torture	49		47	2
Debt collection	15		15	0
Police inaction	14		13	1
Unprofessional conduct	128	8	115	5
Abuse of Authority	37	3	31	3
Death in police custody	3		3	0
Total	417	18	385	14

Table 1.3 2005

Nature of cases	No. of complaints received	Referred	Pending	Finalized
Unlawful detention	141	1	133	7
Brutality / Torture	37	0	36	1
Debt collection	21	0	20	1
Police inaction	13	1	1	20
Unprofessional conduct	140	1	135	4
Abuse of Authority	23	1	21	1
Death in police custody	5	0	5	0
Total	380		362	14

Table 1.4 2006

Nature of cases	No. of complaints received	Pending	Finalized
Unlawful detention	83	80	3
Brutality / Torture	40	38	2
Debt collection	18	16	2
Police inaction	15	15	0
Unprofessional conduct	100	91	9
Abuse of Authority	11	11	0
Death in police custody	0	0	0
Total	267	251	16

Source: Police Public Complaints Authority Annual Reports 2002-2006