

POLICE AND PUBLIC ORDER WITH PARTICULAR  
REFERENCE TO ZAMBIA

BY

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POLICE AND PUBLIC ORDER WITH PARTICULAR REFERENCE TO  
ZAMBIA

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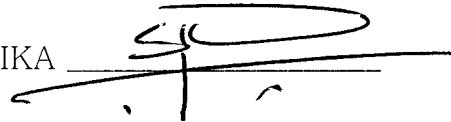
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## DEDICATIONS

This essay is dedicated to Fr. John Joseph Braun (Dadjo).

You have showed me the true meaning of life, love and friendship. You will never know just how much your life challenges me and how much I want to be like you. I will always try to sincerely follow what you have taught me. You are black like me.

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The most ambitious and hard working woman I have ever had the fortune of knowing. I will always be your son.

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You will always be wonderful. Keep your dreams burning and may the good Lord bless you all.

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To all you and many more who have rendered help in one way or another, I say thanks and, may God bless Zambia.

**David Given Simusamba**  
**November, 2004**

## **ABSTRACT**

This essay considers police and public order in a democracy. It seeks to identify the role of the police in a democracy, placing particular emphasis on matters regarding public peace and tranquility.

The essay argues that police have been abused and have themselves abused democratic rights of citizens especially on matters pertaining to public order. It has also identified some of the causes and effects of those abuses in Zambia and have suggested means and ways through which these issues can be adequately addressed. The essay concludes that notwithstanding all the vices identified therein, some degree of order and control is necessary for freedom to be meaningful in any society.

## **PREFACE**

The subject I have undertaken to write on have taken a centre stage in the politics of the emerging democracy in Zambia. Democracy whether viewed as a process or an end condition, is defined by broad values involving participation and the rule of law. Although there is no widely agreed upon definition of a democratic police, at least all democratic police systems share the idea that police powers are to be used according to the rule of law and not according to the whims of the ruler or the police agent. In fact, the apposite of this is perhaps the very definition of a non-democratic society.

In Zambia, like in most emerging democracies however, the problem has been how to use police powers in a more restrained fashion, or in other words how to use police in a more accountable and rule of law oriented.

Generally speaking, the instances where police have brutally murdered or, treated or, have interrupted a public procession or gathering with uncalled for brutality are numerous. To this end, the questions that need obvious answers are that what is the relationship between the police and public order? What is the role of the police in a democracy? Are there parameters for the police in maintaining public order? What are the causes and effects of police violation of liberties in a democracy? Are there any lasting solutions to ensure the proper role of the police in a democratic state?

These are the questions that this essay will attempt to answer. The essay is divided into five chapters. Chapter one examines the legislation on public order in Zambia and chapter two looks at the role of the police in a democracy. Chapter three examines the Zambian experience of police and public order while chapter four looks at the causes and effects of the issues that have been raised in chapter three. Chapter five give a summary, conclusion and

recommendations. It is my sincere hope that this paper will greatly contribute to the understanding of the role of police in a democracy especially on matters regarding public order and; what needs to be done in order that democracy may be preserved.

Finally, let me mention here that the fact that police abuse remains a significant problem in Zambia today does not mean there has been no progress. As shall be seen in chapter three the courts and the communities throughout the country have relentlessly tried to bring about change. This essay, therefore, was not inspired by, nor is it intended to generate animosity towards the police, or to promote the perception that all police officers are prone to abuse. They are not. Rather, it arose out of my realization that ultimately, it will take a strong and sustained effort by the courts, NGOs, community at large, and the government itself to bring about real and lasting reform. And it is to those efforts that the views in this essay are dedicated.

**David Given Simusamba**  
**UNZA,**  
**November, 2004**

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## **CHAPTER ONE**

### **OVERVIEW OF LEGISLATION ON PUBLIC ORDER**

#### **INTRODUCTION**

In this chapter, the author will reveal some of the legislation on matters regarding Public Order in Zambia starting with the Constitutional<sup>1</sup> provisions through the Penal Code Act<sup>2</sup> provisions and the Public Order Act<sup>3</sup> and its evolution.

#### **CONSTITUTIONAL PROVISIONS**

The Constitutional provisions regarding matters of Public Order can be found under Articles 20; 21; 30 and 104 of the Constitution.

Article 20 guarantees freedom of expression and this encompasses freedom to hold opinions without interference; freedom to receive ideas and information without interference, whether the communication be to the public generally or to any person or class of persons; and freedom from interference with his correspondence.

Article 21 guarantees freedom of Assembly and Association and defines it as the right to assemble freely and associate with other persons and in particular to

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<sup>1</sup> The Constitution of Zambia, Cap 1 of the Laws of Zambia

<sup>2</sup> The Penal Code Act, Cap 87 of the Laws of Zambia

<sup>3</sup> The Public Order Act, Cap 113 of the Laws of Zambia

form or belong to any Political party, Trade Union or other association for the protection of one's interest.

Article 30 provides for the declaration of public emergency under which, the President may declare a state of emergency whereas Article 104, inter alia, empowers the Police to preserve law and order.

It appears that there are enough provisions in the Constitution regarding matters of Public Order. The interesting thing to note however, and of particular importance to this paper, is that the rights guaranteed under the bill of rights in general, are not absolute. Indeed they need not be. Uncontrolled liberty can be the very definition of anarchy and disorder and can lead to the infringement of the rights of others. The Constitution therefore attempts to strike a balance between individual liberty and social control.<sup>4</sup>

The balance between individual liberty and social control that the Constitution attempts to strike is what is of particular importance to this paper as it has been the subject of abuse from time to time. For example, it was upon Articles 20 and 21 that the Supreme Court in the case of *Christine Mulundika and Others v. The*

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<sup>4</sup> It does this by qualifying the rights. For example articles 20(3)(a) and 21(a) provide that "nothing contained in or done under the authority of any law shall be held to inconsistent with or in contravention of this article to the extent that it is shown that the law in question makes provision reasonably required...in the interest of Defense, Public safety, Public order, Public morality and Public health...and except so far as that provision or, the thing done under the authority thereof as the case may be is shown to be reasonably justifiable in a democratic society.

Attorney General<sup>5</sup> declared certain Sections<sup>6</sup> of the Public Order Act<sup>7</sup> unconstitutional.

## **THE PENAL CODE ACT<sup>8</sup>**

The Penal Code provisions on Public Order can be found under Part II – Crimes Division I (Offences against Public Order) of the Act. This division contains three Chapters<sup>9</sup> with a total of fifty-one sections<sup>10</sup> each dealing with one or the other type of offences against Public Order. Chapter VII deals with treason and other offences and has a total of twenty-eight sections<sup>11</sup> including treason,<sup>12</sup> aiding soldiers or Police in acts of mutiny<sup>13</sup> and publication of false news with intent to cause fear and alarm to the public.<sup>14</sup> Chapter VIII deals with offences affecting relations with foreign states and external tranquillity and has a total of three sections.<sup>15</sup> Chapter IX deals with unlawful Assemblies, riots and other offences against public tranquillity and has a total of twenty sections<sup>16</sup> including punishment of unlawful assembly<sup>17</sup> and Punishment of riot<sup>18</sup>.

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<sup>5</sup> (1995-1997) ZR. 20

<sup>6</sup> *ibid*

<sup>7</sup> Cap 113 of the Laws of Zambia

<sup>8</sup> Cap 87 of the Laws of Zambia

<sup>9</sup> *ibid*, Chapter VII, VIII and IX

<sup>10</sup> *ibid*, from Section 43-93

<sup>11</sup> *ibid*, Section 43-70. Section 47 has been repealed by Act No. 35 of 1973

<sup>12</sup> *ibid*, Section 43

<sup>13</sup> *ibid*, Section 49

<sup>14</sup> *ibid*, Section 67

<sup>15</sup> *ibid*, Section 71-73

<sup>16</sup> *ibid*, Section 74-93

<sup>17</sup> *ibid*, Section 75

<sup>18</sup> *ibid*, Section 76

The sections under this division of the Act deals with offences against Public Order of one type or the other with Punishments ranging from fines<sup>19</sup> to death.<sup>20</sup> Suffice to say here that there are enough criminal laws regarding matters of public order.

## THE PUBLIC ORDER ACT AND ITS EVOLUTION

The Public Order Act which regulates public assemblies<sup>21</sup> can be traced back to the English Public Order Act of 1936 which was developed as a response to the rise of the fascists in England and their Brown shirt demonstrations. The original Public Order Act of 1936 prohibited "Quasi-Military organisations" and outlawed the actions of any one trying to usurp the functions of the Police and armed forces.<sup>22</sup>

On August 19, 1955<sup>23</sup> the Northern Rhodesia (Zambia prior to 1964) Public Order Ordinance<sup>24</sup> was passed. The interesting thing to note, however, is that there was no provision on the issuing of permits for public assemblies and processions<sup>25</sup> in the original ordinance. "The Ordinance was concerned with prohibiting the wearing of uniforms in connection with political objects<sup>26</sup> and

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<sup>19</sup>ibid, Section 57 of the Act

<sup>20</sup>ibid, Section 43 of the Act

<sup>21</sup> See Cap. 113 of the Laws of Zambia

<sup>22</sup> Hansard (NO. 85) 5 July -19 August 1955. p.10

<sup>23</sup> Law was passed despite massive objections in the legislative Council by African representatives.

<sup>24</sup> Northern Rhodesia Public Order Ordinance of 1955

<sup>25</sup> See ibid, see also the case of Christine Mulundika and Others v. The Attorney General (1995-1997) ZR p.20-24

<sup>26</sup> section 3

prohibiting quasi-military organisations;<sup>27</sup> the carrying of weapons at Public meetings and processions and;<sup>28</sup> prohibiting the promotion of hostility between sections of the community<sup>29</sup> and similar matters.”<sup>30</sup> The question of Police permits and public assemblies and processions however, was governed by the Northern Rhodesia Police Ordinance.<sup>31</sup>

### **THE NORTHERN RHODESIA POLICE ORDINANCE, 1953**

As earlier said, matters regarding public assemblies and processions were governed by the Northern Rhodesia Police Ordinance<sup>32</sup> (NRPO) and it was practically the first colonial legislation to regulate assemblies or processions of any kind. “Section 28(1) of the NRPO allowed an officer to issue orders for the purpose of: (a), regulating the extent to which music may be played on public roads or streets on the occasion of festivities or ceremonies and; (b), directing the conduct of assemblies and processions on public roads or streets, and the route by which to proceed and the times at which any procession may pass.”<sup>33</sup> Clause 28(2) of the NRPO provided that “any person who wishes to convene an assembly or form a procession, on a public road or street shall first make application for a permit in that behalf to the officer in charge of police and if such officer is satisfied that such assembly or procession is unlikely to cause a

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<sup>27</sup> section 4

<sup>28</sup> section 5

<sup>29</sup> section 8

<sup>30</sup> see Northern Rhodesia Public order Ordinance

<sup>31</sup> No. 5 of 1953

<sup>32</sup> ibid

<sup>33</sup> Northern Rhodesia Police ordinance; see also Ruedisili, S., Zambia’s Elusive search for a valid Public Order Act: An appraisal, in: **Zambia Law Journal**. Vol. 25-28, 1993-96. p. 3-14

breach of the peace, he shall issue a permit in writing specifying the name of the Person to whom it is granted and the condition on which the assembly or procession may take place.”<sup>34</sup> Clause 30 made illegal any unauthorised assemblies and described “assembly” as “three or more persons taking part” in such activities, (Section 30(b)).<sup>35</sup>

### **NORTHERN RHODESIA PUBLIC ORDER ORDINANCE, 1955**

The Public Order Ordinance was originally introduced on 5<sup>th</sup> July, 1955, by the Governor of Northern Rhodesia, Evelyn Hone, as a “...bill designed to contribute towards public confidence, and towards ensuring that the rights of individuals are exercised without the infringement of the rights of others....”<sup>36</sup> The alleged goal of the bill was “to circumvent those who wish to create a breach of the Peace, or to take unto themselves powers of control which rest properly in the hands of government”.<sup>37</sup>

The thingly veiled reason for the introduction of this bill was to control the indigenous Africans who were struggling for independence against their British Colonial rulers. The Public Order Ordinance also served to reassure the white settlers that the government would hold the African nationalist leaders responsible for unruly pro-independence demonstrations.<sup>38</sup>

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<sup>34</sup> *ibid*

<sup>35</sup> *ibid*

<sup>36</sup> Hansard (No. 85) 5 July-19 August 1955 at 10

<sup>37</sup> Ruedisili, S. *op.cit.* p.6.

<sup>38</sup> *ibid*

The bill itself consisted of ten clauses. Section 1 entitled the Act, while Section 2 defined the words, “meeting”, “native location”, “public meeting”, “public place”, “public procession”, and “uniform”. Section 3 prohibited “the wearing of uniforms or the display of flags signifying association with the promotion of political objects” while section 4 prohibited quasi-military organisations. Section 5 prohibited weapons at public meetings and procession and section 6 forbade offensive conduct conducive to breaches of the peace. Section 7 outlined the powers of the Governor for the preservation of the Public Order including a banning of all meetings or processions in any area for up to three months. Section 8 penalised any person who tried to promote hostility between the tribes while Section 9 penalised people who incite others to strike under certain circumstances. Finally, Section 10 provided penalties of up to two years imprisonment and fines of up to £500 for violations of Section 4, Penalties of up to three months in jail and fines of up to £50 for violations of any other Section of the Ordinance. Further, a Police was given power to arrest without warrant any person suspected of committing an offence under Sections 3; 5; 6 and; 7.<sup>39</sup>

It is worth mentioning here that the bill received mass objections from the only three African Members in the Legislative Council. Mr. Nabulyato saw no need for the bill and observed that it was only going to further the interest of government rather than the general populace. Mr. Sikota thought that the bill

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<sup>39</sup> see The Public Order Ordinance Bill of 1955; see also Zambia law Journal op.cit. p. 7.

was only to combat the political views of the African people and warned that there will be more laws according to what the government sees the people are doing in the country and as such the democracy will not be applicable.<sup>40</sup> Despite all the objections, the bill was finally passed into Law on August 18, 1955.

## **THE 1959 AMENDMENTS**

There were two major changes to the Public Order Ordinance in 1959 all targeted at preventing the growing African independence resistance movements in Zambia.<sup>41</sup> The reasons for the 1959 amendments were to transfer certain provisions from the Northern Rhodesia Police Ordinance to the Public Order Ordinance<sup>42</sup> in the process strengthening the hand of the colonial government.<sup>43</sup>

The 1959 amendments conferred more powers on the regulating officer in that he now had to specify conditions he deemed necessary to the holding of any procession or assembly as long as they were "for the preservation of Public Peace and order"<sup>44</sup>. This provision required any person who wished to convene any assembly or form a procession in any public place to get prior permission from an approved police officer.<sup>45</sup> This prerequisite gave the regulating officer absolute and unconditional veto power to deny a permit if, in his opinion, the

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<sup>40</sup> for further reading on Council debates by Mr Nabulyato and Sikoto see the Hansard 2 August 1955 at 769-781; see also the Zambia Law Journal, Vol.25-28, 1993-96. p. 7-9

<sup>41</sup> Ruedisili, S. op.cit. p.9

<sup>42</sup> ibid; see also for further readings on the same Hansard (No. 98) 23 June -7 August 1959 at 113

<sup>43</sup> See Ruedisili, S. in Zambia Law Journal, Vol. 25-28 at 10; see also Hansard 25 June 1959 at 113

<sup>44</sup> ibid; see also Public Order Amendment No. 10 of 1959 Section 4 A (4)

<sup>45</sup> ibid

assembly or procession was likely to cause or lead to a breach of the Peace.<sup>46</sup> If the officer allowed the assembly to proceed, he had a right to provide any conditions on the assembly as he deemed necessary to keep the Peace.<sup>47</sup> These limitations included the date, place and time of the meeting, the maximum duration of the assembly, the persons who could speak at such an assembly and a general catch-all provisions “ any other matter designed to preserve the public peace and order.”<sup>48</sup>

The other major change established exemptions for “approved religious organisations” from the requirements of the Act<sup>49</sup>. These changes passed the legislative council without objection on June 26, 1959.<sup>50</sup>

## **THE 1967 AMENDMENTS**

In 1964, when Zambia attained its independence, the Public Order Ordinance was renamed “Public Order Act”. On 13<sup>th</sup> December 1966, the ruling United National Independence Party (UNIP) introduced into Parliament an amendment to the Public Order Act which exempted high government officials, including the President, Vice President and all Ministers from the requirement of obtaining a permit to convene a public meeting.<sup>51</sup> The alleged reason for this amendment

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<sup>46</sup> *ibid*; Section 4A (5) of the Amendment

<sup>47</sup> *ibid*, Section 4A (a),(b)(d) of the Amendment

<sup>48</sup> *ibid*

<sup>49</sup> *ibid*.; see also the Hansard, 26 June 1959 at 146

<sup>50</sup> Ruedisili, S., in Zambia Law Journal, Vol. 25-28; see also Hansard, 13 December 1966 at 40 for further reading.

<sup>51</sup> *ibid*; see also Hansard, 13 December 1966 at 41

was the embarrassment and inconvenience it was thought it caused to the ruling party to have to go to a Police Station to get a permit.<sup>52</sup>

The other change in 1967 to the Public Order Act made compulsory the playing or singing of the National Anthem at the beginning of all public meetings.<sup>53</sup> Despite all the opposition that were raised in Parliament both amendments passed the Legislative Council and became Law.

## **THE 1996 AMENDMENTS**

The decision in the Christine Mulundika and seven others v. The Attorney General<sup>54</sup> saw the speedy amendment<sup>55</sup> of the Public Order Act in 1996. The amendments lead to the enactment of a new Section 5(4) which requires anyone intending to convene a public meeting, procession or demonstration to give the police a seven days notice. Section 5(5) provides that "the notice required must be in the prescribed form and shall contain an undertaking by the person intending to assemble or convene a public meeting, procession or demonstration that order and peace shall be maintained through the observance of the conditions laid there under."<sup>56</sup> "Where it is not possible for the Police to adequately police any particular public meeting, procession or demonstration, the regulating officer of the area shall, at least five days before the date of the Public

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<sup>52</sup> *ibid*; *ibid* at 41

<sup>53</sup> see Act No 1 of 1996

<sup>54</sup> (1995-97) 20

<sup>55</sup> see Section 5(5)(a),(b)(c),(d) and (e) of the Amendment Act Cap. 113

<sup>56</sup> Section 5(6)

Meeting, Procession or demonstration inform the convenors in writing of the reasons for the inability of the Police to police the public meeting, procession or demonstration and shall propose an alternative date and time for holding of such public meeting, procession or demonstration".<sup>57</sup>

According to Section 5(7) where the Police notify the convenors of the Public meeting, procession or demonstration that it is not possible for the Police to adequately police any proposed public meeting, procession or demonstration, the same shall not be held. Section 5(8) provides that if the convenors of the public event are not satisfied with the reasons given by the regulating officer under sub-section (6) they may immediately appeal to the Minister of Home Affairs who shall decide and inform the convenors in writing of his decision on the matter within a period of five days, and "where one is aggrieved by the Minister's decision he may appeal the decision to the High Court within 30 days."<sup>58</sup>

Section 5(10) exempts from the advance notification requirement a procession that is commonly or customarily held without police involvement or is a funeral procession held in the normal course of such event. Section 6 of the Act has also been amended to provide that any person who opposes or disobeys any direction issued under sub-section 3 of Section 5 or fails to comply with the provision of sub-sections (4) and (5) of Section 5 shall be guilty of the offence of

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<sup>57</sup> Section 5(9) of the Act No. 1 of 1996

<sup>58</sup> *ibid*, No. 1 of 1996; see also the case of Resident Doctors' Association v Attorney General 1997/HP/0817 (Unreported)

taking part in an unlawful assembly under Chapter IX of the Penal Code and be liable on conviction to imprisonment for five years. Furthermore, anyone who participates in a meeting or procession for which the stipulated conditions are not met may be arrested without warrant and charged with unauthorised assembly.

The ultimate effect of the 1996 amendments to the Public Order Act is that it is no longer necessary to obtain a permit in order to hold a public meeting, procession or demonstration. The requirement of obtaining a permit has been replaced by a duty to notify the Police. The police are required to be informed to enable them regulate public meetings, processions and demonstrations for the purposes of preserving public peace and order. Furthermore, the police are no longer empowered to decide who can address a public meeting or what subject cannot be discussed.

## **SUMMARY NOTE**

In this Chapter the essay has looked at the various legislation concerning matters of Public Order. It has discussed provisions in the constitution, the Penal code Act and, the Public Order Act and its evolution. In the next chapter the essay will look at the role of the police in a democracy.

## CHAPTER TWO

### THE ROLE OF THE POLICE IN A DEMOCRACY

In chapter one, the essay revealed legislation on public order. It looked at the Constitutional provisions, the Penal code Act provisions and the Public order Act. It also looked at the evolution of the public order act from the days of colonial governance to the present date.

In this chapter, the essay will look at the role of the police in a democracy. Why do the police exist? What do they do? How can the police be made more compatible with a democratic society? The main purpose of this chapter is to attempt to answer these and related questions about police and public order in a democratic society.

#### POLICE DEFINED

"The word police is related to the Greek word **politeuein**, which means to be a citizen or to engage in political activity, and **polis**, which means a city or state"<sup>59</sup>. As its derivation suggests, in ancient Greek cities there was no clear distinction between duties now performed by the police and those of others engaged in city government<sup>60</sup>. From this it follows that, at least in democratic countries, police

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<sup>59</sup> Roberg, R. et. al. **Police and Society**. 2<sup>nd</sup> Edition. New York: Roxbury Publishing, 2000

<sup>60</sup> **Chambers Encyclopedia**. Vol. 11. Pergamon Publishing, 1968, p. 22

are, or should be agents of the law, which it is the responsibility of every citizen to maintain<sup>61</sup>.

In modern societies, all governments are vested with police powers to regulate matters of health, welfare, safety and morality. This is because a society requires both structure and order if it is to be effective in meeting the safety, economic and social needs of its members. One important expression of the police power in a society is a police, or law enforcement, organisation.<sup>62</sup>

It is worth mentioning here that notwithstanding the various types of policing such as private police (e.g. security companies) or vigilanteism, this essay is concerned with the public police force which is an institution created by **Article 103** of the **Constitution** of Zambia<sup>63</sup> and provided for by the **Zambia Police Act**<sup>64</sup>.

## THE POLICE CONCEPT IN A DEMOCRACY

"The activities and behaviour of the police are determined, in part, by the type of government of which they are a part"<sup>65</sup>. In countries of totalitarian governments, on the one hand, power is exercised by only one person (e.g. a dictator) or, a small number of individuals or a political party. Generally, the

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<sup>61</sup> ibid

<sup>62</sup> Roberg, R, et.al. op. cit.

<sup>63</sup> Cap 1 of the Laws of Zambia

<sup>64</sup> See CAP 107 of the Laws of Zambia: An Act which provides for the organization, functions and discipline of the Zambian Police Force and Special Constables and for matters incidental thereto

<sup>65</sup> Roberg, R. et.al. op.cit.

established laws and policies are merely subordinate agents intended to serve the interest of those in power and "...the social order is preserved at the expense of individual freedom"<sup>66</sup>. Democratic governments, on the other hand, are based on the idea of the participation of the governed. The members of a democratic society either directly participate in deciding the laws or they elect representatives who make such decisions for them.

Thus, "democracies are concerned about the rights and freedoms to be given to individuals and about the limits to be placed on government's use of the police power"<sup>67</sup>. This concern is usually addressed by creating a constitution<sup>68</sup> which serves the basic purpose of establishing the nature and character of government by identifying the basic principles underlying that government. The constitution of Zambia identifies the functions of government and specifies in the Bill of Rights,<sup>69</sup> the rights of individuals relative to the government.

Zambia has a constitutional democracy in which the exercise of power should be based on the premise of the rule of law, that is, government by laws and not by individuals or institutions, such as the police. "Ideally, laws created through a democratic process are more reasonable and more likely to be accepted by citizens than laws created by only a few individuals or by the most influential

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<sup>66</sup> *ibid*

<sup>67</sup> *ibid*

<sup>68</sup> A Constitution may be written or unwritten. For example Zambia has a written constitution CAP 1 of the Laws. The UK has an unwritten constitution, i.e., it cannot be found in one single document.

<sup>69</sup> See part III of the Constitution CAP 1 of the Laws of Zambia

persons in society”<sup>70</sup>. One importance of the rule of law according to the proponents of democracy is that individuals in power will be inclined to abuse the power (i.e., act in an arbitrary manner) unless they are controlled by a constitution, democratically developed laws, and a well structured or organised system of government.

The constitution of Zambia provides for three ‘branches’ of government, i.e. the **Executive, Judiciary and Legislature**<sup>71</sup>- ideally called ‘*separation of powers*’. This separation exists to provide a system of ‘*checks and balances*’ so that one branch of government will not become too powerful. Law enforcement is the responsibility of the executive branch whereas law making is the responsibility of the legislature. Law interpretation is the responsibility of the Judiciary.

“Government and laws are created through a political process, or system. Being political means becoming involved in attempting to influence the way government resources are used and what laws and policies are to be developed to guide governmental decision making..”<sup>72</sup> Theories of political decision making in a democracy include both pluralistic and elitist or class, perspectives. The pluralistic perspective argues that debates bargains and compromises determine use of resources, laws and policies. According to them, no one group dominates. The elitist or class perspective argues that only a limited number of persons (e.g.

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<sup>70</sup> Roberg, R. et.al. op.cit.

<sup>71</sup> See parts IV, V and VI of the Constitution CAP 1 of the Laws

<sup>72</sup> Roberg, R. et.al. op.cit.

the rich or special-interest groups) have real influence in the political process. This type of politics results in preferential treatment for the most influential persons or groups in society and discrimination against those with little or no influence or power<sup>73</sup>. A recurring problem in law enforcement and of particular importance to this essay is the frequency with which the police treat some persons preferentially while discriminating against others (especially on matters regarding public assemblies in Zambia).

## **THE DEMOCRACY-POLICE CONFLICT**

**Berkeley**<sup>74</sup> observes that 'democracy is always hard on the police'. In both concept and practice, the police conflict with some of the important characteristics of a democratic society. The Police represent the legitimate force of government to compel citizens, if necessary to obey laws that the majority of citizens at least theoretically, have participated in creating.<sup>75</sup> Goldstein<sup>76</sup>, quoted by Roberg<sup>77</sup>, describes the democracy-police conflict in the following words:

"The police... are an anomaly in a free society. They are invested with a great deal of authority under a system of government in which authority is reluctantly granted and when granted, sharply curtailed".

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<sup>73</sup> ibid

<sup>74</sup> Berkeley, G. E . **The Democratic Policeman**. Boston: Beacon Press 1969, p. 1

<sup>75</sup> Roberg, R. et.al. op.cit.

<sup>76</sup> Goldstein, H. **Policing a Free Society**. Cambridge, MA: Ballinger Publisher Company, 1977, p. 1

<sup>77</sup> Roberg, R. et.al. op.cit.

For a democratic government to be successful it must be based on consensus. When there is a failure of consensus, the police are often the initial representatives of government that responds. For example, one of the common values of the Zambian society is the importance of private ownership of property<sup>78</sup>. Yet when one person steals another's property, this action reflects a failure of a consensus on this value. The creation of a police force is based, at least in part on the idea that consensus cannot be completely achieved<sup>79</sup>.

"Democracy is also associated with some degree of freedom"<sup>80</sup>. While complete freedom might be the very definition of tyranny in any society, at least a democracy permits citizens participation in deciding how and when individual freedom will be restricted<sup>81</sup>. The policies and procedures of the police and the decisions of individual police officers however, do not always include citizen participation<sup>82</sup>. Consequently, the exercise of police authority tends to reflect an authoritarian orientation in an otherwise 'free society'<sup>83</sup>. Police are a constant reminder that freedom is limited<sup>84</sup>.

Equality is another important characteristic of democracy. Democratic governments, according to the social contract theory,<sup>85</sup> are founded on a

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<sup>78</sup> The Constitution under Article 17 protects privacy of home and other property

<sup>79</sup> Roberg, R. et.al. op.cit.

<sup>80</sup>ibid

<sup>81</sup> ibid

<sup>82</sup> ibid

<sup>83</sup> ibid

<sup>84</sup> ibid

<sup>85</sup> Social contract theory is one among other Political theories that explains the origins of the state.

contract to which all parties agree in which all parties are equal.<sup>86</sup> The citizen and the police officer nevertheless, are not equals. For when the contract has been established represented by a constitution and laws, non compliance will legitimate the police to use coercion (if required) to ensure compliance<sup>87</sup>.

"All these factors indicate why the opposite of a democratic state is often called a police state. Democracy represents consensus, freedom, participation and equality; the police represent restriction and the imposition of the authority of government on the individual. That is why the police in a democracy are often confronted with hostility, opposition and criticism no matter how effective or fair they may be"<sup>88</sup>.

## **DEMOCRACY AND THE RULE OF LAW**

The democratic rule of law implies, first, the principle of equality before the law. It excludes the autocratic and totalitarian principle which, in the divine right, of inspired leadership or of power pure and simple, exempts individuals and groups from the law of the land. The other pillar of the rule of law, cardinal to all democratic thought, is the principle of equal individual responsibility. This however does not exclude legal differences arising from the exercise of functions. Officials are, as such, nowhere in the same legal position as

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<sup>86</sup> For readings on the Social contract theory see Kapur.A.C.Principles of Political Science. New Dehli: S. Chand & company Limited, 2004 pp 111 – 133, this especiall at pp 122 – 129 on Rousseau's Theory; See also Rousseau J.J. social contract theory for indepth reading.

<sup>87</sup> Berkeley, G. E. Op.cit. pp. 1-5

<sup>88</sup> Roberg, R et.al. op.cit.

individuals. It does exclude, for example, exemptions of individuals or classes from legal responsibility and, on the other hand, punishment or persecution of individuals by virtue of their membership of a specific race, religion or other group characteristics.

Thus, "Police accountability to the rule of law is an important tradition in democratic societies"<sup>89</sup>. The basis for democratic policing "is to be found in rational and human laws"<sup>90</sup>. Liberty depends not on any form of police organisation, but on the supremacy of the rule of law. Whether or not the police are answerable to the law and ultimately, to a democratically elected government is perhaps the proper criterion to determine if the police state exist. In totalitarian states, police power are controlled by a totalitarian government that acknowledges no accountability to democratically elected representatives and the citizens, therefore, cannot rely on the law to protect them<sup>91</sup>.

It follows therefore that in a democracy the law is supreme<sup>92</sup>. Thus, governmental activities including police powers are to be exercised according to the dictates of the law rather than to the whims and caprices of those who govern.

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<sup>89</sup> *ibid*

<sup>90</sup> Reith, C. pp. 188

<sup>91</sup> Royal Commission on the Police. **Report**. London: Her Majesty's Stationery Store. 1962 p. 45. see also Roberg, R. et.al. op.cit

<sup>92</sup> See Article 1 (i) (2) and (3) of the Constitution CAP 1 of the Laws.

## WHAT IS THEIR ROLE

The police are the major representative of the legal system in their transaction with citizens. Thus, their organisation and activities must be compatible with the community's expectations in order to avoid or reduce on the role conflict. They are also the 'major emergency arm of the community in times of personal and public crisis, and in carrying out their mandate they 'possess a virtue monopoly on the legitimate use of force'<sup>93</sup>. The police also provide needed governmental and social services such as controlling traffic and other related activities.

Therefore, in a democratic society police should not be a law unto themselves. In spite of strong pressures and temptations to the contrary, they are not to act in an explicitly political fashion, such as spying on or disrupting groups they disagree with or failing to enforce the law against groups they support or to enforce laws they personally disagree with.<sup>94</sup> Nor are they to serve the partisan interests of the party in power, or the party they would like to see in power.<sup>95</sup> Their purpose must not be to enforce political conformity.<sup>96</sup> Holding unpopular beliefs or behaving in unconventional, yet legal, ways are not adequate grounds for interfering with citizens liberty.<sup>97</sup> When opponents of democracy operate within the law police have an obligation to protect their rights, as well as the rights of others.

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<sup>93</sup> Reiss, A. J., Jr. **The Police and the Public**. New Haven: Yale University Press, 1971. pp 1-2

<sup>94</sup> Marx, G.T.in: M. Amir and S. Einsten (eds). **Policing, Security and Democracy**. Theory and Practice, vol.2

<sup>95</sup> *ibid*

<sup>96</sup> *ibid*

<sup>97</sup> *ibid*

A democratic police is a politically neutral police. Police should never take sides, nor should they spy on or disrupt the legal actions of an opposition political party. Citizens are to be treated in equivalent ways regardless of their political affiliations, other characteristics which, are perfectly legal.

## **SUMMARY**

The word police is derived from the Greek words **politeuin** and **polis**. The type of police a society has is determined by its type of government-either totalitarian or democratic. In democratic governments there are a number of democracy-police conflicts. The rule of law is the most important means for dealing with these conflicts. Laws represent rules that citizens are supposed to follow and that the police are supposed to follow in their relationship with citizens. The police role therefore, and what is considered to be appropriate activity and behaviour, is determined by legal requirement, its organisation and the community. The greater the degree to which legal, organisation and community expectations are compatible, the less the extent of role conflict for the police in a democratic society. Police should never serve the partisan interests in a democratic society.

## **CHAPTER THREE**

### **THE ZAMBIAN EXPERIENCE**

#### **INTRODUCTION**

In chapter two, the essay looked at the role of the police in a democracy. It said that the type of police a society has is determined by the type of government obtaining in that particular society. In a democracy where freedom, consensus, participation and equality before the law is the foundation of society the concept of police is contradictory<sup>98</sup>. It also observed that in order to reduce the conflict between police and democracy the legal and organisational structure of the police ought to be compatible with the expectations of the community they serve.

The essay also said in chapter two that in a democratic society, police must not be a law unto themselves. In spite of strong pressures and temptations to the contrary, they are not to act in an explicitly political fashion, such as by spying on or disrupting groups they disagree with or failing to enforce the law against groups they support or to enforce laws they personally disagree with<sup>99</sup>. Nor are they to serve the partisan interests of the party in power, or the party they would like to see in power<sup>100</sup>. Their purpose must not be to enforce political conformity. It also said that holding unpopular beliefs or behaving in unconventional, yet legal ways are not adequate grounds for interfering with

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<sup>98</sup> Roberg, R. et.al op.cit.

<sup>99</sup> Gary, T. Marx. In M. Amir and S. Eisten. Policing, Security and Democracy: Theory and Practice, vol.

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<sup>100</sup> *ibid*

citizens liberty. When opponents of democracy operate within the law police have an obligation to protect their rights, as well as the rights of others. A democratic police is a politically neutral police. For example in a partisan or labour disturbance, police are not to take sides, nor should they spy on, or disrupt the legal actions of an opposition political party.

In this chapter however, the essay shall look at some of the Zambian experiences of police and public order laying particular emphasis on balancing freedom against public order. It shall argue that the Zambian experience on police and the public has been pathetic as police has often behaved in undemocratic ways contrary to those identified in chapter two of this essay. It shall argue that on matters of public order, the police have more often than not brought about public disorder rather than public order. The essay shall also show here that in most cases where the police and the public have come into contact, this have led to police brutality. It is hoped that by the end of this chapter its main purpose of showing how the police in Zambia have failed to perform their role in a much more democratic fashion will have been met.

## **UNDEMOCRATIC TENDENCIES OF POLICE IN ZAMBIA**

"A defining characteristic of police is their mandate to legally use force and to deprive citizens of their liberty. This power is bound to generate opposition from those who are subject to it. It also offers great temptations for police abuse and abuse on behalf of the authorities controlling them. Law enforcement requires a

delicate balancing act”<sup>101</sup>. Thus, “the conflicts between liberty and order receive their purest expression in considerations of democratic policing, which is not necessarily equivalent to ‘policing in a democracy’”<sup>102</sup>. Until recently, for example, South Africa had many of the trappings of a democratic society for white citizens, but its policing was highly undemocratic<sup>103</sup> as non-whites were subjects of police abuse and discrimination. One can imagine a monarchy such as the UK rather than a republic such as Zambia, in which the police are none-the-less broadly accountable to law and the public and police power is limited and consistent with values such as those in the United Nations Universal Declaration of Human Rights<sup>104</sup>.

It is ironic that police are both a major support and a major threat to a democratic society. When police operate under the rule of law they may protect democracy by their example of respect for the law and by suppressing crime. In other words, police are moral, as well as legal, actors<sup>105</sup>. In Zambia like in most African countries however, it is sad to note that the police are still far from being a major support of the democracies these African countries have embraced in the recent years.

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<sup>101</sup> ibid

<sup>102</sup> ibid

<sup>103</sup> ibid

<sup>104</sup> ibid

<sup>105</sup> ibid

At this juncture, therefore, the essay will now show some of the undemocratic tendencies of the police in Zambia. The reader is being reminded here that the range of such tendencies is overwhelmingly wide but these below here have been selected to suit the kind of the research.

## **1. Excessive use of Deadly Force on Demonstrators**

A primary function of policing is to maintain or restore social order. It is the state's responsibility to ensure that the police response to civil disorder, including criminality, is conducted within the parameters of international human rights standards<sup>106</sup>. As law enforcement agents, the police have the statutory right to use force including deadly force<sup>107</sup>. The fundamental human rights principles are that, whenever the use of force and firearms is unavoidable, law enforcement officials must "exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved", and that the intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life 'and' only if other means remain ineffective"<sup>108</sup>.

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<sup>106</sup> Policing to Protect Human Rights. A survey of police practice in countries of the SADC, 1997-2002. REPORT. London: Amnesty International Publications, 2002. p. 5

<sup>107</sup> *ibid*; see also section 24 of the Zambia police Act CAP 107 of the Laws of Zambia on the use of firearms

<sup>108</sup> *ibid*

Despite these provisions in both our local legislations as well as international laws, however, the Zambian experiences on this matter have been unfortunate. In 1995, police from Matero Police Station shot dead a marketeer at Buseko Market in Lusaka after the deceased's brother was engaged in a scuffle with a customer. In protest against the fatal shooting of a fellow marketeer, a mob of irate marketeers descended on the police station causing extensive damage to public property and greatly inconveniencing the public which had turned into a riotous mood<sup>109</sup>. In the same year, residents of Chiwempala Township in Chingola demonstrated against the fatal shooting of a fellow resident by people believed to have used state firearms. Police's contact with the demonstrators led to a full scale riot and police fatally shot one rioter while injuring two others<sup>110</sup>.

These two incidences are merely examples to demonstrate how the police have actually caused public disorder by poorly handling or carrying out their function of maintaining public peace and order. There are numerous incidences of police use of deadly force in cases which do not have a direct bearing on public order but to narrate them here would defeat the purpose of the essay.

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<sup>109</sup> Times of Zambia October 12, 1995, p. 1; see also October 13, edition

<sup>110</sup> Times of Zambia, July 4, 1995

## **2. Excessive use of Physical Force on Demonstrators**

Policing of both legal and illegal demonstrations and public gathering in so far as their sentiments are against those of the government have been accompanied by use of excessive physical force and have often left civilians injured or even killed as a result of police actions during such demonstrations.

On 30 August 2000, police armed with short buttons and teargas canisters fired teargas into students' accommodation at the University of Zambia following protests about rising fees. One student sustained serious injuries when she jumped from a window and many others were seriously injured in an effort to escape from what had started as a peaceful demonstration but until the arrival of the police<sup>111</sup>.

In 1995, police with amazing force thwarted a protest march to the National Assembly by students from the University of Zambia over government's intention to rename the institution to Harry Mwaanga and plans to present the draft constitution to parliament. Upon the arrival of the police, what had started as a peaceful demonstration culminated into a full scale riot leaving behind a truck belonging to the coca cola company looted, traffic jammed, and mass inconveniencies caused to the general

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<sup>111</sup> See the Post August 31, 2000; see also Amnesty International Report. Supra note at p. 17

public along the Great East Road<sup>112</sup>. Having 'successfully' thwarted this protest of a national cause, police then raided the students' hostels firing teargas in an effort to silence the protestors<sup>113</sup>.

In 2001, mourners at a prominent politician, Paul Tembo's<sup>114</sup> funeral procession attempted to peacefully march to Mulungushi Conference Centre to express their anger at the fatal shooting of Mr. Tembo before president Chiluba and other heads of state who were attending the Organisation of African Unity (OAU) Summit. Police's attempt to disperse the mourners by force brought about disorder and inconvenience not only to the general public but also the presidential and other delegates' motorcades<sup>115</sup> as police fought running battles with the mourners who only dispersed at the request of their leaders<sup>116</sup>.

These few incidences demonstrate how the police by using excessive force on protestors and other public gatherings have brought about more often than not the public disorder and inconvenience, which they are supposed to maintain.

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<sup>112</sup> Times of Zambia, August 2, 1995, p. 1

<sup>113</sup> Times of Zambia, August 3, 1995, p. 1

<sup>114</sup> Mr. Tembo was fatally shot at his home the night before he was to testify against Chiluba [then president] in a case in which he was implicated as a thief.

<sup>115</sup> The official route for the motorcade had to be diverted in order to avoid the confusion and because the road was closed as a result of confusion

<sup>116</sup> See the Post, July 10, 2001. pp 1 and 10-11

### 3. Discriminatory Patterns of Arrest

Equality is a fundamental principle of human rights<sup>117</sup>. Especially in a democracy 'all are equal before the law and are entitled without any discrimination to equal protection of the law'<sup>118</sup>. The African Charter prohibits any discrimination in the enjoyment of human rights<sup>119</sup> and provides for equality before the law<sup>120</sup>. Amnesty International, a worldwide movement of people campaigning for internationally recognised human rights, observed that 'although several governments in the SADC Region speak of the 'democratisation' of policing, discrimination and differential treatment by the police based on ... political affiliation... have been reported in almost all SADC countries<sup>121</sup>.

Indeed Zambia has not been spared off police discriminatory attitudes. On August 22, 2001 Movement for Multi Party Democracy (MMD) cadres rioted and destroyed property at Sam's Sports Café where opposition parties were holding a joint Press Conference. The incidence, which happened in full view of the police, caused terror to members of the general public who scampered in all directions for safety. The Lusaka division commanding officer acknowledged that his own investigation revealed that violence took place, and that there was damage caused to

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<sup>117</sup> Amnesty International Report. Op.cit p. 21

<sup>118</sup> Article 7 of the Universal Declaration of Human Rights Statute

<sup>119</sup> Article 2 of the African Charter

<sup>120</sup> ibid Article 3

<sup>121</sup> Amnesty International Report. Op.cit. p. 21

property yet no arrests were made in respect of the riot<sup>122</sup>. Instead, the officer gave an excuse that the police could not follow up the matter unless the owners of the property had complained<sup>123</sup>. To this end, one wonders whether or not, the police are aware of the penal code provisions under sections 81, 82 and 335 which are sufficient to convict a person engaging in a riot of the type above<sup>124</sup>.

In 2001, MMD cadres armed with stones and pangas indiscriminatory hacked any one in sight at a polling station in Lusaka's Chawama Township during a bye-election in full view of the police. The residents, who were angered by the police's domance threw stones at the police and a full scale riot emerged leaving behind shattered car windscreens and injured people. Instead of arresting the perpetrators of the riot, the police chose to fire teargas and live bullets at the rioting residents<sup>125</sup>.

The essay here appreciates that there are numerous incidences of police discrimination in arresting those who commit human rights violations in Zambia. But it hopes that the two incidences given will suffice to demonstrate the discriminatory patterns of arrest by the police in Zambia.

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<sup>122</sup> See the Post August 29, 2001. p. 6; the Post August 23, 2001

<sup>123</sup> *ibid*, August 29 edition p. 6

<sup>124</sup> Section 81 provides for rioters demolishing buildings etc, section 82 provides for rioters injuring buildings and section 335 provides for other malicious injuries, general and special punishments

<sup>125</sup> See the Post July 18, 2001. p. 4

#### 4. Discriminatory Non-Enforcement Of The Law

Amnesty International reports that some 'governments across the SADC region are "... politically misusing the police to suppress public meeting, demonstrations or campaigning by opposition parties and government critics'<sup>126</sup>. It further observed that in the majority of countries in the region, police harass, disrupt or discourage the activities of opposition leaders, trade union officials, youth activists, human rights monitors and journalists<sup>127</sup>. 'Evidence of such misuse can be seen in statements of political allegiance made by police officials and in reprisals against officers who carry out their duties in a fair and impartial manner'<sup>128</sup>.

It is sad to note that Zambia squarely fits in the findings of Amnesty International as quoted above. In fact, Father Davoli Umberto of the Roman Catholic Church Diocese of Ndola once wrote in one of the daily papers on what seems to be a restatement of the findings of the amnesty international as quoted above: "speak, for instance, of our young democracy raped and violated by the day, often by its very tutors; of violence exclusively seen and condemned when allegedly perpetrated by the opposition, but regularly condoned and swept under the carpet... when done by those in power. Speak of the shameful bias shown by our once admired police for instance, with permits not even required, or

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<sup>126</sup> Amnesty International Report op cit. p. 25

<sup>127</sup> *ibid*

<sup>128</sup> *ibid*

granted on the spot whenever the ruling party wishes to demonstrate-even at short notice-but regularly denied to the opposition (*we have families... should we dare to stand for real justice, in no time we would be out of job or on the other side of the bars*)<sup>129</sup>.

It is thus no doubt that police in Zambia have; and do not carry out their duties fairly and impartially. For example, in 1995 police denied students at the Evelyn Hone College in Lusaka who wanted to show solidarity for Mr. Mwanawasa's intention to stand as a presidential candidate, a permit but escorted pupils to state house in a demonstration in support of the then President Chiluba<sup>130</sup>. On October 9, 1995 police withdrew demonstration permit for a public demonstration against the mode of adoption of the constitution. They unfoundedly, cited security reasons<sup>131</sup>. Those who gathered at the freedom statue in anticipation of the demonstration were arrested<sup>132</sup>.

In another incident on 18<sup>th</sup> March 2003, Patriotic Front (PF) notified the police of its intention to hold a rally on 29<sup>th</sup> March, 2003 from 13:00 hours to 17:00 hours at Kafue roundabout<sup>133</sup>. However, in a letter dated 20<sup>th</sup> March, 2003, the police advised that the public meeting could not be

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<sup>129</sup> The Post, September 14, 2001. p. 10

<sup>130</sup> Times of Zambia, August 8, 1995. p. 1

<sup>131</sup> Times of Zambia, October 10, 1995. p. 1

<sup>132</sup> *ibid*

<sup>133</sup> the post, March 14, 2003

'approved' due to the unfavourable security situation obtaining in the country<sup>134</sup>. Permanent Human Rights Commission Chairperson Judge Chibesa Kunda condemned the cancellation of the PF meeting and asserted that there was undue interference in the operation of the law enforcement agents<sup>135</sup>.

In addition, Amnesty International reported that 'the lead-up to both the 1996 and 2002 elections in Zambia saw government clamp down on freedom of expression and assembly<sup>136</sup>. "The police have routinely abused their power under the 1996 Public Order (amendment) Act to deny the right of assembly to opposition groups and government critics, although government-backed rallies do not seem bound by its requirements, including advance notification of public gatherings"<sup>137</sup>. The report further stated that police suppressed large-scale protests at the results of the December 2001 presidential elections and new President Mwanawasa said police would deal with demonstrators who alleged that the ballot had been rigged 'as they deemed fit'<sup>138</sup>.

At this juncture, it can safely be concluded that police in Zambia have failed to play its role of being mediator during political conflicts.

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<sup>134</sup> *ibid*

<sup>135</sup> The Post, March 27, 2003

<sup>136</sup> Amnesty International Report op cit p. 33

<sup>137</sup> *ibid*

<sup>138</sup> *ibid*

## **SOME JUDICIAL DECISIONS IN THE ZAMBIAN COURTS ON PUBLIC ORDER**

It is perhaps breath-taking to note that while the police have since 1964 engaged in acts of plundary of the rights of the citizens, at least the courts have not, as they have from time to time defended these rights, serve for a few unfortunate decisions like in the case of ***Alfred Mthakati Zulu v. the Attorney General***<sup>139</sup> where the honourable Judge K C Chanda rejected the Secretary General of the University of Zambia Students Union's (UNZASU) petition asking for a declaratory judgment that the cancellation of a student procession by the police was invalid and a violation of their constitutional rights<sup>140</sup>.

However, in ***Christine Mulundika and Others v. The People***<sup>141</sup>, The Applicant and Seven Others were charged in a magistrate court with unlawful assembly contrary to section 5 of the public order Act. Section 5 required anyone who wished to hold a public meeting, procession or demonstration to apply to the police for a permit. The police were entitled to reject the application, or if they decided to allow the said event, they could impose conditions. Section 7 of the Act provided for punishment for the violation of section 5.

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<sup>139</sup> 1992.HP/2225 [unreported]

<sup>140</sup> For a full analysis of this case, Zambia Law Journal Vol. 25-28 1993-1996 at pp. 33-38

<sup>141</sup> [1995-1997] ZR. 20

The applicants argued that sections 5 and 7 of the public order act were unconstitutional as they infringed the guarantees of freedom of expression and assembly in the constitution. The Supreme Court struck down sections 5 and 7 of the public order act for being unconstitutional i.e. they infringed upon the freedom of expression and assembly<sup>142</sup>. The court held that section 5 (4) was not reasonably justifiable in a democratic society for a number of reasons: the uncontrolled nature of the discretionary power vested in the regulating authority, the fact that the regulating authority was not obliged, when imposing a ban, to take into account whether disorder or breach of the peace could be averted by attracting conditions upon the conduct of the procession of meeting such as relating to time, duration and route; that although the rights to freedom of expression and assembly are primary and limitations secondary section 5 (4) reversed the order in effect denying such rights unless the public meeting or procession was unlikely to cause or lead to disorder and that the criminalisation of the procession or meeting held without a permit irrespective of the likelihood of occurrence of any threat to public safety or public order, and the lack of adequate safeguards against arbitrary decisions<sup>143</sup>.

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<sup>142</sup> See Article 20 and 21 of the Constitution of Zambia CAP 1

<sup>143</sup> for a full analysis of this case, see Zambia Law Journal vol. 25-28 1993-1995, pp 38-52 by Ruedisili Steven

The Christine Mulundika's case saw the unprecedented amendment of section 5 and 7 of the Public Order Act<sup>144</sup>. A case after the amendment was that of ***Resident Doctors Association of Zambia and Others v The Attorney General***<sup>145</sup>. In this case, the petitioners intended to conduct a peaceful demonstration to raise public awareness about the pathetic situation in hospitals and the doctors' conditions of service. Two days prior to the demonstration, the police officers informed the petitioners that they would not be allowed to demonstrate because they had information that there was a group of persons who did not agree with the petitioners demonstration and were ready to 'hammer' the petitioners. The police further informed the petitioners that they did not have enough man power to police the event and declined from suggesting an alternative date. The petitioners who nevertheless went ahead with the planned demonstration were arrested and detained. They then filed a law suit claiming the following that their freedom e.g. expression, assembly and association as guaranteed by the constitution had been violated and that the police action in its entirety was in breach of the Public Order (amendment) Act.

The High Court held that any person wishing to hold a public meeting, procession or demonstration, does not require to obtain a permit from the

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<sup>144</sup> See Act No. 1 of 1996

<sup>145</sup> 1997/HP/0817 [unreported]

police for such an event and that the police have no power to refuse any person from holding a public meeting, procession or demonstration at all. The only demand the police can make from a person(s) intending to hold a public meeting, conduct a procession or demonstration is a notification of at least seven (7) days. If the police cannot adequately police the event, they are obliged in law to suggest an alternative date at which the event should take place.

## **CONCLUSION**

There are several other cases on public order such as the ***Law Association of Zambia v The Attorney General***<sup>146</sup> but to list them here is beyond the scope of this essay. The few incidences that the essay in this chapter has looked at suffice to demonstrate how the police here abused the law and violated human rights in their encounter with the public.

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<sup>146</sup> 2001/HP/0382 [unreported]

## **CHAPTER FOUR**

### **CAUSES AND EFFECTS**

#### **INTRODUCTION**

In chapter three, the essay looked at some of the police-public experiences in Zambia and observed that more often than not these experiences have been pathetic as they have been, on the part of the police, unreasonable, biased or, simply put, undemocratic.

In this chapter, the essay seeks to find the causes for such undemocratic behaviour by the police in Zambia. It will also give the effects this have had on both the young democracy and the public at large.

#### **DEMOCRATIC SOCIETY AND POLICE FORCE**

One element in defining a democratic society is a police force that: is subject to the rule of law embodying values respectful of human dignity, rather than the wishes of a powerful leader or party; can intervene in the life of citizens only under limited and carefully controlled circumstances and; is publicly accountable<sup>147</sup>.

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<sup>147</sup> Marx, G. T. Police and Democracy. In M Amir and S Eistejn (eds). Policing, Security and Democracy: Theory and Practice, Vol. 2

These conditions are inherent to police in a democracy<sup>148</sup>. As inherent are ongoing myths, for example, it is a myth that all that stands between total chaos and social order is the police. Social order has multiple sources. These include socialisation to norms, reciprocity, self defence and the design of the physical environment<sup>149</sup>. Yet, police are an important factor, in that all industrial societies use police to control crime and to contribute to public order (e.g. mediating and arbitrating disputes, regulating traffic and helping in emergencies).

As earlier mentioned<sup>150</sup>, it is ironic that police are both a major support and a major threat to a democratic society. When police operate under the rule of law, they may protect democracy by their example of respect for the law and by suppressing crime<sup>151</sup>. But apart from the rule of law and public accountability, the police power to use force can be used to support dictatorial regimes, powerful vested interest groups and practices<sup>152</sup>. The term "police state" as represented by Germany under National Socialism and the former Soviet Union under communism suggests the opposite of a democratic state<sup>153</sup>. Police are subservient to a single party, not a legislature or judiciary. The policing of crime and politics merge and political dissent becomes a crime<sup>154</sup>.

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<sup>148</sup> *ibid*

<sup>149</sup> *ibid*

<sup>150</sup> under Chapter three

<sup>151</sup> Marx, G. T. *op cit*

<sup>152</sup> *ibid*

<sup>153</sup> *ibid*

<sup>154</sup> *ibid*

The unfortunate thing is that especially on matters regarding public order the Zambia Police Service can hardly be said to be too removed from these undemocratic tendencies of policing. As was seen in chapter three, the police have been used in suppressing political rivals and in most cases favouring the interests of the political party in power. What then, are the causes and effects of such undemocratic tendencies by the police? This is the question that the essay will now attempt to answer in the coming paragraphs.

### **1. Lack of Respect for Human Rights**

The Constitution of Zambia guarantees the protection of fundamental human rights and freedoms in the bill of rights<sup>155</sup>. In addition to that, Zambia have acceded to a number of international human rights instruments including: the international covenant on economic, social and cultural rights-1984; the international covenant on civil and political rights -1984, and the first optional protocol; the African charter and people's rights -1984 and; the International Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment -1998.

However, the trend in Zambia has been to repudiate<sup>156</sup> these rights by government and one of its principle organs – the police – thereby undermining the very concept of a democratic state. Indeed, as Simon

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<sup>155</sup> See in general articles 11-32 of the constitution CAP 1 of the laws.

<sup>156</sup> See the various incidences alluded to in chapter 2 of the essay. The incidence have been a clear demonstration of no respect on the part of the government the fundamental human rights enriched in the constitution

Kulusika a lecturer in the Faculty of Law at the University of Zambia once wrote in one of the daily papers; "No government, except the totalitarian and theocratic ones, would venture to repudiate human rights especially..."<sup>157</sup> interalia, "... rights to equality before the law... freedom of expression, assembly... and prohibition of slavery and torture..."<sup>158</sup> When this is the case, it is no doubt that a state, even if its official policy is the guarantee and protection of human rights, falls short of the definition of a democratic state. For example, in the former USSR citizens, in principle, were granted many of the same political rights as in the United States, but in practice these were denied by the "KGB"<sup>159</sup>, particularly when it was concerned with political conformity<sup>160</sup>. Thus, lack of respect for human rights on the part of the government is one reason and indeed a cause for the police's violation of human rights guaranteed by the constitution.

## **2. Political Abuse**

Political manipulation of the police subverts the rule of law and undermines the professionalism of officers, deterring the best recruits and reducing police capacity to combat crime effectively<sup>161</sup>. Police have been used to suppress public meetings, demonstrations or campaigning by

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<sup>157</sup> See the Post October 16, 2004: An article by Simon Kulusika on 'Enforcement of Human Rights' at p. 7 column 3

<sup>158</sup> *ibid*

<sup>159</sup> KBG was a highly sophisticated police wing like FBI, CIA or OP in Zambia

<sup>160</sup> Marx, G. T. *op cit*

<sup>161</sup> Amnesty International Report. Policing to protect Human Rights. A survey of police in countries of the Southern African Development Countries 1997-2002. p. 25

opposition parties and government critics in Zambia<sup>162</sup>. They have been used to disrupt, harass or discourage the activities of opposition leaders, trade union officials, human rights monitors and indeed journalists<sup>163, 164</sup>. In fact, most of the police officers interviewed in the research areas attributed their conduct to the dictates of the government through their superiors. "*timachita cimene boma yakamba, cingankale nicabwino indiponso coipa, boma ikakamba ninshi yakamba*" meaning "we do what government says whether it is good or bad, as long as government has said it". At the height of police violations of human rights especially the freedom of speech and assembly during the run up to the 2001 general elections, a prominent columnist in one of the daily papers once observed. "it looks like the police don't know the difference between serving the nation and being abused... The police too like any other person should have a head of their own and think for themselves..."<sup>165</sup> This political misuse of the police violates international human rights guarantees and standards of policing thereby undermining democracy.

### **3. Lack of Will and Respect for Human Rights on the part of the Police**

The police officers generally lack the will and indeed respect for human rights. As Judge Peter Chitengi, a High Court Judge, once said at a

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<sup>162</sup> *ibid*

<sup>163</sup> for example on this see chapter three of the essay

<sup>164</sup> Police have often harassed newspapers editors including their families in order to subvert their reports on Government. See the Post August 20, 2001. p. 3 for example

<sup>165</sup> See the Post, August 22, 2001. p. 12 Column 2: An article by Misheck Tembo

human rights workshop in Lusaka. "Law enforcement officers do not respect human rights"<sup>166</sup>. "This could not be attributed to lack of adequate information and instructions but a total disregard or a deliberate and conscious conviction and a decision to ignore human rights"<sup>167</sup>. Issues of human rights were positively correlated to good governance and democracy. Law enforcement officers should not discriminate in the application of the law<sup>168</sup>. Any attempts at unduly cancelling an earlier permit for a meeting on the grounds that "giants" have taken up the same venue is a violation of article 23 (i) of the constitution<sup>169</sup>.

#### **4. Limited Understanding of the Relevant Laws**

Although most of the police officers approached for interviews sharply and defensively claimed a good understating and knowledge in human rights and the relevant laws, short interviews demonstrated the opposite. Most police officers talked to, especially those from the paramilitary section, demonstrated lack of knowledge not only in the constitutional provisions for the protection of human rights and other provisions such as in the Public Order Act, but also in the existence of the same. To this end Judge Bobby Bwalya once observed; 'the police have done a lot of wrongs to the community. They had been stopping meetings even where security was not

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<sup>166</sup> See the Post, October 29, 2001. p. 5

<sup>167</sup> *ibid*

<sup>168</sup> *ibid*

<sup>169</sup> *ibid*

at risk<sup>170</sup>. Surely, if the police understand human rights as they claim to do, then they would understand that it is not the limitation that is important but the right itself.

## **5. Lack of A Tradition of Democratic Policing**

The Zambian police force lacks a tradition of democratic policing. It will be recalled here that the colonial government used the police to curb down the struggle for independence as early as 1953<sup>171</sup>. The introduction of the public order ordinance in 1955 worsened the role of the police in a democracy as they now became an apparatus for the colonial government to control and curb down the pro-independence demonstrators. Public meetings and assemblies of Africans were severely curtailed by the government in that any person who wished to convene an assembly or to form a procession in any public place had to apply for a written permit from the authorities<sup>172</sup>. Written permits however, were rarely granted and as a result many Africans who participated in illegal meetings were arrested, prosecuted and jailed<sup>173</sup>.

Most unfortunate is the fact that at independence the public order ordinance was not only retained by the independence government but

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<sup>170</sup> See the Post July, 16 2001, p. 2

<sup>171</sup> See the Northern Rhodesia Police Ordinance of 1953 sections 28-30

<sup>172</sup> Professor Chanda, A. W.: A case study in Human Rights in Commonwealth Africa (unpublished thesis), July 1992, Yale University, at 84

<sup>173</sup> *ibid*

three years later even strengthened.<sup>174</sup> This only deprived citizens of the proper role of the police in a democracy. Thus, the colonial government use of the police as an apparatus to suppress political rivals has continued to the present day thereby enhancing a tradition of non-democratic policing.

## **6. Lack of Openness and Accountability**

"It seems apparent that, as an ideal type, democratic police forces are not supposed to be insular, self curtailed, or cut off from the communities from which their power derives"<sup>175</sup>. "Openness to the force and the poor should be a master ideal of democratic policing"<sup>176</sup>. If openness is one sign post of democratic policing, the other is accountability. "Police should be accountable to the communities being policed, to the taxpayers who pay the bills, and to the legal order governing their authority"<sup>177</sup>.

Lack of openness and accountability have led to a lot of violations of human rights by the police in Zambia. Withdrawal and refusal of permits on frinzy and unfounded grounds; as well as executing order from superiors and political figures which not only violate human rights but also

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<sup>174</sup> See the 1967 Amendment to the Public Order Act. They exempted high government officials from the requirement of obtaining a permit to convene a public meeting. See the Hansard, 13 December 1966 for valuable debates in parliament pp. 40-52

<sup>175</sup> Skolnick, J. H. Democratic Policing © Police Foundation 1999

<sup>176</sup> *ibid*

<sup>177</sup> *ibid*

basic police ethics, demonstrate a lack of openness and accountability on the part of the police.

## **7. Inadequate and Inappropriate Training of Police**

Inadequate and inappropriate training of police in both human rights and other police tactics is another cause of human rights violations by the police. As earlier mentioned most of the police officers interviewed shared little knowledge in human rights understanding and equally demonstrated an understanding that compliance with the law can only be achieved by the use of force.

## **8. Lack of Proper Procedures and Inappropriate Equipment for Public Policing**

Inappropriate equipment for public order policing and lack of proper procedures all encourage the use of excessive and often lethal force. First of all, like most government organs that provide a service directly to the people, the police are ill equipped especially in the area of public policing. Nevertheless, the police themselves lack a proper procedure in handling issues of public order. Their approach of using force even where there is no breach of the peace have often sparked off a full riot with citizens left injured or even dead. For example, and as earlier mentioned in chapter three, police's attempt to disperse mourners who peacefully formed a procession to the Mulugnishi International Conference centre culminated

into a full scale battle between the mourners and the police causing disturbance to the general public as well as delegates to the OAU Summit<sup>178</sup>. In Livingston, police's approach to rid the streets of vendors and money changes sparked off a full scale riot leaving behind injured citizens and property destroyed<sup>179</sup>.

In most cases therefore, the police's approach to use force even when there is no breach of the peace has often led to full scale riots. There are various causes of police violations of human rights in relation to public order but to cite them all here is beyond the scope of this essay.

### **What then are the effects of police misdeeds?**

It appears that although the causes might be many, the effect they all have is perhaps a one big whole. Of course a police force that violates the very people it is supposed to serve will receive no respect later on support from such a people. But over and above, the misuse of police in for example, suppressing political rivals and denying peoples fundamental rights is totally the opposite of a democratic state.

In conclusion therefore, the causes of police abuse or violation of human rights are wide ranging. They include, inter alia, political misuse, inadequate procedures and indeed lack of respect for human rights. The

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<sup>178</sup> See The Post, July 10, 2001 pp. 1 and 10-11

<sup>179</sup> See The Post, September 14, 2001

net effect this has on the state and its people is that while the official policy on paper may depict democratic precepts, the situation on the ground may be the opposite. "In defining a given system it is necessary to look beyond formal documents and expressed ideals to actual behaviour"<sup>180</sup>. The essay here is of the view that although formal documents and expressed ideals in Zambia seems democratic, the actual behaviour leaves much to be desired.

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<sup>180</sup> Marx, G. T. op cit

## **CHAPTER FIVE**

### **GENERAL CONCLUSION AND RECOMMENDATIONS**

#### **SUMMARY NOTES**

In chapter one, the essay looked at the major legislations concerning matters of public order. It highlighted the provisions in the constitution, the penal code act and indeed the public order act. It also critically analysed the evolution of the Public Order Act from the Northern Rhodesia Police Ordinance of 1953 through the 1955 northern Rhodesia Public Order Ordinance to the Public Order act of 1996. It also gave a critical analysis of some of the crucial or controversial provisions of the public order act and all its amendments. The chapter concluded by observing that in so far as public order is concerned there are enough legislative provisions to ensure that public peace and tranquility is preserved.

In chapter two, the essay looked at the role of the police in a democracy. It observed that the type of police a society has is determined by its type of government-either-totalitarian or democratic. In a democracy the concept of police is contradictory and, the rule of law is the most important means of dealing with these conflicts. The police are the major representative of the legal system in their transaction with citizens and they are also the major emergence arm of the community in times of personal and public crisis. The police role therefore and what is considered to be appropriate activity and behaviour, is determined by legal requirement, its organisation and the community.

The chapter concluded by asserting that in a democratic society police must not be a law unto themselves. In spite of strong pressures and temptations to the contrary, they are not to act in an explicitly political fashion, such as by spying on or disrupting groups they disagree with on failing to enforce the law against groups they support or to enforce laws they personally disagree with. Nor are they to serve the partisan interests of the party in power or the party they would like to see in power. Their purpose must not be to enforce political conformity. Holding unpopular beliefs or behaving in unconventional, yet legal ways are not adequate grounds for interfering with citizens' liberty. When opponents of democracy operate within the law police have an obligation to protect their rights as well as the rights of others. A democratic police therefore, must be neutral.

Chapter three looked at some of the police and public experiences on public order in Zambia. It argued that the Zambian experience on the police and public has been pathetic as police have often behaved in undemocratic ways. The police more often than not have brought about public unrest rather than order. The chapter also argued that in most instances where the police and the public have come into contact this have led to public brutality. To this end, the chapter looked at some of the incidences of undemocratic tendencies of the police in Zambia including, inter alia, excessive use of deadly force and discriminatory patterns of arrest. The chapter concluded by observing that police in Zambia have failed to play its role of being mediator during political conflicts and upheld the position the judiciary have taken up in matters of public order.

In chapter four, the essay looked at some of the major causes and effects of police undemocratic tendencies identified in chapter three. In other words, the chapter sort to discover the major causes and effects of police's violation of human rights and said that among the causes were the lack of respect for human rights; political abuse; lack of will and respect for human rights; limited understanding of the relevant laws and; lack of a tradition of democratic policing. It concluded by observing that the effect this has on both the government and its people is the situation where democracy is no more than the document in which it is written, as the situation in actuality becomes the opposite.

## **CONCLUSION**

In conclusion therefore, the essay acknowledges that some degree of order and control is necessary for freedom to be meaningful in any society, but a society characterised by excessive concern for order and control would stifle healthy debate and criticism, repress freedom and probably lack imagination and dynamism. Any attempt to encourage excessive freedom carries dangers of lawlessness and disorder. Yet, ultimately, attempts to repress are also likely to end in protest and violence<sup>181</sup>.

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<sup>181</sup> Melanie, L. and Vanstone, B. A Level Law London: Letts Education Publications, 1997. p. 224

Many incidents which threaten or involve breaches of public order are associated with events and activities which have a serious purpose in society. For instance: protest about major social and political issues and; concern with questions of employment – for example workers on strike.

When public order is threatened by these kinds of events and activities rather than by ordinary acts of violence, disorder and vandalism, there is an important balancing task to be performed by the law and those who uphold it<sup>182</sup>. It is to balance the need for the preservation of order against the need to preserve and support fundamental freedoms<sup>183</sup>.

It can be said that the most effective way to maintain public order may be to prevent trouble arising in the first place by controlling or even prohibiting relevant activities and events. Yet there is a danger that this may be seen as the easy way out of the problem, with the result that freedom of expression, assembly and association are affectively suppressed. The English court resisted this temptation in **Beauty v Gillbanks**<sup>184</sup> when holding that marchers behaving peacefully and lawfully should not be prohibited from marching merely because another group of marchers would oppose them and thus threaten the peace.

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<sup>182</sup> *ibid*

<sup>183</sup> *ibid*

<sup>184</sup> (1882) 9 QBD. 308

Finally, "restrictions on police are not a sufficient guarantee of freedom"<sup>185</sup>. Taken too far, they may even guarantee its opposite, as private interests reign unchecked and/or citizens take the law into their own hands<sup>186</sup>. Yet a police whose power is too arbitrary is also a danger. President Abraham Lincoln posed the dilemma well when asked, "Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its existence?" There is a paradox in the fact that a democratic society needs protection both by police and police and from police. On a broader scale, this is one of the major challenges of democratic government. President James Madison said that "you must first enable the government to control the governed and in the next place, oblige it to control itself".<sup>187</sup> The question is when will the Government in Zambia oblige to control itself?

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<sup>185</sup> Marx, G. T. Police and Democracy. In M Amir and S Einsteins (eds) Policing Security and Democracy: Theory and Practice Vol 2

<sup>186</sup> *ibid*

<sup>187</sup> *ibid*

## **RECOMMENDATIONS**

### **POLICE SERVICE**

1. The recruitment policy should be and need to be revisited. Recruiters must ensure that the new recruit has adequate educational background to enable him/her understand issue of human rights. Human rights courses should be made the basis for entry into the police service and recruits who fail to pass such courses should not be admitted to the police service.
2. The impunity of police must be curbed. Police must be made more open and accountable to the community, tax payers and to the legal order governing their authority. Parliament must be able to evaluate police actions and place necessary measures that would enhance democratic policing.
3. The process of appointing the inspector general of police and his tenure must be protected by the law and not to be left at the mercy of the president as is the case at present. The appointment should be ratified by parliament as a way of insulating the office from political pressure.
4. The police complaints authority must be made efficient and effective. This can be achieved by having as, members of the authority, independent legal practitioners or paralegals who can impartially look into the complaints and effect remedy measures.
5. There should be a more decentralised police service with a creation of complementary police agencies at provincial level rather than a monolith

as is the case at present. This will check against political abuse as well as abusive order from the top. It will also enable parliament to effectively monitor the actions of the police as their identities will be visible. Liberty is more likely to be protected if power is diffused, if complementary agencies watch each other and if police identities and actions are visible.

## **PUBLIC ORDER ACT**

1. It is recommended that the regulating officer should not be subject to direction or control of other persons. This will encourage the police service to administer the act professionally
2. Regulation officers should have immunity against disciplinary action or proceedings brought against them as a result of exercising their function in a professional manner.
3. The notice requirement should continue but the period for such must be abridged from seven days to a reasonable five days and not less than twenty-four hours where the nature of the meeting, procession does not permit advance notice.
4. An appeal for the refusal of a permit should lie to the magistrate instead of a minister.

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