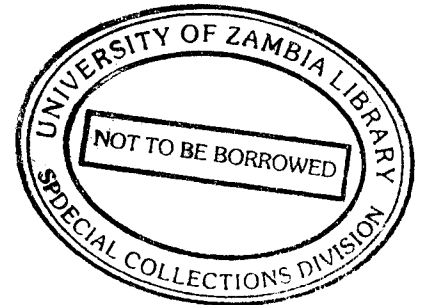


**POLICE BRUTALITY IN THE ENFORCEMENT OF CRIMINAL
LAW IN ZAMBIA, AN OVERVIEW**

BY

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**AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY
OF ZAMBIA IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE AWARD OF A BACHELOR OF
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THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

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Police Brutality in the enforcement Criminal Law in Zambia, An Overview

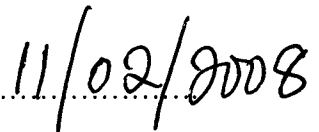
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RTD JUDGE KABASO CHANDA
(SUPERVISOR)

DATE.....



DEDICATION

This essay is dedicated to Ms Harriet Mary Chibuye. You have showed me the true meaning of life, love and hard work. You will never know just how much your life challenges me. I will always try to sincerely follow what you have taught me. You are an inspiration to my life.

To my father, Mr Chanda Chibuye. You have taught me how to fight on, no matter what came my way. I will always be your daughter.

To my entire family, you will always be wonderful, keep your dreams burning and may the good Lord bless you.

ACKNOWLEDGEMENTS

I remain grateful and give praise and honour to the Almighty God who made this dream come true.

Being a fallible human, I may have made mistakes inadvertently and I therefore without any hesitation state that whatever mistakes remain in this work are mine alone.

To my supervisor, Judge Kabaso Chanda, I pour out my gratitude from the bottom of my heart for his able and educative supervision throughout the essay am deeply indebted for his guidance.

To Herman Lukwesa, am thankful for the help and encouragement he gave me throughout this essay. No words can adequately express my indebtedness.

To Muyanza Nomsa Hamanenga for allowing me to use her laptop to type this essay. I thank her for her unfailing friendship.

To my friends; Adinas Banda, Thomas Thole, Mwenshi Chibangulula, Chiluba Mumba, and Reagan Kashimbaya thank you for making my stay at campus to be so meaningful. Fiona Sondashi my room mate thank you for the light moments we shared.

Sandra Chibuye.

February 2008

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DECLARATION

I Sandra Chibuye, identity No 22076476 do declare that am the author of this Directed Research paper entitled “Police Brutality in the enforcement of Criminal Law Zambia, An Overview. I further declare that it is a work of my own ingenuity and that due acknowledgement has been made where other People’s work has been used. I truly believe that this research has not been previously presented for academic work.

Date.....

Signed.....

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ABSTRACT

The police, as law enforcement officers in Zambia have been given a mandate to protect the citizens of Zambia and to maintain law and order, the community is expected to run to the police for protection. The police officers in Zambia today are the most feared because that they have taken the law in their own hands by brutalising the very citizens whom they are supposed to protect even as they enforce criminal law. Brutality has become so prevalent in Zambia and the sad thing is that in most cases the culprits are not punished.

The essay looks at the provisions of relevant pieces of legislation that provide against brutality, it also looks at some of the remedial responses to brutality as well as the active remedial institutions. It was however so found that much as the law in a way provide against acts of brutality, it is not all enveloping, it leaves loopholes that leave room for the swelling number of brutality cases. It is suggested that the law must envelope all relevant loopholes and also, police officers must receive stiffer punishment within the revised machinery of legislation. In turn, the police will assume their rightful place in society.

1.0 CHAPTER ONE

1. 1 INTRODUCTION

Zambia is faced with the prevailing police brutality problem, so much that it is now the order of the day to hear of imposed confessions on suspects and questionable death in police cells, This adds to the peculiarity of indiscriminate police shootings which at times end in tragic deaths of members of the public, a day does not go by without hearing of persecutions of suspects and humiliation of members of public by police officers who are on most times unhelpful, uncooperative and rude if not being violent towards the citizens who seek police help.

As a matter of fact, the police in Zambia are the only institution created as vanguards against any physical harm to members of the society. In turn, the Zambia Police service has been established in Zambia with the responsibility to enforce the law and maintain public order.¹ However, there has been a persistent and widespread pattern of police brutality in Zambia, this is not because Zambia has pursued policies deliberately designed to cause unnecessary harm to its citizens. Most of the cases of brutality are as a result of individual misconduct by some police officers which is, as a result of overreaching police behaviour where police exceed their powers or go beyond the reasonable requirement of a given situation in carrying on their lawful function. That is further supported by the under reaching police behaviour resulting in failure by police to carry out their proper functions to prevent crime or loss on the part of citizens.² This has even worsened by lack of visible and effective punishment for the police officers as most brutality cases have gone unpunished or covered up by

¹ Section 103 of The constitution Act chapter 1 of the laws of Zambia

² Police brutality in southern Africa- A Human Rights Report, Inter African Network for Human Rights and Development (Afronet) 2000 p1

fellow officers. To that effect, it is logical to hold that police officers in Zambia seem to be in breach of their own laws.

Formally and officially, the law and the administrative mandate determine the role and function of the police .In common parlance, these roles are; protection of peoples' lives and property, the prevention and detection of crime and maintenance of law and order³. However, society perceives police roles as not being all enveloping. As Cardwell and Nardini observe;

“Police agencies are public service agencies primarily responsible for maintaining order and enforcing laws, but they are also responsible for the regulation and protection of the community especially with respect to matters affecting public health, comfort, morals and safety ⁴

Many victims who have come forward to give their bitter revelations constantly demonstrate the existence of police brutality, most claims are sadly dismissed without the benefit of an investigation. With all the confusion on the ground about the common problem of police brutality, one wonders when and how the vice came about in the first place. It follows therefore, that the issue of police brutality in Zambia should be seen within the historical context.

1.2. Historical Background

The British South Africa Company (BSA) established the first police force in the country in 1900, it comprised of white officers largely drawn from British South Africa and a few African constables.

³ The Constitution Act Chapter 1 of the laws of Zambia

⁴ Cardwell and Nardini, Foundation of Law Enforcement and Criminal Justice Indianapolis: Bobbs Merrill Co (1977) .p 42

The primary role of the police force in the company's entire administration from 1891 to 1924 was the safeguarding of its property and protection of its officials, employees and colonists. To that effect the police did not do much civic duties among the African population, that is to say that there was very little contact between the police who lived in towns and the Africans who lived in the rural areas. As a result there were rare incidents of police brutality during the BSA rule.

In the 1940's as a result of Welfare Societies and Associations formed by Africans as a way of presenting their views to the authorities, contributed by the merging of all welfare Societies to form a National Organisation, energetic agitations were mounted for the independence of the indigenous people. The new development in the public affairs inevitably changed the role of the police force, from guarding government property to a state agency fighting the danger created by the political awakening.

The colonialists where now faced with real danger to their political power, posed by African Nationalism. In response to that therefore, they had to crash that black political consciousness with the most effective weapon at their disposal, which was the police force.⁵

Retired Judge, Kabaso Chanda in his contribution to the Southern Africa Human Rights None Governmental Organisation Network⁶ observed "that the desperate situation in which government found itself gave rise to the emergency of police brutality, a legacy of terror still in existence today."

⁵ A Report on Police Brutality in Southern Africa – A Human Rights Perspective, Inter African Network for Human Rights and Development (Afronet) (2000). P 185

⁶ Ibid

Indeed, today as alluded to earlier, the police as law enforcement officers upon whom every citizen looks for protection have now become the untrusted by the public, this has been as a result of cases where law enforcement officers in the name of enforcing criminal law have taken the law in their own hands by brutalizing citizens and criminal offenders either before and after being found guilty. In some cases, brutality does not spare even the law abiding citizens.

1.3. Statement of the problem

The police as law enforcement officers upon whom every citizen looks for protection have now become the most feared by the public, this has been as a result of cases where law enforcement officers in the name of enforcing the law have taken the law in their own hands by brutalizing criminal offenders even before and after being found guilty. The Zambia police service Act, the Criminal Procedural Code, the Penal Code and the constitution of Zambia as well as other incidental pieces of legislation make provisions with regard to criminal law and police powers. In this research, it is assumed that there has been very little or no serious follow ups and discipline with regard to the brutal actions by the police officers because it is a well known fact that no one is above the law.

1.4. General objectives

To assess the difference between actions of the police and their source of authority, in cases where the two are found to be contrary, to ascertain the remedy given or available from the correctional institutions.

1.4.1. Specific objectives

(a) To find out the functions and duties of the police service.

- (b) To find out other standards which the law provides regarding the police.
- (c) To find out whether the actions taken by the police are in line with the provided Law, functions and duties of the police.
- (d) To find out the extent and nature of police brutality.
- (e) To find out what has been the remedial response to police brutality.
- (f) To find out whether the law has adequately covered police brutality.

1.5. Research Questions

The study is intended to answer the following questions;

1. What are the functions and duties of the police?
2. What other standards has legislation set for the police to discourage brutality?
3. What has been the response of the police administration with regard punishment for police brutality?
4. Do all victims of brutality get their well deserved remedies?
5. What are the adequacies and inadequacies of the law on brutality?

It is therefore the intention of this study to evaluate the police action in view of brutality in an effort to find out the nature and extent to which brutality has gone. Indeed, the study will be beneficial to the ordinary members of the Zambian community as victims of brutality so much that they will be enlightened on the law and recourse to brutality as well as providing them with knowledge of the stated matter. And the police on the other hand will through this study have a clear version of their newly portrayed picture to the public so that they can review their actions

and assume their true position in society. Cardwell and Nardini⁷ portray this true position to be that;

“The police are charged with the maintenance of order and enforcement of the Law, they must therefore, act to protect the community with respect to Public health, morals, safety and prosperity. It is not surprising, then that the Police officer is usually the first point of contact between the citizen and the Law. Indeed for many persons, the police are the law, and for this reason their appearance, conduct and effectiveness do much to destroy or create the law.

It is a challenge therefore, to the police service and the remedial institutions like the Police Complaints Authority and the Courts to see to it that overzealous police officers who take the law into their own hands are punished to deter further unlawful practices of brutality .The Inspector-General of police in whom the entire police command is vested should keep a close and watchful eye on the police whom he governs to ensure sanity and obedience to law in the police force. Criminal offenders must be handled in a way provided by the law even if the very laws seem inadequate at the time.

Arising from the foregoing observations, it came out clearly that the demand for satisfactory police services from the public is immerse and this, in turn, suggests that a number of conditions and good laws should exist to enable the police carry out their respective functions. In fact an ideal police institution is naturally expected to be well ahead of criminals in terms of knowledge, skill and equipment otherwise, the battle will be lost to the criminals and contraveners of various laws enforced by police.

But this seems not to be the case as Ndulo⁸ observed;

⁷ Foundations of law Enforcement and Criminal Justice Indianapolis: Bobbs – Merrill co (1977). p 42

“...In Zambia there has long been a crisis of confidence on the part of the public as to the ability of the force to deal effectively with the crime. Some view the police with suspicious; others treat officers with hostility and contempt. There is no doubt that the performance of the force has left a lot to be desired, with clear up rates for many offences remaining unsatisfactory.”

Hatchard and Ndulo⁹ have questioned the effectiveness and ability of the police in their effort to curb crime, to them, there is lack of confidence on the part on the police which has resulted in the public viewing the police with suspicion and hostility. As stated by Ndulo the effectiveness of the police in their use of power and is up to the public who act as a check on their effectiveness. A cross section of society would in reality say very little to praise the police. This is not to say that there is complete ineffectiveness on the part of the police, there are bad elements in the police service tarnishing the name of the entire police service.

A further attempt to identify the role of the police is made by Wilson¹⁰ in his study of the roles and functions the police identifies two basic aspects, by and large summarizing the role of the police into the ‘legalistic order’ or order maintenance aspects and the ‘service aspect’ he noted that the role of the police in the maintenance of order is to enforce the law according to its definition. The service aspect entails moving away from these functions and duties directly related to threats or violations of the law and in turn, help create a satisfied society. This means treating the police as part of the community rather than outsiders. This leads to the fact that the there must be police public relations, sadly it is not the case at present in Zambia citizens fear the

⁸ Hatchard, J & Muna Ndulo. Readings in Criminal Law and Criminology in Zambia Multimedia Lusaka. (1994). P 78

⁹ Ibid.

¹⁰ Wilson, J. Varieties of Police Behaviour University Press: Harvard. (1998). P 8

police more than treating them as part of the community, the police seem to be in the world of their own.

It would be a fantasy to hope and trust that the situation of police brutality will be dealt with by the machinery we have now without further adjustments, what this study will do is to concentrate on brutality in criminal law, the study hopes to suggest means by which reports like “police torture causes woman to abort”¹¹, “police brutality leaves chazanga resident deformed”,¹² or “police condemned for chayanfya’s death”¹³ among others can be brought to an end.

The comforting start to resolve the problem would be enacting laws strictly enacted to cure the mischief of brutality by capturing the aspect of punishment of brutality offenders with updated and reliable legislation. It suffices to note that the attainment of criminal justice depends on the effectiveness and efficiency of the machinery of criminal law, criminal justice in Zambia can be attained by including in the law new pressures and changes affecting the fabrics of the society. In this study the new pressure and change affecting the fabrics of society is brutality.

It has been found that there is rampant brutality in Zambia as more and more cases are being reported in the press concerning the unlawful behaviour of the police who are entrusted with the armor of protecting the citizens. The results of brutal actions mostly go unpunished or covered up by fellow officers, very few get to be punished. To that effect, it is suggested that if only the vice of brutality can be dealt with adequately

¹¹ Legal resource foundation Newsletter No 52 June 2003

¹² Legal Resource Foundation Newsletter No 54 August 2003

¹³ Legal Resource Foundation Newsletter No 96 May 2007

using the correct machinery for curing the mischief, the police will assume their rightful place in society and perform their functions in accordance with the law.

This study will therefore find out the nature and extent of police brutality, by so doing, it will ascertain what the law provides on some identified criminal offences, in turn, it will find out whether the actions take by the police in response such offences as well as other cases have been justified by law and if it is not so, whether there have been remedial responses available for victims of brutality. The study will further investigate whether the law in existence now has adequately or inadequately covered brutality. Then, a conclusion and recommendations will be made accordingly.

1.6 Methodology

This study will take the centralistic approach, that is to say, it will include primary and secondary data. The primary data will be collected by conducting interviews with the police administrative officials, statutes and judicial precedents. While the Secondary data will be collected form police reports, statistical reports, books, newspapers, journals and other relevant publications.

Having generally introduced this study on police brutality in the enforcement of criminal law in Zambia, the essay will proceed in chapter two to look at the functions, duties as well as other legislative standards of the police service in Zambia. The chapter will further mention some selected offences that will be vital in analysing the response of police officers to such offences. Chapter three will then look at how the police have responded to some of the cases in relation to the offences highlighted in chapter two and what the remedial responses to cases of brutality have been. In

chapter four will be an assessment of the adequacy and inadequacy of the law with regard to brutality. Lastly, chapter five will have recommendations arising from the research findings dealt with in chapter three, the chapter will also contain a conclusion by way of giving a summary of the work.

2.0 CHAPTER TWO

2.1. FUNCTIONS, DUTIES AND LEGISLATIVE STANDARDS OF THE POLICE SERVICE

A general view of brutality has been highlighted in the previous chapter, this chapter will now focus on the functions and duties of the Police Service in Zambia and other legislative standards by which the police are expected to abide. In so doing, various pieces of legislation which provide for duties and functions of the Police will be brought out. Among the legislation are the Supreme Law of Zambia, the Constitution,¹⁴ the Police Service Act,¹⁵ The penal Code¹⁶ and the criminal procedure Code¹⁷ As it must by now be apparent, it is clear that with the direction of the numerous cases of brutality, one wonders whether those functions, duties and standards set in the legislation have any impact on the very people whom they are meant for. This chapter takes different directions of the law, all pointing to the fact that brutality is prohibited by law. This leads to a neat conclusion that the purpose of the law is everywhere the same with regard to brutality. Human rights law also takes a strong view on the observance of human rights, none observance of such rights is condemned as being Human rights abuses.

2.2. Functions and duties of the Police Service

The Zambia Police Service is charged with the responsibility of maintaining law and order as well as protecting the life and property of the community.

¹⁴ Chapter 1 of the laws of Zambia

¹⁵ Chapter 107 of the laws of Zambia

¹⁶ Chapter 87 of the laws of Zambia

¹⁷ Chapter 88 of the laws of Zambia

The Zambia Police Act provides for the organization, functions and duties of the Police, the constitution on the other hand also spells out the functions and duties clearly laid down, what remains desired is the steadfast adherence to the laid down functions and duties in a manner provide by the laws.

The Police Service Act in Section 5¹⁸ makes a provision that the police are employed throughout Zambia in order to serve the peace, prevention and detection of crime as well as apprehension of offenders against peace. The Section goes on to allow the Police Officers to carry arms in the performance of their duties, however, that does not give a leeway for brutal shootings by Police Officers without justification. Section 18¹⁹ of the Penal Code provides that,

“ where any person is charged with a criminal offence arising out of the arrest or attempted arrest, by the police, of a person who forcibly resists such arrest or attempts to evade being arrested, the court shall in considering whether the means used were necessary or the degree of force used was reasonable for the apprehension of such person, have regard to the gravity of the offence which had been, being committed by such person and the circumstances in which such offence had been, or was being, committed by such person.”

By and large, this Section in our Penal laws allow the use of force in affecting arrests, it however goes to set a limit of such use of force by justifying only the use of reasonable force.

What seems to be a well meaning provision of the law is questionable due to the fact that what amounts to reasonable force is not clearly stated. To that effect brutality is in most cases justified by Police Officers as being reasonable, reasonable to suit their actions.

¹⁸ Chapter 107 of the laws of Zambia

¹⁹ Chapter 87 of the laws of Zambia

Retired Judge Justice Kabaso Chanda observes that “it is not denied that the police are a Section of the government and are generally associated with the use of force against unruly elements in society in order to preserve public tranquillity but the application of that force...has to be tempered with some limitations.... Excessive use of force against a criminal, such as shooting dead a disarmed and tied up robber is a typical example of abuse of Police Powers.”²⁰

In the same vein, High Court Judge, Justice Timothy Ndhlovu called on Police Officers to be a mirror to society by setting good examples as law abiding citizens.²¹ Formally and officially, the law seems to be inclined to the fact that Police Officers are also just like any other citizens expected to carry out their duties within lawfully and acceptable standards. Section 14 (1) of the Police Service Act supports that view as it provides that Police Officers are expected to exercise such power and perform their duties as are conferred by or imposed by law on them.

The Police Officers also have the duty to collect and communicate intelligence affecting the public peace. Additionally, the Police Officers are to detect and bring offenders to justice and to apprehend such offenders, for such apprehension sufficient grounds must exist.²²

The importance of such provisions can be seen from both the criminal and human rights perspective, it has been observed that liberty is equally lost whether the citizen is left to the mercy of an overzealous policeman who is trigger happy. Few

²⁰ Police brutality in southern Africa- A Human Rights Report, Inter African Network for Human Rights and Development (Afronet) 2000 p 184

²¹ Legal Resource Foundation News Letters No 58 2003/ 2004

²² Section 14 (3) of the Zambia Police Act Chapter 107

people will deny that the extent to which human rights are respected and protected within the context of criminal proceedings is an important measure to each and every society's well being.

There is need for Police Officers to have an understanding of the law regarding criminal activities out of which brutality result. Article 103 of the Constitution makes a clear provision that the Police Force is a nationalistic, patriotic, professional, disciplined, competent and productive force... It is therefore assumed ordinarily that the Police Offices have all the mentioned qualities, whether or not that is true will be decided at the end of this study. The Constitution adds on to the provisions of functions and duties of Police officers according to that provision the Police force has a duty to:

- (a) Protect life and property.
- (b) To preserve law and order
- (c) To detect and prevent crime.
- (d) To cooperate with civilian authority and other security organs established under the constitution and with the population generally.²³

In the case of *Rice V Connolly*²⁴ it was sated that there is no exhaustive definition of the powers and obligations of the police, but they are at least those that include the duty to detect crime and bring the offender to justice.

²³ Section 104 of the Constitution

²⁴ (1966) 3 W. L. R. 17, 21

Needless to say that the police service have additional duties to safeguard the rights and freedoms of members of society as well as developing sound police- community relations supporting the fact that the list of functions and duties are indeed exhaustive.

Apart from the provisions that expressly state the functions and duties of the police in Zambia, there exist other legislative standards that act as additional guidelines on the way the police should carry out their duties. These standards are set in other relevant pieces of legislation, for example, the Penal Code and the Criminal Procedure Code.

2.3. Legislative Standards

Even though there have been efforts to perform duties and functions as laid down by the law, one can not neglect the fact that cases of brutality have become overwhelming in recent times. Brutality cases capture various incidences, they in most times, take place as the Police Officers are enforcing criminal law. It then becomes vital at this point to note that police brutality can take place in pre-trial procedure. The late Professor Alfred Chanda observed that,

“The essence of the procedural protections at the pre-trial stage is equalisation of the ambushing powers of the defendants and the prosecution. What might therefore seem like a tilting of the procedural scale in favour of the suspect or the accused is merely an effort to compensate the defendant for the fact that the enormous investigative powers of the Police are invariably placed at the generous disposal of the prosecution.”²⁵

²⁵ Human Rights Law for Enforcement Officers publication (1999).

It is true to Professor Chanda's words, that indeed the Police force has enormous powers such that in the name of investigations, a great amount of brutality has resulted when the law provides that no one is to be deprived of his liberty except as authorised by law in a number of specified instances.²⁶

It then suffices to note that a person may be apprehended upon reasonable suspicion of having committed or being about to commit a criminal offence under the law in force in Zambia. Even when making an arrest, the Police Officer making the arrest, unless the person concerned has submitted to custody by word or action, must touch or confine the body of the person to be arrested.²⁷

What seems clear from the legislation is that Police Officers have no powers to detain a person for questions unless he is arrested in respect of a criminal charge and he or she must be informed of the reasons. However, the Police are entitled to question any person including persons who may become suspects, in order to determine whether there is reasonable ground to suspect any person or persons.²⁸ Additionally, the Police are not empowered to use force to extract statements from a suspect or a defendant. To that effect, the Constitution in Article 15 provides that no person shall be subjected to torture or to inhuman or degrading treatment or other like treatment. Torture is a form of brutality which is against the law be it by Police Officers.

The provision is also clear in outlawing torture or any other inhuman or cruel punishment or treatment. It must therefore afford sufficient protection against police brutality.

²⁶ Article 13 of the Constitution

²⁷ Section 18 of the Criminal Procedure Code

²⁸ Section 26 of the Criminal Procedure Code

The law's disregard for police brutality is shown by the fact that confessions procured by torture, threats or promises by a person in authority are normally excluded in evidence even though the decision to omit is dependent on the discretion of the judge.

Interrogations are governed by judges rules, these rules lay down an elaborate set of cautions to be given by police at various stages of interrogations.

The Judges rules seem vital if strictly followed because most of the brutality cases in Zambia take place during interrogations. Sadly, the judge's rules are widely disregarded in Zambia to an extent that brutality of suspects is now the rule rather than an exception. What is even more saddening is that the suspects are left at the mercy of Police officers during interrogations.

By and large, the legislations have made various provisions outlaying the functions, duties as well as standards by which police officers are lawfully expected to operate, the provisions which are both directly and indirectly linked to brutality goes unnoticed. That is because the local police came into contact largely with uneducated persons who neither know nor understand criminal procedures and what is lawfully expected from police officers. For such people, what may amount to brutality may seem like normal police work and goes unreported and undetected making themselves even more vulnerable. Sadly, for such people ignorance of the law puts them at a greater disadvantage. The result is that despite the legal provisions guiding Police Officers, an overreaching or underreaching behaviour by Police Officers remains shut out of Public examination. Much to the disadvantage of the ignorant majority in Zambia.

To that effect, the public does not view police officers as collaborating partners in the fight against crime, instead police officers are viewed with disappointed eyes. In *Rice V Connolly* it was also stated that “every citizen has a moral duty, or if you like a social duty to assist the police, there is no legal duty”. This is a clear indication that the help that the police can get from the public is dependent on what help the police are giving in return, if the police are known for brutality more than they are known for their protective duties. Then one does not expect the public to return good for evil, besides they have no legal duty to assist the police and they can not be held responsible for breach.

To that effect, the extent of brutality can not be clearly stated because brutality is mostly carried out away from the public to avoid detection and exposures leaving only few cases of brutality open to the public. And it is these few cases that receive public criticism. What is saddening is that those reported cases are only a fraction of the many brutality cases which happen behind scenes.

The situation is worsened by the fact that policing is intimately involved with the use of force, brutality is an inevitable by product of policing, the special powers accorded to members of the Police Service as well as the arming of Police Service members, inevitably heighten Police brutality.²⁹

There have been amendments to the Zambia Police Act by Amendment number 14 of 1999 to provide for criminal offenders who are in custody; it is believed in this study that the amendments also cover persons found guilty after trial, so much that instead

²⁹Supra note 28

of brutalising them, their sentences serve their purpose of reforming them and not deforming them.

Generally, the provisions state that the custody officers hold the position of officer in charge, therefore, they must ensure that a person who is custody is treated in a decent and human way such that even if that person in custody requires medical attention, he has access to medical facilities. This in one's opinion indirectly disregards brutality of persons in custody.

In this study, the offences which will be looked at are murder,³⁰ theft³¹ and aggravated robbery.³² Having shown the provisions of the law on duties, functions and standards set by the Legislations on Police Officers, the above mentioned offences will be used to analyse how Police Officers have responded to suspects of such offences. It is worth noting however that brutality does not only manifest in pre-trial and after trial situations, it also sadly occurs in unexplained circumstances, though in the name of enforcing criminal law. Police officers who are trigger happy go on rampage shooting innocent citizens with no regard for the law at all. With the provisions of the laws stipulating clearly on the duties, functions and legislative guide lines of police officers, cases of brutality must be seen to minimize or even stop existing. But that seems to be probable in the angelic world for now.

Getting back to the mentioned offences above, murder is causing the death of another person by an unlawful act or omission by any person with malice aforethought.³³

³⁰ Section 200 of the Penal Code

³¹ Section 264 of the Penal Code

³² Section 294 of the Penal Code

³³ The intention or guilty mind is what is called malice aforethought

Theft on the other hand is the fraudulent taking of anything capable of being stolen or fraudulently converting to the use of any person who is not the owner or special owner of that thing capable of being stolen. Additionally, aggravated robbery is the use of offensive weapon or instrument immediately before or immediately after stealing.

All the above offences have punishment attached for anyone found guilty and brutality is not among them, the Penal Code is an Act that establishes a code of criminal law and the Civil Procedure Code, in its preamble provides that it is an Act to make provision for the procedure to be followed in criminal cases, the two Acts supplemented with particular Acts in accordance with the crime are able to deal with any crime without the involvement of brutality. If the police service is placed to enforce the law, surely they must enforce it as it is laid down leaving the amendments to the legislature because by brutalising citizens, they tend to disobey the law and work with what they believe is the law.

It suffices to note that the pre-trial procedures mentioned elsewhere in this study apply to the above mentioned offences, as an example, a person accused of murder, theft, aggravated robbery or any other crime must be arrested and cautioned, it is only when such a person is resisting arrest that reasonable force can be used to effect arrest, such person must be taken for trial. The fact that one is a suspect does not justify any kind of brutality. Brutality of suspects is in fact a form of finding someone guilty prejudicially when the law in fact states that an accused person is innocent until proven guilty, normally called the presumption of innocence.³⁴ What would be the

³⁴ Section 18 (1) of the constitution

essence of beating up a suspect who turns out to be innocent, that merely amounts to a great injustice, an abuse of one's rights.

It would best if the police by all means endeavour to abide by the standards set as well by the legislation, in that way they return the well deserved respect from the public. Enforcement of criminal does not entail brutality because by brutalising the offenders, the police become criminals themselves.

Having attempted to outline the functions, duties and standards set out in the relevant laws of Zambia, the study will then proceed to Chapter Three which will focus on how police have responded to some offences and other cases in which brutality has resulted, the Chapter will further look at the remedial responses which have taken place in response to brutality cases.

3.0 CHAPTER THREE

3.1. POLICE RESPONSE TO CRIME-BRUTALTY, REMEDIAL

RESPONCES AND INSTTUTIONS

This chapter will show how police officers have responded to the offences mentioned in the previous chapter as well as other instances in which brutality has resulted. The chapter will go further to examine the remedial responses if any to the acts of brutality. In so doing, it will be vital to look at case studies which will then review acts of brutality and the remedial responses that followed, taking into account other remedial institutions involved.

Without the law we would probably have unprecedented anarchy, but even with the law is our country safe? In most parts if not all the country there is a sense of crisis concerning the security of citizens. Can we look to the law to protect the citizens from police brutality, and will the law help our country win the war against brutality?³⁵

An innocent look at the mission statement of the police service seems to answer the above questions in affirmative. The statement states;

“We the Zambian police service are committed to providing high quality service, by upholding and applying the law fairly and firmly to all. We will apply pro- active methods to prevent crime, arrest those who break the law and take them to court and assist victims of crime through counseling. We are committed to cultivating rapport and partnership with the community. We pledge to respect individual human rights while recognizing the community’s expectations and obligations. We are committed and will review our role and be ready to change approaches to law enforcement methods were necessary in order to facilitate good governance while upholding our professional ethics.”³⁶

³⁵ Legality Journal University of Zambia Law Association publishers (2004) p 10

³⁶ Simbulo, Rinos The Human Rights Observer : Police and Human Rights in Southern Africa October (1999) p 26

With this statement a lot of hope is surely raised pointing to the fact that there is unlikelihood of brutality if the mission statement is upheld and followed strictly by the police service. However there is a different picture on the ground as most case studies show a parallel picture from the very promising mission statement.

3.2. Case Studies

3.2.1. Case No 1³⁷

The applicant was convicted of theft, part of the case of the prosecution was the evidence of a police officer to whom the applicant was alleged to have made a free and voluntary statement. Objection was made on the ground that the statement was made as a result of beating. The applicant alleged that the police beat him badly and was made to sign on some note book.

Remedy

The remedy to start with was the holding of a trial within a trial, it was concluded that the applicant would allege that he made no statement but that he was forced to sign his name in a note book. The magistrate discontinued the trial within a trial on the ground that a statement was a matter for the general issues and not for a trial within a trial.

Blagden, C.J. stated that if the statement was not made voluntarily... the accused is entitled to have it entirely excluded from the consideration of the court ... that before a confession to a person in a trial is admissible, it must be proved to have been freely and voluntarily made. *Voluntariness is a condition precedent to admissibility, and*

³⁷ Tapisha V The People Court of Appeal, (1972) Z.R.

questions of fact relating to voluntariness are properly described as affecting admissibility. With regard to the second question, it is to be recalled that the judges rules were formulated for the guidance of the police officers. They put police officer on guard with regard to what type of conduct on their part will or will not be regarded by judges as improper or unfair vis a vis a person suspected of having committed a crime. It follows that whereas failure on the part of the police to administer a caution constitutes an impropriety in respect of which court may exercise its discretion in favour of the accused, however, the issue must always be whether the accused was so fairly or improperly treated in the circumstances that the evidence ought to be rejected.

3.2.2. Case No 2³⁸

The next case is that of a 26 year old Lusaka resident, Webster Mfula who had two of his toes shattered and subsequently amputated at the hospital after being battered by police officers for alleged aggravated robbery. Mr Mfula narrated that seven police officers took turns beating him after he was accused of stealing a television set and fridge at gun point, He was arrested in May 2003 by two Ngwerere police officers from the premises where he was doing some plumbing job. The officers used an iron bar to beat him leaving two of his toes shattered and later amputated at UTH, he also sustained injuries on other parts of the body. Mfula narrated that he was put on what is famously known as “*akampelwa*”³⁹.

Remedy

³⁸ The Legal Resource Foundation News Letter No 54 August 2003 p1

³⁹ This is a form of torture where one is suspended on an iron bar with his legs and hands tied with wires, the police then hit that person on the feet and his whole body.

After the incident, the relatives of the victim reported the matter to the Permanent Human Rights and were told to also report to the Legal Resource Foundation who then took up the matter.

In cases such as this one with enough evidence to justify unprofessional behaviour on the part of the police, it is only logical that institutions like the Public Complaints Authority act quickly to remedy the situation. The excuse given is lack of funds to enable the institution to effectively carry out its duties.

3.2.3. Case No 3⁴⁰

The case involved one Mary Goma, she was picked up from her work place 7th May 2003 on suspicion that she had stolen K2 million from a named college. Despite informing the police that she was two months pregnant, they went ahead to torture her, she said she was beaten with a short button blind folded and sexually assaulted. As a result, she had an abortion resulting from the brutal beatings. The medical report done by DR Michael kasonde of Livingstone general hospital which also coincided with the police report reviewed that Mary had a complete abortion, sustained swollen tender buttocks, bruises on the left hand and a tender left knee.

Remedy

Mr and Mrs Goma were claiming for compensation from the state. Nothing at that time was done to the officers who were involved.

Lawfully, an accused is innocent until proven guilty, there is no justification for brutalising an accused person. In fact, a custody officer holds the position of officer in

⁴⁰ Legal Resource Foundation News Letter No 54 June 2003 p 1

charge, he must therefore ensure that a person who is in custody is treated in a decent and human way.

3.2.4. Case No 4⁴¹

David 17 was on June 1 2001 among several pupils from different schools in Chipata who were protesting against the teachers strike demanding for them to resume work. When riot police came, the pupils scampered in all directions, David was apprehended and five police officers begun beating him with short buttons and kicking him with boots. They beat him until unconscious and left him lying in a drainage filled with dirty water, a nurse leaving near by ordered the police to take him to the hospital as they were the cause of the unconsciousness. As a result David is paralysed in the lower part of his body and only moves using a wheel chair to this day. His medical report showed that he was injured on the abdomen, spinal code and had intra abdominal haematoma.

Remedy

The matter was taken to court by the LRF and in 2006 David was awarded K322 million damages as compensation.

Cases like this one bring some kind of relief, the court here is seen to give the most desired remedial responses to the act of brutality. That is comforting indeed, it is however sad to note that the remedial response took too long such that in some cases the remedy might come when it is too late and meaningless.

3.2.5. Case No 5⁴²

⁴¹ Legal Resource Foundation News Letter No 84 May 2006 p 1, 4

On the 28th of October 1997, a group of military officers and soldiers took over the national radio, they announced that they had overthrown the government of Fredric Chiluba, the then president of Zambia which turned out to be a failed coup. Thereafter, most of the soldiers were arrested and charged with treason. Before their trial, all the arrested soldiers were tortured by police and other security officers. The result was that some of them even died, an example being Corporal Robert Chikulo who died in prison. The ones who survived were and are still not in their correct state, mentally, physically and psychologically. That was much to the condemnation of the international community as well as the Permanent Human Rights.

Remedy

The brutalisation of the coup suspects was seen as a means of punishing the offenders. Of course that was a political perspective because the matter was so attached to politics such that the role played by criminal laws was at the mercy of the politicians. There was no remedy for all the brutality which took place. Well, it could have been a politically pronounced “justifiable brutality”

3.2.6. Case No 6⁴³

In this case, Sydney Gondwe was shot dead by police officers as he and his two brothers went to attend a funeral of their friend’s father in what is popularly known as the Ngo`mbe incidence of 2006. Friday Sinyangwe 20, an eye witness narrated that four men went to the funeral house around 23 hours with one of them clad in a police uniform. The armed man shot in the door way shooting the men who were sited near the door, it was after the shooting that the men asked what the victims were doing and after being told that they were attending a funeral, the four men left, after noticing

⁴² Police brutality in Southern Africa – A human rights perspective (SAHRINGON) (2001) P 191

⁴³ Legal Resource Foundation News Letter No 89 October 2006 p 8

that it was indeed a funeral house. The survivor Thomas Tembo a grade ten pupil of Olympia Basic School lost his eye after the bullet in his left eye was removed, he is now permanently blind. Thomas stated that his life and education was destroyed. The motive of the shooting was not known.

Remedy

When asked about the Ngo`mbe incidence in an interview, police spokes person Mr Boni Kapeso said that the officers involved in the shooting were arrested, stating further that police are expected to conform to a high standard of behaviour, no trigger– happy officer is tolerated.⁴⁴

3.2.7. Case No 7⁴⁵

On Friday 6th November 1998 police shot dead Chanda Chayafya, 20 a sub inspector with Armco Security. The police said he was shot in an exchange of fire with the police who were pursuing him as a suspect in the murder of former finance minister Ronald Penza. However, Afronet investigations revealed that Chayafya was at home in the early hours when unknown people gunned down Penza. According to the mother of the deceased, Marithinia Mwansa said she heard a lot of noise on Friday afternoon, near Chaisa market and someone informed her that police officers were beating up her son. She ran to the market where she found the police bundling her son into a car. He was taken to a nearby bush in Chazanga area where they shot him dead in cold-blood. “If he really stole or killed somebody, why kill”? Mwansa asked. “My son has never been arrested in connection with any crime in his life”.

⁴⁴ Interview held on 22 October 2007 at 12:50 at the Police Service Headquarters in Lusaka.

⁴⁵ The Inter- African Network For Human Rights development Report chapter three (1998)

Remedy

The matter was taken to court and judgment was entered for the estate of the deceased, damages were to be assessed by the deputy registrar. In passing judgment, judge Kakusa said the conduct of the police in respect of chayafya's death demonstrated determined desire to defeat the course of justice, he further said that from the conduct of the police officers after the shooting, it was right to conclude that their primary interest was to eliminate the deceased.

Section 12 (3) (b) of the constitution of Zambia provides that the police may kill in order to effect a lawful arrest or to prevent the escape of a person lawfully detained, this does not however give police carte blanche to kill suspects at will. A policeman must only use a firearm when there is no other alternative.

3.2.8 Case No 8 ⁴⁶

On 27 February 1999, 21 year old John Mulango died in Mandevu police cells after being battered by police officers during interrogations. According to a post- mortem conducted by forensic pathology, Dr Nahindra Grag, which report was made available by Mulango's uncle Joseph Mumba showed secondary shock, septic wound, suspected assault and head injuries as the probable cause of death.

Remedy

No officer was arrested with regard the case. Thus no remedy was given.

It becomes very difficult for the affected party to prove brutality when a death occurs in police cells, Dorcas Phiri in an interview⁴⁷ narrated that her son Kumbuso Phiri

⁴⁶ The Inter- African Network for Human Rights Development report.

was arrested by police and taken to the Titanic police station after he was suspected of stealing a welding machine. When she went to see him the following morning she found him unconscious, when asked, the police said he had malaria. Mrs Phiri wondered what type of malarial that was, because her son had serious bruises on his body, he died that very afternoon. All efforts by the mother to disprove police allegations that her son died from malaria failed.

The case studies above have shown how brutality takes place not only with regard suspects but also on innocent law abiding citizens. The functions of the police as stated in the previous chapter are to protect the citizens and only arrest in a lawful manner those erring citizens among other duties. No provision of the law allows brutality. The constitution as the supreme law clearly provides against inhuman and degrading treatment, a logical conclusion would then be that any one who goes against such a provision must be punished by it a police officer. In an interview, Mr Boni Kapeso said that when a police officer breaks the law he must be made accountable, he must be arrested and charged just like any other citizen.

What is on the ground however is that brutality has visibly created a distance between the police and the public. Linda Muleya of Lusaka in an interview⁴⁸ said that people have lost trust in the police service because for one to access the police, one had to bribe them or the other party to the matter bribes them, besides the police service is not user friendly.

⁴⁷ An interview held with Mrs Phiri of Misisi Compound in Lusaka on 28th September 2007.

⁴⁸ Interview held the Wednesday 19th of September 2007 with Miss Muleya of woodlands.

The Zambia police practice is that most of the police officers do not know that beatings, ill treatment and torture of persons in their custody were illegal acts. This is simply because all officers of all ranks are doing it, they view it to be normal police practice.⁴⁹ Some police officers that asked not to be named said the problems in the police service start from the bosses themselves. They said in cases of police brutality, it is mostly the bosses who give them authority to do it but when trouble comes, the bosses are not implicated. The officers also complained of their poor conditions of service which force them to work according to the complainant's instructions.

Some of the case studies above cover suspects of theft, aggravated robbery and murder, the law on arrest is very clear. The police officer making the arrest, unless the person concerned has submitted to custody by word or action, must touch or confine the body of the person to be arrested. The arresting officer is allowed to use force when arresting or stop a person from escaping if he suspects that person has committed a serious offence, the officer can also use a firearm. Mr Boni Kapeso however stated that the police can only use a fire arm after warning the person whom he intends to arrest three times by firing warning shots in the air or ground, after that, he can fire only to disable that person in the knees in order to make the arrest easy. Additionally, Mr Kapeso said the police could also use a firearm if his life is in danger or in the prevention of a crime if the suspect is also using a firearm.

With all the provisions of the law laid down, we still have cases where the police use guns when in fact the suspect is unarmed. Commenting on this Mr Kapeso admitted that there are some trigger-happy police officers but the law is there to clip their

⁴⁹ Police brutality in Southern Africa – A human rights perspective (SAHRINGON) (2001) P 195

wings. It is known that no one is above the law, to that effect the law must visit any police officer in breach of the law.

It suffices to note that a good number of brutality cases take place during the interrogation of suspects, in *Chimba V The Attorney General*⁵⁰ the suspects were slapped, kicked and subjected to electric shock, as a result Chimba died a few years later. In another case of *The Queen V Mainza Chona*⁵¹ overreaching police officers descended on helpless men and women, repeatedly hit them with heavy clubs which resulted into breaking of limbs and bones. As a witness, Mr Chona wrote to the government to prosecute the assaulters, the request was ignored, there was no remedy in short so much that when Mr Chona made attacks on the justice system, he was then charged and convicted of sedition.

The courts have been of remedial help to the whole matter, such that there have been, if not precedents then rules put in place to curb brutality in a way. In the case of *S V Manhivi and Others*⁵² it was held that brutality by the police in investigating crime and interrogation of suspects must be punishable effectively. The judges rules operate as some form of remedy to brutality to the effect that, if it is proved that the suspect was forced to confess due to beatings or any form of harm, such evidence is not admissible in the court of law.

The acts of brutality are mostly aimed at obtaining confessions and they seem like an integral part of police investigation, to them, they hold desired outcomes. The process of taking statements from suspects is now hedged about with a wealth of formalities

⁵⁰ (1972) Z.R

⁵¹ (1962) Z.R

⁵² S – 30 - 91

designed to mitigate the adverse effects of the inherently coercive nature of custodial interrogation and to ensure accuracy in the recording of what suspects say to the police.⁵³ With the vice of brutality at hand, it is agreeable that all available revenues like the court with its rules are taken into consideration.

What has been observed from the case studies is that the law is not followed in most cases of theft, murder and aggravated robbery among others. Most criminal suspects are generally beaten up some even die as a result, in most cases the police refute any allegations of brutality, thus in many cases were the arrested person has bruises or injuries, it is common for the police to claim that the injuries were sustained as a result of the police having to forcibly restrain him or her. In such cases it is frequently not possible to ascertain who actually is telling the truth, the problem is worsened not just because there are two compelling accounts but because the people making the allegations are of low class and their manner of presenting their side of the story is not as good as that of the police.

A cross section of the communities in Zambia view the police with a disappointing eye, what should be borne in the mind of the police however, is that, without the confidence, approval and support of the public machinery, the police as we know it today becomes powerless, and incapable of fulfilling its functions.⁵⁴ What is on the ground now is a great distance between the police and the public to an extent that members of the public were cheering when police officers struggled against suspected

⁵³ Andre L-T Choo Evidence obtained in consequence of an inadmissible Confession in Wood Turner *The Journal of Criminal Law* Vol 57, Pageant Publishing. London UK (1993) p 195

⁵⁴ Ngawo Nakamba prospects for ideal police – Public Relations; The role of the police public complaints authority Obligatory Essay UNZA 2004

criminals.⁵⁵ In normal circumstances, the public must be seen to help the police in getting rid of the bad elements in society, as for now that seems far fetched.

If the conduct of the police is to be improved, opposition to misconduct must be continuous and intensified. Therefore, the police should be made to pay for brutality and not the State as is the case. What is somehow comforting is the impact being made on police officers who have been sued and called to the attorney General's office sometimes to exculpate themselves for them to verify the claims.

The president Dr Levy P. Mwanawasa complained that the performance of the police is below what is expected of them. "There is too much disorder in the nation and am not happy with the police says Mwanawasa"⁵⁶

It is then vital at this point to bring out some remedial institutions which have been seen to help both in providing remedies and making sure, within their capabilities that the police work within the law. Apart from the court and the LRF there are other remedial institutions that help in a way in the fight against brutality:

3.3 Remedial Institutions

3.3.1. The Police Professional Standard Unit.

The unit was established to investigate and recommend action against any implicated officers among other issues. The unit is under the authority of the senior police prosecutions officer. What that means is that an erring officer can be investigated and action recommended remedying the problem.⁵⁷

⁵⁵ Police news headed: Musamba cries for help 2003 p5

⁵⁶ Zambia Daily Mail, vol. 9 NO 134 of 6th June 2005

⁵⁷ The Zambia Police Force Governance and Poverty Reduction: Proposals the Fifth National Development Plan – 2006 – 2011: Prepared by the Civil Society for Poverty Reduction: (CSPR)

3.3.2. Police public complaints Authority

It is another remedial institution where police officers can be reported for action to be taken against them if the allegation is found to be true. The institution handles cases of brutality among others. It receives complaints from:

(i) An aggrieved person who is directly affected by police action. This means that the victim, in this instance, of police brutality can go and report any police officer for acting outside his powers. The problem on the ground, however is that most victims have beliefs instilled in their minds that the police have the power to cause such harm. This is because some people who are not well acquainted with the law see it as normal police practise.

(ii) An association acting in the interest of its member.

There are times when the victim dies or is unable to lodge a complaint on his/her own, in such instances, an association, for instance Women for Change or any particular organisation interested in the group in which the victim falls can bring up a complaint.

(iii) A person acting on behalf of an aggrieved person, body, or organisation.

This is where the aggrieved person, body or organisation are represented by another person who might be more acquainted with the law or be in a better position to make such reports.

3.3.3. The Human Rights Commission.

The commission also receives cases of human rights abuse, which also encompasses brutality by the police. It also probes into alleged cases of human rights abuse even if the authorities involved step on the truth.

However, it is disappointing to note that most of these institutions do not function to their expectation due to lack of funds, expertise or both. What worsens it is the fact that reports take too long to be dealt with delaying the course of justice to the disadvantage of the victims.

Another thing worth noting is the fact that much as case studies of brutality have been shown in this study, it is arguable that some of the reports from the legal resource foundation might not be of gospel truth. When asked about this allegation,⁵⁸ the Legal Resource official said that all of the cases reported in the LRF news letters are handled by the LRF lawyers, some go to court and others are sorted out of court, he further said the LRF have offices throughout the country and they receive and deal with cases of brutality amount others. He stated further that the LRF are among the few institutions who labour to bring out the aspect of brutality and they publicise brutality cases among others as a means of letting the public know about it and as a means of deterrence to those officers who are brought out in public.

The chapter has attempted to highlight some cases in which brutality has been clearly seen. In some, remedies have been awarded to the victims though they came too late for many victims, in others no remedy is given at all, leaving the victims distressed to an extent of mental break down. The remedial institutions on the other hand do their best in accordance with their capabilities. Chapter four will proceed to give a consideration of the adequacies and inadequacies of the law with regard to brutality.

⁵⁸ Interview held with the LRF Legal assistant in Lusaka on Monday 26th November 2007

4.0 CHAPTER FOUR

4.1. A CONSIDERATION OF THE ADEQUACIES AND INADEQUACIES OF THE LAW ON BRUTALITY.

This chapter is going to focus on the adequacies and inadequacies of the provisions of the law on brutality. It will be vital then, to look at whether or not the legislation has adequately provided for the detection of brutality, the safeguards and deterrent measures.

4.2. Adequacies of the law.

The role of law is to maintain peace and security in the country, among other roles. It must be abreast with the changing society so that it caters for new developments in society. With the increased rate of brutality during enforcement of criminal law in Zambia, the most obvious question would be whether the law as it is, has made enough provision to deal with the vice of brutality. When asked on whether or not the Zambian laws have provided enough on brutality, police spokes person Boni Kapeso said that the law has made adequate provision on brutality, all that is needed is strict adherence to the law⁵⁹. It is true to Mr Kapeso's words that indeed the law has made appreciable provisions on brutality, but whether or not they are adequate is a questionable matter.

To go by the saying 'give credit where it is due' it can be said that the Zambia police Act has been drafted in such a way that discipline in the police service is maintained, a look at the form of declaration which every police officer is subjected to attest to on joining the force ,it in part reads-

⁵⁹ Interview held on the 22nd of October 2007 at 12:50 at the police Head Quarters in Lusaka.

I, A.B., do swear/solemnly and sincerely declare and affirm that I will be faithful and bear true allegiance to the President of the Republic of Zambia, that during my service with the Zambia Police Force I will preserve, protect and defend the Constitution of Zambia, as by law established, and will obey all lawful orders of the President and of all officers placed over me and will subject myself to all Acts, Orders or Regulations relating to the said Force.⁶⁰

The declaration is made before a magistrate or superior police officer in such a manner as the new officer may declare to be most binding on his conscience.⁶¹ What is clear is the fact that the law is structured in a way that officers joining the force are of exceptionally high standard in character and ready to work in accordance with the laid down laws. Well, that is supposed to be the case in a perfect world, in reality, most of the police officers act contrary to the very declarations they made. As a result, the law seems to be valueless.

The other interesting provision of law which points to the fact that the law is adequate on brutality is section 24 of the Zambia Police Act. In that provision, the police are permitted to use firearms, it however goes further to limit circumstances in which such use of force is permitted, to that effect, a firearm can only be used when any person in lawful custody charged with or convicted of a felony tries or attempts to escape⁶², or, when a person who by force rescues or attempts to rescue any other person from lawful custody⁶³ as well as situations where any person who by force prevents or attempts to prevent the lawful arrest of himself or of any other person.⁶⁴

⁶⁰ Form 1 of the Second Schedule of the Zambia Police Act chapter 107 of the laws of Zambia

⁶¹ Section 8 of the Zambia police Act

⁶² section 24 paragraph (a)

⁶³ section 24 (b)

⁶⁴ section 24 (c)

The law is very clear and straightforward such that any overreaching use of power by any police officer can be easily detected. In addition, the very law provides that; a police officer shall not use any firearms-

(i) unless the police officer has reasonable ground to believe that he cannot otherwise prevent the escape and unless he shall give a warning to such person that he is about to use firearms against him and the warning is unheeded;

(ii) unless the police officer has reasonable ground to believe that he or any other person is in danger of grievous bodily harm and that he cannot otherwise effect such arrest or prevent such rescue.

What is even more interesting is the fact that the law even stipulates that use of fire arms is meant only to disable the person in order to ease the arrest. Under lawful circumstances, a police officer can shoot a suspect in the legs only to make an arrest easier, but if the suspect is also armed then shooting is justified in order to save the officer's life or the lives of other people in danger. It is however sad to note that there is a different picture being portrayed on the ground in Zambia. It is not the law to blame, but the very law enforcement officers whom it is meant for.

The law in the Zambia Police Act, as is shown is well elaborative of the fact that conduct failing outside the law is unlawful and one would not go too far by calling it brutality, unless if justified under other Zambian laws.

It is to that effect that the Act provides for disciplinary control over police officers above and the rank of Assistant Superintendent to be exercised as is provided in the Constitution.⁶⁵ Those below the rank of Assistant Superintendent accused of any

⁶⁵ Section 29 of Zambia Police Act

offence against any law or against the Act, the Inspector-General may interdict that officer from the exercise of the powers, functions and duties vested in him as a police officer pending the result of the proceedings taken against that officer.⁶⁶

It must be further noted that the police officer who has been interdicted receives half a salary which he is normally entitled to.

One can not dispute the fact that the above disciplinary measures can go a long way in the fight against brutality. The law covers both the high ranking and lower ranking police officers, showing that indeed, no one is above the law. It is also true of Mr Kapeso's words that any police officers found guilty of brutality must face the law just like any erring citizen.

One other adequacy of the law is that, the constitution of Zambia has made provision against inhuman and degrading treatment and it is held to be a violation of human rights. Brutality falls within the category of inhuman and degrading treatment. The police officers who involve themselves in brutality are not only guilty of assault or other criminal offences, they also violate the rights of the victims, and this is where the institutions like the Human Rights Commission came in. It must be noted that the commission is the creature of the constitution of Zambia⁶⁷. One would then come to a neat conclusion that the constitution has not paid a blind eye to brutality at all, this is because whether or not it is done in the enforcement of criminal law or in other ways it is still inhuman and degrading.

⁶⁶ Section 38 of Zambia Police Act

⁶⁷ Article 125

Additionally, the Criminal Procedure Code⁶⁸ and Penal Code⁶⁹ provide for what constitutes offences, in the case of the Penal Code and what should be done after such offences have been committed in order to enforce criminal law, is found in the Civil and Criminal Procedure. With such provisions of the laws, it is quiet easy to tell where there is brutality and the same acts will provide for the offence that such brutality falls in and the punishment that follows thereafter.

It is worth noting however that, much as the law has tried to provide for what can be called 'protective provisions' against brutality, it has still left some loopholes which need to be covered up, leading to some inadequacies in the law.

4.3 Inadequacies of the law.

It suffices to note that the legal framework has some weaknesses which as a result lead to abuse of police powers and hence the use of excessive power in the course of their day to day activities, particularly when interrogating and investigating. Even though there are judge's rules to curtail any form of brutality at these stages, the rules are not rules of law and therefore not binding. Meaning that, the law does not provide for such rules at all. This was clearly explained in the case of *The People V Shamwana and 12 others*⁷⁰ where it was stated that;

Judges' Rules are not rules of law but formulated by the courts for the guidance of the police for fair treatment of the suspects or arrested persons. The breach by the police of these rules does not automatically render the statements so obtained inadmissible, there is always the discretion of the judge to exclude such statements.

⁶⁸ Chapter 88 of the laws of Zambia

⁶⁹ Chapter 87 of the laws of Zambia

⁷⁰ (1982) Z.R. 122

The word discretion means that judges have the liberty to either admit the confession obtained by brutalisation of suspects by the police during interrogations and investigations or not.

That is a very serious inadequacy because rules are designed to secure that no advantage should be taken of a person who is in custody and whom the Police have already made up their minds to charge with the commission of an offence by requiring that in such a case they should first administer the usual caution before making inquiries of him.⁷¹ The case of *S V Blanchard*⁷² in which it was stated that, "...imprisonment between the period of confinement and trial is not for punishment, a suspect must therefore be treated with outmost humility and neither be loaded with needless fetter or subjected to other hardships...." Supports the fact that judge's rules play a vital role to achieve the status of treating accused persons with outmost humility even as the police are enforcing criminal law. It would be of help to include them in legislation.

Further, the statutes contain words or provisions that empower the police to use 'reasonable force' on the suspect who for example, is resisting arrest. Such provisions are vague and leave room for abuse because the law does not define what reasonable force is. Hence, brutality results because police officers are not restrained. The legislation is loaded with jargon but does not provide a clear framework for values, in this instance, the law says nothing about what reasonable force is, a great inadequacy indeed. What happens in reality is that, when there is a matter in court were there are

⁷¹ *R. v Straffen* [1952] 2 Q.B. 911

⁷² (1999) (2) Z.R. (11) 189 - 191

allegations of brutality the defence must prove to that effect. In *Mvula V The People*⁷³ it was stated that where serious allegations of brutality and violence are made against the police, it is the duty of the defence to call evidence to support such allegations.

Mostly a trial within trial is held to ascertain whether or not there was brutality on the part of the police when obtaining the statements from the accused. If such statements are found to be involuntary and as a result of brutality of any kind, the appropriate thing the court will do is not to admit such evidence.⁷⁴ This is the position of the law, however, the whole process of the trial within a trial and the need for the defence to prove allegations of violence and brutality is not always an easy thing because the police will argue that they used reasonable force in order to effect an arrest and the statement during interrogations was given by the accused freely.

There have been cases where the police brutally beat up or even kill the accused in the process. The justification used is reasonable force and because the law does not define reasonable force, the police officer gets away with it. The only savoir left is the trial within a trial where the truth of that justification can be ascertained.

When asked about the use of reasonable force and the abuse of such powers by the police. Mr Kapeso said that in the mind of a police officer investigating aggravated robbery or treason, these are capital offences and carry life imprisonment. Any accused knows and so they make it hard for the police to get information from them, what we call brutality is therefore reasonable force to the police in such circumstances. He further went on to say that when the police give evidence in court,

⁷³ (1963-64) Z.N.R.L.R. 171

⁷⁴ Solo V The People (1967) Z.R. 99

it is up to the offender to raise an alibi or call for a trial within trial to allow the offender to state why he thinks the police brutalised him.

Additionally, the legal framework encourages abuse of citizens by giving the police a leeway to use force, torture and kill while ensuring that they will have enough excuse like justifiable killing, or reasonable force when exposed.

In *Kongozi V The Republic*⁷⁵ it was shown that the court punishes all policemen who seem to contravene their duties. But sadly it is only when and until the case is in the court of law that such punishment can come about.

What comes out from this case is the fact that it is only when the case has been reported by the victims or representatives of the victims, when something is done about the case. The courts also naturally come in only when the matter has been brought before them. As if that's not enough, the cases in our courts take too long to be concluded. The effect is that much as the court is seen as a means by which remedy can be given to the victims of brutality, it is too slow to cope with the increasing number of brutality cases.

One may then neatly state that even though the law has made what can be argued to be adequate provisions with regard brutality, the legislators should not pay a blind eye to the inadequacies, it is safer to seal the loopholes than argue about what the law should be, leading to the formation of rules which are not binding like the judges' rules. It would be much better to have legislation that is adequate in order to leave no excuse for brutality because the law will have covered anything capable of being used

⁷⁵ (1994) T.L.R. 39

as excuses, for example by providing for what amounts to brutality, it would be easier to tell when there is brutality. As the saying goes prevention is better than cure.

Having stated the adequacies and inadequacies of the law in this chapter, chapter five will be a conclusion of the study and recommendations will be given thereafter.

5.0 CHAPTER FIVE

5.1 RECOMMENDATIONS AND CONCLUSION.

5.2. Recommendations

Having examined the duties and functions of the police in the enforcement of criminal law in Zambia, and having looked at some cases in which brutality occurred and the remedial responses given in some cases. As well as the legal framework and its adequacies and inadequacies on its provision on brutality, the following measures should be considered;

Reviewing of the legal framework is necessary and emphasis is on equipping police officers with investigative techniques that respect the dignity of the suspect to avoid shortcuts in obtaining evidence.

It is further recommended that the state, through its relevant institutions should spearhead the passing of laws that create specific ways of protecting victims and potential victims of brutality.

In the same vein, police discipline should be improved, currently police officers are not punished adequately, and in most cases they get away scot free. There is need to individualise the punishment as it will make more police officers be conscious of their actions and be serious in their work. In cases where the victim has recovered damages against the Attorney General, the police officer involved should face disciplinary action and pay, or at least contribute towards the expense.

It is recommended that the institutions involved in the fight against brutality must have a publicity section in the papers or journals and made available to the public, additionally, the names of such police officers, their position, work place and the punishment given should also be published. Such publicity will deter police from repeating such brutality. There is also need to ensure that police officers who engage in brutality are punished to the fullest extent of the law.

In fact, those police officers with no record of brutality should be honoured so as to discourage brutal actions and those with the highest record must be demoted.

It is submitted that the police service must have revised recruitment qualifications for police officers in order to prevent hiring of persons or worse off rehiring of abusive individuals with a history of violence or abuse or those who had allegations of this nature levelled against them.

It is further submitted that there be lessons on police public relations included in the police training curriculum. In that way, police officers will be better equipped on how to relate and work with the Zambian citizens even as they are enforcing the law. Such training will help police officers to have a customer oriented approach in their work.

The absence of the definition of reasonable force is a serious fetter in the fight against brutality. It is therefore vital to have an active engagement with issues relating to the use of force. Such an approach should combine measures to discourage excessive and unnecessary force with measures to improve police safety, and effectiveness in using force where such force is required.

In criminal cases, suspects relate how police officers have tortured them, in those cases, it is recommended that judges should be in a position to recommend criminal prosecution of police officers. In civil claims against police officers for brutality perpetrated by them, the court, though it handles a lot of civil cases only awards damages, nothing else. The recommendation is that when a police officer is found to have brutalised the plaintiff in a civil claim, the judge should make appropriate comments and forward them to the Director of Public Prosecution for further investigations.

It is recommended that the institutions involved in the fight against brutality should with the help of the state create mechanisms for prevention of police brutality and for the monitoring of the effectiveness of such mechanisms. This could mean, for instance having a system for the inspection of prisons and detention centres.

What must be noted however is that there must be improved powers and resources directed for the institutions directly linked to cure brutality as most if not all are under funded and lack necessary powers like investigating a matter without receiving a report from victims in order to fulfil its mandate.

It is not in dispute that litigation is a very expensive venture and since a large number of Zambia's population is living in abject poverty, it is submitted that institutions like the legal aid clinics and other paralegal institutions should be strengthened and spread all over the country to help the underprivileged.

Further recommendation is made of the fact that judges rules should be included in the laws, they must be binding on the police officers because as it is now, they are somehow optional and tend to be disregarded in most times.

In addition notice can be made of the fact that most police stations in Zambia have open reception areas and victims as well as suspects of crime are normally received without privacy. There is therefore need to provide some more private receptions for the victims.

It also suffices to note that there is need to educate the public who do not know where to go when they fall prey to brutality, in order to ensure that there exists reachable and independent reporting mechanisms for the victims, there is also need for the sensitisation of the communities on their rights as well. In situations where brutality reports are covered up by fellow officers, the public should be educated on where to report. As a result, most if not all cases of brutality will be brought out in public and they will be accounted for.

5.3 Conclusion

With the aforesaid, suffice to conclude that indeed there is brutality in the enforcement of criminal law in Zambia. The police actions in cases of brutality are ultra vires their powers. The law has made provisions on the functions, duties and legislative standards which are expected to be followed by the police, however most brutality cases do not show any amount of professionalism on the part of the police.

From this study, we see that to a large extent, the police failure to meet people's expected standards of performance is attributed to the nature of the laws they enforce, the police's role in law enforcement entails that they should enforce the law as it is whether inadequate, weak or bad. Bad law still remains enforceable. As a result there has been an overwhelming abuse of power by police officers either because of the same bad laws or lack of lawful provisions on certain matters. To that effect, there has been a lot of brutality in the name of enforcing criminal law in Zambia, at most times suspects are brutalised during interrogations, that is to say in pre trial as well as post trial periods.

It has been noticed that existing remedies in brutality cases are inadequate, or at times ineffective. Where they exist, they are usually not known or very little known to members of the public.

It must also be noted that, at times brutality is as a result of frustrations in the police force due to their pathetic conditions of work, the police have nothing to motivate their professional functions. As a result, we are experiencing an increase in brutality by the very officers we have put in place to enforce the law.

It suffices to state that the recommendations made in this chapter will go a long way to improve both the police in their performance of duties and in the clearance of their name to the public as well as the improvement of public relations. It is hoped that some other works to be done in relation to this study will seek to address many other aspects of brutality towards the attainment of a brutality free Zambia and the enforcement of criminal law lawfully.

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