

THE LEGAL PERSPECTIVE OF CORRUPTION IN THE ZAMBIA POLICE SERVICE

BY

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POLICE SERVICE



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CERTIFICATION

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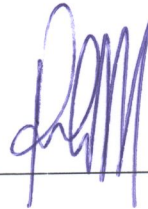
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DECLARATION

I Alex Chileshe, Identity Number 88246931 do hereby declare that I am the author of this Directed Research paper entitled: 'The legal perspective of corruption in the Zambia Police Service'. I further declare that it is the work of my own ingenuity and that due acknowledgment has been made where other people's work has been used. I truly believe that this research has not been previously presented in the School of Law at University of Zambia for academic work.

I therefore bear the absolute responsibility for the contents, errors, defects and any omissions therein.

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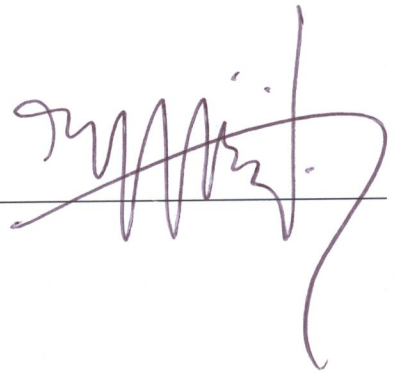
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ABBREVIATIONS AND ACRONYMS

1. Anti-Corruption Commission(ACC)
2. Corruption Perception Index (CPI)
3. Criminal Procedures Code(CPC)
4. Director of Public Prosecution(DPP)
5. Inter-African Network for Human Rights and Development (Afronet)
6. Jesuit Centre for Theological Reflection (JCTR)
7. Legal Resource Foundation (LRF)
8. Police Public Complaints Authority(PPCA)
9. South African Police Service (SAPS)
10. Transparency International(TI)
11. United Nations Development Programme (UNDP)
12. Zambia Air Force (ZAF)
13. Zambia National Commercial Bank (ZANACO)

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Alex Chileshe
February, 2009

ABSTRACT

Corruption manifests itself in various forms, at different levels and in different sectors of society. There is political corruption, judicial corruption, sports corruption, electoral corruption, administrative corruption, procurement corruption and many more. This essay looks at **police corruption** from a legal perspective. It aims to provide a common level of knowledge and understanding of corruption in the Zambia Police Service, its causes and the efficacy of the strategies for its prevention.

The essay argues that the legal definition of corruption is limited to the 'gain' that a public officer derives from a certain activity connected to his official duties and does not include other malpractices or deviant behaviour per se, which behaviour may be difficult to measure and enforce as offences in the courts of law. However, it is this deviant behaviour which is rampant and which the common man calls 'police corruption' that has proved difficult to eradicate. In this regard, the essay looks at other definitions of corruption in the literature vis a vis conduct of police officers in performance of duties.

The essay also identifies weaknesses in the legal framework pertaining to powers of the police as provided for in certain statutes which tend to encourage corrupt practices. From the facts, the essay observes that police corruption cannot simply be explained as a product of a few bad eggs but that it is intrinsic to policing as a job. By way of conclusion, the essay acknowledges that it would be unrealistic to expect a complete eradication of corruption in the Zambia Police Service. However, there is optimism that the Zambia Police Service can be reformed, and as such the essay makes suggestions of how corruption can be controlled.

It is my sincere hope that this paper will significantly contribute to the understanding of police corruption in Zambia both from legal and broader perspectives and what needs to be done in order to curb it.

Alex Chileshe
UNZA,
February, 2009

CHAPTER ONE: OVERVIEW OF CORRUPTION PROBLEM

1.1 Introduction

Corruption is a highly complex and diverse phenomenon with many different manifestations. It can be grand or petty, incidental, systematic or systemic with propensities to become entrenched in a society to insurmountable levels. There are a number of competing definitions of corruption and it is difficult to settle for one universal definition. What is clear, however, is that corruption has a devastating impact on the moral, economic, social and political fibre of any given society. Similarly, the causes of corruption may differ from one country to another but will usually be contextual, rooted in the country's policies, laws, bureaucratic traditions, political development and social history¹.

Defining corruption precisely is at least as difficult as determining its effects. However, in Zambia the Anti-Corruption Commission (ACC) Act² defines 'corrupt' as the soliciting, accepting, giving promising, or offering of gratification by way of a bribe or other personal temptation of inducement, or the misuse or abuse of public office for private benefit. This is the legal and official definition of corruption in Zambia.

At national level, Zambia is currently rated as the 13th most corrupt country among the 64 countries surveyed globally by the Transparency International.³ Statistics from the ACC

¹ G.S. Bhargava, India's Watergate: A study of political corruption in India (New Delhi: Arnold Heineman Publishers Ltd, 1974)

² Section 2 of Act No. 42 of 1996 of the laws of Zambia

³ 2008 Transparency International, Corruption Perception Index

also indicate that a total of 1,960 cases of corruption were reported in 2006 which is indicative of the high corruption rate in the country⁴.

What is of paramount concern to the fight against corruption is the fact that the Zambia Police Service, a law enforcement agency of the state has apparently been identified to be the most corrupt public instruction⁵. Admittedly, the police deal with all sectors of the country and they may thus be very exposed⁶.

1.2 Statement of the problem

The incidence and scale of seriousness of corruption in the Zambia Police Service⁷ is a source of public concern as regards the prospects of enforcement of law and order in particular and good governance in general. The fact that corruption can be practiced and nourished by police officers raises much concern about the state of integrity of a society.

Former Inspector General of Police Ephraim Mateyo is also on record as having admitted publicly that police officers in Zambia are the most corrupt⁸. The practice is more prevalent in the traffic section of the Police Service, where offenders are daily let off the hook after paying a bribe to the officers⁹.

⁴ ACC 2006 Annual Report

⁵ Ibid 4

⁶ The Bribe Payers Index for 2004 and 2005 ranks the police as the main recipients of bribes- ITZ Report 2005

⁷ Cap 107 does not recognize the term 'Zambia Police Service', only 'Zambia Police Force' however since this is the term that is widely used in practice, in this research, the term Zambia Police Service will be maintained.

⁸ The Post, 6 February 2008

⁹ The Corruption Eye, Vol.1 issue No.3, An AFRONET Publication, April 2002

Corruption in the Zambia Police Service appears to occur at all levels, that is; it involves both lower and higher-echelon police officers. For instance, in 1990, Mr. Henry Mtonga, a former Inspector General of Police was investigated by the ACC for corrupt practices. He was however, subsequently cleared of the allegation but lost his job. He was retired in the public interest¹⁰. In 1991, another very senior police officer, a Mr. Darius Kalebo, holding a rank of Deputy Commissioner of Police, the third highest rank from the top, was charged with corruptly obtaining a Toyota Hilux Vanette. He was acquitted on a technical point¹¹.

The list of police officers involved in corrupt practices is long. Most of the cases either do not reach the attention of the general public or are dealt with under the disciplinary procedures within the institution¹². Every year, one or more police officers either quietly get dismissed by the appointing authorities or are openly prosecuted and acquitted or convicted of corruption related offences.

Corruption in the Zambia Police Service has of late come under increasing official scrutiny and has caused concern about the standard of ethics and integrity within the police ranks¹³. The history of policing even in other jurisdictions is punctuated with examples of malpractice and misconduct. Police officers are also known for activities that

¹⁰ Times of Zambia, 29 September, 1991

¹¹ The Post, 13 February, 2002, see also *The People v Kalebo* (Unreported)

¹² Zambia Police Professional standards Committee

¹³ ACC Commissioner, A. Lewanika, The Post, 22 May, 2008

involve the suppression of evidence, the beating of suspects, tampering with confessional evidence and dubious discontinuation of cases¹⁴.

Literature that reveals the nature, causes, magnitude and devastating consequences of corruption both in Zambia and Africa abounds. For instance, the Governance Baseline Report ably captures the state of corruption in Zambia. According to the survey findings, a cross section of the Zambia people acknowledges the existence of corruption and its impact on Government delivery of services.¹⁵ The focus of the survey is on the causes and how the Zambian populace perceives corruption in Government Departments. The survey merely confirms the existence of corruption in the police service and other government departments.

Another attempt to study corruption in Zambia, was made by Justice Kabazo Chanda, who explores the existence of corruption generally in the police, courts and prisons in Zambia¹⁶, but he did not examine the legal and institutional framework that tends to foster corruption particularly in the Zambia police service hence he does not address himself to the subject of this essay.

In a Comparative Study undertaken by the United Nations Development Programme (UNDP)¹⁷, it was observed that corruption is a failure of institutions, in particular those in

¹⁴ M.Lemba, Best Practices in the Police, ITZ Report 2005

¹⁵ Zambia National Governance Survey Report, UNZA Dept of Political and Administrative Studies, August 2004, p.4

¹⁶ This is a publication by Afronet on Corruption in Zambia, Afronet, Lusaka, 2002, p.96. Afronet means Inter-African Network for Human Rights and Development

¹⁷ This is a Study entitled, "Institutional Arrangements to Combat Corruption: A Comparative Study, Keen Publishing House (Thailand) Co. Ltd, 2005, p.27

charge of investigations, prosecution and enforcement.¹⁸ Although this could be true the main issue is lack of a clear understanding of the underlying factors that encourage corrupt practices in the process of execution of duties as well as lack of a well-thought through anti-corruption reform strategy.

The Reform Study Report of 2003¹⁹ has observed that waging a successful fight against corruption, among other things requires a citizenry that understands and have knowledge about what corruption means, the various ways corruption manifests itself, the institutions charged to deal with cases of corruption, and is aware of the reporting mechanisms available. The Study²⁰ chronicles people's understanding of corruption in Zambia; it also looks at the consequences of corruption, but does not look at police corruption in particular and how it is to be understood and possibly prevented. This Study, however, concludes that there has not been much public education and sensitization on the ills and effects of corruption in Zambia.

Equally, Dr. Kenneth Mwenda looks at laws and institutions put in place to fight corruption in Zambia. In his book²¹, Dr. Mwenda selects Zambia as a case study on problems that are principally internal to Africa such as corruption. He thus examines the efficacy of legal and institutional framework for fighting corruption in Zambia but does not specifically address himself to the subject of this study. Similarly Dr. Musonda Lemba

¹⁸ Ibid 22

¹⁹ Study undertaken by Afronet in 2003 entitled "Anti-Corruption Commission Act Reform Study Report.

²⁰ Ibid 24

²¹ K. Mwenda, *Legal aspects of fighting corruption*, The case of Zambia, Cambria Press, N. York, 2007

gives a general treatise on the need to observe human rights by the police in their work²². However, what has not been done is to critically analyse or examine how the powers of the police as provided for in certain statutes tend to foster and encourage corruption.

When the police succumb to, or embrace bribery and abuse of office, they will not be able to discharge their duty professionally or successfully, with the result that people will prefer to take the law into their own hands, with disastrous consequences. Late Justice Kapembwa observed that there were instances when criminals who bribed police officers got away with it, or when motorists with defective vehicles were required to pay bribes instead of fines to the state. He adds that ‘it is even more unconscionable when a person in distress, as a victim of crime, is expected to pay a bribe to obtain policed services’²³

1.2 Objectives of the research

The research objectives are three fold, namely;

- To examine the practices and procedures in the administration of law and order by the Zambia Police Service and identify those that are prone to corrupt practices. The study will thus catalogue instances of corruption in the police service, which undermines public confidence and interferes with effective police service. The idea is not to lionise corruption in the Zambia Police Service but to evaluate, from a

²² Best practices in the Police, ITZ,2005

²³ *The State of Corruption in Zambia* , A thematic paper presented at the Integrity Round Table Conference, July 1999

legal perspective, instance of corruption, nature of the scourge and why it is prevalent and difficult to eradicate in the system.

- To examine the legal powers of the police as enshrined in various statutes such as the Constitution of Zambia, Zambia Police Act, the Penal Code, the Road Traffic Act and the Criminal Procedures Code with a view to identifying weaknesses in the legal and institutional framework that allow corruption to thrive. This approach will be undertaken on the premise that there are certain occupational and organizational characteristics of policing that allow or promote police corruption to flourish. It will also be imperative to examine the legal definition of corruption in relation to the rate of convictions by the ACC.
- To attempt to spell out the possible mechanisms for dealing with the crime of corruption in the Zambia Police Service. Thus, solutions to corruption control will be proposed, which if implemented, may enable the institution reclaim its rightful place in society and begin to fulfill its original mandate as a protector and refuge of every citizen in the country.

1.3 Research questions

The essay seeks to address specific questions that are posed in this research with a view to generating knowledge that may be useful in understanding and fighting corruption in the Zambia Police Service. In this regard, chapter two attempts to answer how corruption is identified and defined. **Is there a universal definition of corruption? In particular,**

what is police corruption? The main purpose of this chapter is to examine the nature of police activities and procedures that are generally considered to be corrupt and also to relate them to other definitions in the literature.

In Chapter three, the research question to be considered and answered is; **what are the sources of police corruption?** The chapter looks a number of factors ranging from the legal and institutional frame work to road blocks and patrols, thought to be fertile grounds of corruption within the Zambia Police Service. Having analysed what are generally perceived to be the key factors in the prevalence of police corruption, chapter four then looks at the reverse by asking and answering the question; **what strategies have Zambia Police Service used in an attempt to control, reduce or prevent corruption among their ranks? Have these strategies been effective?** .Proposals for reducing corruption are presented in Chapter five by posing and answering the question; **are there workable measures of fighting corruption in the Zambia Police Service?** The aim is to make recommendations on how corruption can be controlled based on the assumption that full-scale organisational corruption can be prevented.

1.3 Rationale of the research

The acknowledgement of the existence of high levels of corruption in the Zambia Police Service has on the other hand posed a challenge to policy makers, academicians and technocrats charged with the responsibility of reducing the scourge. However, there has

been little or no much research in some developing countries like Zambia on the subject²⁴. The nature and dimensions of corruption in the Zambia Police Service therefore need to be investigated or researched on in much detail, in order to provide more knowledge and information for concerned parties to make viable policies and strategies in tackling the problem.

A lot of attention has in the recent past been focused on prosecution of police officers who commit this crime²⁵. Prosecutions, although unavoidable have, however, not been complemented by comprehensive research, which may act as a reservoir to generate knowledge in order to understand fully the nature of the problem and possible strategies, which may be homegrown.

This is an area of interest which must concern every Zambian whose desire is to ensure that the Zambia police service has high standards of honesty, integrity and ethical behaviour in connection with the performance of their policing functions. The study is also timely as it could not have come at a better time than now when the fight against corruption in Zambia has been intensified²⁶.

1.4 Methodology

The study will examine the various local statutes, from the Constitution to the Zambia Police Act that have a bearing on the powers of the police. Although a visit to the Zambia Police Service, Anti-Corruption Commission, Police Public Complaints Authority (PPCA)

²⁴ Pope J. Confronting Corruption: The Elements of a National Integrity System ,2000

²⁵ ACC Annual Report 2005, 2006 show that at total of 30 police officers were prosecuted in two years.

²⁶ Times of Zambia 3, 2008

and Transparency International Zambia (TIZ) will form a part of the research, the study will rely mainly on the library and desktop research which will involve the analysis of legislation and other documentation such as, legal documents, books and publications, previous research papers, media reports and internet based information.. All these sources will be reviewed as an on-going process for the duration of the research

1.5 Limitation of the study

It is almost impossible to know the true nature and extent of corruption, since it is a nefarious secretive activity that in its most direct form occurs between two consenting parties and is therefore often referred to as a ‘victimless crime’. For this reason coupled with the sensitive and stigmatizing aspect of the topic, it is extremely difficult to get objective information from sources like the Police who are perceived as perpetrators of the scourge and chances of the study being misunderstood are quite high, thereby denying the researcher the necessary cooperation. Being mindful of this challenge, the study will mostly rely on secondary data from institutions concerned with issues of corruption and to some extent primary data in the form of personal interviews with willing members of the public from all walks of life.

CHAPTER TWO: DEFINITION OF POLICE CORRUPTION

2.1 Introduction

This Chapter considers how police corruption is to be identified and defined. It examines the nature of police activities and procedures that are generally regarded as being corrupt. Other definitions of corruption such the one in the ACC Act and those in other literature will also be explored in this chapter.

The term ‘police corruption’ has been used to describe many activities: bribery; violence and brutality; fabrication and destruction of evidence; racism; and favouratism or nepotism. Authors on this subject differ in the breadth of the definition they are prepared to accept. Before moving to the question of whether a precise definition is possible, it is worth examining in a little detail the range of activities that might be included within a broad discussion of police corruption. The best known typology of police corruption is that provided by Manning and Redlinger²⁷. They identify nine types of corruption which are also familiar to the Zambia Police situation and each of which can be analysed along one or more dimensions.

Table 1: Types and dimensions of police corruption

Type	Dimensions
Abuse of authority	When a police officer receives some form of material gain by virtue of their position as a police officer without violating the law per se (e.g. free drinks, meals, service)

²⁷ P.K. Manning and L.J.Redlinger *Thinking about Police*, McGraw Hill: New York 1977. p194

Kickbacks	Receipt of goods, services or money for referring business to particular individuals or companies(e.g. referring a suspect to a lawyer)
Opportunistic theft	Stealing from arrestee, from traffic accident victims, crime victims and the bodies or property of dead citizens.
Shakedowns	Acceptance of a bribe for not following through a criminal violation i.e. not making an arrest, filing a complaint or impounding property
Protection of illegal activities	Police protection of those engaged in illegal activities (prostitution, drugs, pornography) enabling the business to continue.
The fix	Undermining of criminal investigations
Direct criminal activities	A police officer commits a crime against a person or property for personal gain in clear violation of both police and criminal norms
Internal payoffs	Prerogatives available to police officers(e.g. holidays, promotions , shift allocations) are bought, bartered and sold
Flaking or padding	Planting of or adding to evidence (evident in drugs cases)

The categorization of corruption varies depending on how one approaches the problem.

For example, a thematic study of corruption in the *Zambian Financial Sector*²⁸ identified different types of corruption, some which are summarized below and are applicable to police corruption.

Table 2: Types and forms of corruption in general

Type	Description
Abuse of authority/office	The use of one's position for personal or private gain
Bribery	Consideration given as an inducement to influence a conduct contrary to the norm
Embezzlement	Illegal diversion of a principal's resources to one's own use
Extortion	Unlawful extraction of money or favours by force or intimidation such as the threat of arrest in order to extract personal favours.
Fraud	Misrepresentation in order to obtain unfair advantage such as deliberate disclosure of false or misleading information on someone
Gifts	When gifts are large enough to obtain marginal impact on the recipient's behaviour such as giving reciprocal favours, they take the dimension of bribes
Graft (American term)	Procuring illegal profits or fraudulent financial gains

²⁸ *Corruption in the Financial Sector: Externalisation of Funds in Zambia*, Afronet Publication, Lusaka, July 2003

Insider dealing	Use of confidential information secured during the course of duty as an agent for personal gain
Nepotism	Showing special favours to one's relatives as against others
Plunder of state resources	Abusing or channeling of state resources for private gain at a grand scale

Police corruption, it is generally accepted necessarily involves an abuse of position. What is corrupted is the 'special trust' invested in the occupation; it involves the element of exploitation or misuse of authority. The 'special trust enjoyed by police officers may be corrupted in two ways. First, it may be corrupted when police officers commit criminal acts under the cover of such trust. For instance in September 2008, the then Commissioner of Police Francis Kabonde²⁹ announced that a police officer was arrested in connection with the Investrust Bank robbery in Lusaka and was to appear in court³⁰. Further, the Police Public Complaints Authority Annual report revealed that a total of 37 cases of police brutality and torture in Zambia were recorded in 2005 and only one police officer was dismissed for assaulting an inmate³¹. This type of corruption corrupts both the ends of policing and the means we entrust the police to achieve them.

Secondly, 'special trust' may be corrupted when that trust is employed for illegal reasons such as providing services for money. In 2006, a total of 105 reports of police officers soliciting for money in order to provide a service were recorded by ACC³². The PPCA also in 2005 recorded a total of 59 cases of police officers asking for money from victims

²⁹ At the time of this research, he was Acting Inspector General of Police

³⁰ Zambia Daily Mail, 18 September 2008

³¹ Police Public Complaints Authority 2005 Annual Report

³² Ibid 4

so as to ‘assist’ them³³. This type of corruption perverts the fair distribution of the ends of policing.

The ACC Act has no definition for the term corruption. What is defined in the Act is the verb ‘corrupt’³⁴ which refers to one’s conduct. The actual offence for being corrupt is provided for in section 29 of the ACC Act which proscribes any public officer to solicit, accept or attempt to obtain gratification as an inducement or reward for doing or forbearing to do anything in relation to any matter with which any public body may be concerned. What this provision implies is that as long as what is given is not meant to influence the exercise of power or it is not connected to official functions, then it is not corruption. Director of Legal and Prosecution Department at ACC, Mwape Bowa admitted that the ACC had lost a number of cases in court because of such legal technicalities not only in cases involving the police but also other public officers³⁵.

The ACC Act defines gratification as “....*any corrupt payment, whether in cash or in kind, any rebate, bonus, deduction or material gain, benefit, amenity, facility, concession or favour of any description and any loan, fee, reward, advantage or gift, or any other thing obtained as a result of the corrupt misuse or abuse of public funds or property, other than casual gift...*”

Most definitions of corruption go further and include activities that are not necessarily criminal such as the acceptance of gifts or minor kick backs; activities that do not involve the provision of services such as the failure to police and activities that do not involve the exchange of money or material goods. Thus, Morton’s definition of corruption is

³³ Ibid 31

³⁴ Ibid 2

³⁵ Interview: Mwape Bowa 02.10.08

sufficiently broad to include a range of such activities. He puts it aptly that, “A public official is corrupt if he accepts money or money’s worth for doing something he is under a duty to do anyway, that he is under a duty not to do, or to exercise a legitimate discretion for improper reasons”³⁶

There are broad, inclusive definitions which suggest that police corruption is loosely identified as ‘deviant, dishonest, improper, unethical or criminal behaviour by a police officer’³⁷. This definition recognizes that the particular ‘ends’ of corrupt activity may not involve personal reward but, rather may be undertaken for the benefit of a wider group(such as traffic section) or the police station as a whole. The corrupt activity may be gratification for the mere fact that the officer is working for the police service and may share the gratification received with other police officers.

The Oxford Dictionary³⁸ defines corrupt as“ ... *open to or involving bribery or other dishonest practices... morally depraved...to become or cause to become dishonest or disloyal.* ”

There is another form of corruption known as abuse of office which is provided for in section 37(2) of the ACC Act. Under this section it is an offence for a public officer to misuse, abuse his office, position, or authority to obtain advantage, wealth or profit directly or indirectly. It is also an offence to maintain a standard of living above which is commensurate to one’s present or past official emoluments or to be in receipt of any services reasonably suspected of having been received corruptly.

³⁶ J. Morton , Bent Coppers: A Survey of Police Corruption., London, Little Brown and Company, 1993,p77

³⁷ Ibid 32

³⁸ Fourth Edition, Oxford University Press, 1994, p179

It is common knowledge that police officers in Zambia are poorly paid³⁹. However, it is also not uncommon to see police officers driving personal posh motor vehicles and owning houses with Multi-Choice dishes perched on their roof tops. To a large extent this is a manifestation of unexplained wealth or pecuniary resources, an offence under section 37(2) of the ACC Act. Mwape Bowa⁴⁰ again admitted it was difficult to secure a conviction because a suspect could simply explain that he was doing business or he just borrowed money and the court would most likely acquit him.

The lacuna in section 37(2) seems to be the provision of the phrase ‘unless he gives a reasonable explanation’ implying that as long as the court is satisfied with the accused person’s explanation, he/she will be acquitted. The ACC has hitherto; since its inception in 1982 has had very few successful convictions of any police officer (or public officer) under this section⁴¹. In fact these convictions were only secured in the last two years.

They include; **The People v Bulaya** (unreported) in which former Ministry of Health Permanent Secretary Kashiwa Bulaya was convicted for abuse of office but he has since appealed to the Supreme Court⁴², **The people v Singogo** (unreported) in which the former Zambia Air Force (ZAF) Commander was convicted of abuse of authority of office and theft by public servant but he has also appealed to the High Court⁴³, **The People v Musonda** (Unreported) in which former Zambia National Commercial Bank (ZANACO)

³⁹ The 2007 Bribe Payers Index revealed that police officers earn between K250,00 and K1,000,000 per month.

⁴⁰ Ibid 37

⁴¹ acc.zambia.bz

⁴² Bulaya has appealed against conviction and sentence.

⁴³ The Post, January 13 2009. The new convictions could be attributed to the change in attitude by the courts, as they appear to support the fight against corruption

Managing Director was convicted of abuse of office but has since appealed to the Supreme Court⁴⁴ and that of the **People v Nyirongo** (unreported)⁴⁵ where former minister of Lands was recently sentenced to four years imprisonment for abuse of authority of office. She also has appealed to the High Court⁴⁶. The convictions are a clear demonstration of change of attitude especially by the subordinate courts in the fight against corruption in Zambia more so that abuse of authority of office cases invariably involve high profile persons.

The offence of abuse of authority of office provided for in section 99(1) of the Penal Code appears to be easy in terms of securing a conviction as it only requires to prove that a public officer was involved directly or indirectly in any arbitrary act prejudicial to the rights or interests of the Government or any other person. However, this offence is treated as a misdemeanour except if the act is done or directed to be done for purposes of gain, the person guilty of a felony and is liable to imprisonment for three years.

Whether it is helpful to consider all forms of activity which involve the use of illegitimate means to secure legitimate ends as corrupt, is questionable. The lack of universal definition of corruption notwithstanding, the various definitions advanced share some common ground by touching on the element of abuse of a position for personal advantage. All the definitions somehow mention abuse or dishonest in the operations of an individual. However, it must be understood that definitions are normally understood in a cultural context or perspective.

⁴⁴ The Post, January 20 2009

⁴⁵ The Post, February 13,2009

⁴⁶ The Post , February 17 2009

These culturally accepted practices combined with the inclusion of words such as abuse and dishonest in the definition(s) cloud up the interpretation of the term 'corruption' by different individuals and societies. Some practices may be acceptable to some individuals/societies while they may not for others. This in turn makes it difficult to narrow down and grasp the exact meaning of corruption. For example, giving a tip to a waiter for a good service rendered may be acceptable as normal by some individuals/societies while it may not be acceptable for others. Some individuals/societies may accept giving a commission to a purchasing officer as normal while others may not. Instead of considering the motive/principle behind an action, some individuals/societies use the quantum involved as the basis for accepting or rejecting a case of corruption⁴⁷.

Thus, the ACC Act defines casual gift as: *"...any conventional hospitality on a modest scale or unsolicited gift of modest value offered to a person in recognition or appreciation of that person's services, or as a gesture of goodwill towards that person and includes any inexpensive seasonal gift...which is not in any way connected with the performance of a person's official duty...."*

The foregoing definition appears to be very permissive to corrupt practices as the interpretation of terms like 'inexpensive seasonal gift' are left to subjective personal interpretation. A laptop computer given to a police officer for example, could be an inexpensive gift to a company like Lumwana Mine Ltd. It can also be interpreted that it is permissible to give bribes during seasons like Christmas time.

⁴⁷ Ibid 29

There are also various forms of policing practice ranging from the use of excessive force through to procedural breaches resulting in conviction- which whilst clearly illegitimate, are not necessarily helpfully categorized as 'corrupt' or have not been included in legal definition of corruption.. In a similar fashion, many definitions of corruption exclude such activities as sleeping on duty, taking drugs or having sex whilst working, mistreating suspects, reckless driving and other forms of 'minor' police deviance.

The justification for excluding certain conduct in the legal definition of corruption is that it does not involve 'material reward or gain'. In such cases, the corrupt 'motivation' is said not to be present. Kleinig tries to provide a more inclusive definition of corruption by asserting that police officers act corruptly when, "in exercising or failing to exercise their authority, they act with the primary intention of furthering private or departmental/divisional advantage"⁴⁸

Kleinig argues that the advantage of this definition is that it enables 'many acts and practices that may never show themselves as corrupt-for example, doing what one is duty bound to do solely for personal advancement', to be included within a definition of corruption. This would clearly cover activities that would come under the general rubric of 'process corruption' as well as activities such as over-zealous policing with the aim of personal advancement.

Though such activities may not be what we normally think of as corrupt, they should be considered to be so because they are 'motivated by the spirit of corruption'. As Kleinig

⁴⁸ J.Kleinig, *The Ethics of Policing*, Cambridge, University Press, 1996, p33

argues, it is motivation that is the key to understanding corruption. Corruption, at heart, is an ethical problem before it is a legal or administrative problem⁴⁹.

The preceding treatise has demonstrated the futility of seeking an all-inclusive definition of corruption. It may be that defining the essential characteristics of corruption is largely impossible. As with all organizations there are certain practices within the Zambia Police Service which whilst they may be considered to be 'deviant' are nonetheless tolerated; they are not perceived as corrupt from both the legal and cultural perspectives. In some cases however, they may differ only in degree from activities that would almost uniformly be considered corrupt.

There are certain practices that are so entrenched in police culture and attitude that it is difficult to completely get rid of them. An interview⁵⁰ conducted at Emmasdale police station in Lusaka with one of the senior police officers, revealed that it was difficult to fight corruption within the Zambia Police Service as almost every one is involved in corrupt practices. He gave an example of a supervisor in traffic section who gave his juniors a 'target' for cashing bribes to him at the end of the day.

The foregoing issues are on the periphery of the 'corruption problem' and they quite obviously raise fundamental questions about the police. For instance, should the police officers be subject to different (higher) standards from other public officials? Is it useful to have a complete ban on gifts? Should the police service invest greater trust in their staff?

⁴⁹ Ibid 40

⁵⁰ Interview: 24.09.08

Minor gifts have often been accepted as part and parcel of ordinary police work.⁵¹ It is therefore not uncommon for police officers to expect to be given at least '*iya drink*' (money for a drink) and they get surprised if it is not given. The PPCA in 2007 recorded a total of 106 reports of police officers asking for '*iya drink*' in order to provide a service.⁵² Technically, there is nothing wrong with a *casual gift* as long as it is within the provisions of the ACC Act.

The tendency however, has been that some police officers will never 'move' or if at all they move, the movement will be frustratingly slow until given this casual gift.⁵³ Moses Mwewa a fourth year student in the School of Humanities at the University of Zambia confirmed in an interview with this author that he had to pay K50,000 cash to a police officer so that he could expedite the opening of a docket for a theft case he had reported⁵⁴.

Mwewa said he was not asked for the money but he 'instinctively' knew that the police officer wanted money so as to 'move' fast. When a gift takes such a dimension, then it no doubt becomes a bribe. In fact, the 2007 Bribe Payers Index reveals that of 2000 people interviewed 43 % said they were used to paying bribes to the police before the police even ask for them. It was also established that 52% of the respondents who refused to give a gift or pay a bribe had service unnecessarily delayed while 36% had service denied.

⁵¹ Ibid 40

⁵² Unpublished statistics from the Register at Police Public Complaints Authority

⁵³ G.Banda, *Corruption-An Emerging Way of Life in Zambia?* AFRONET Publication 2002

⁵⁴ Interview: Moses Mwewa, 27.09.08

By far the most comprehensive treatment of gifts is provided by Kleinig⁵⁵. He begins by pointing out one significant difference between ‘bribe’ and ‘gifts’: Bribes are generally of a significant size and often in proportion (at least) to the ‘favour’ being requested whereas gifts tend to be more symbolic. He argues that whereas bribes are offered and accepted in order to corrupt authority, there is nothing in principle that implies that the offer of a gift is done with the intention of influencing the exercise of authority or that, alternatively, even in cases where the actions of an officer are aimed at securing a gift, that the gift would not have been offered any way. Nonetheless, the question of whether it is appropriate for police officers to accept gifts remains a difficult one. Kleinig’s argument in favour of, or against acceptance of gifts and similar benefits are outlined in Figure 3 below

Table 3: Arguments for and against acceptance of gifts and benefits

A. Arguments in support of acceptance		
Appreciation	It is natural and reasonable to show appreciation to those providing a public service. It is also rude to refuse a gift	
Not significant	Gifts are not significant enough to buy or cultivate a favour	
Officially offered	When officially offered by a person or company , no personal sense of obligation can develop	
Links with the community	Giving gifts s part and parcel of fostering close links with the community, including business people.	
Police culture	Accepting gifts is an entrenched part of police culture. Any attempt to end it will result in displeasure and cynicism	
Trust and discretion	Attempts to prohibit acceptance of gifts imply that officers cannot be trusted to exercise discretion and are incapable of making sensible moral judgments to guide their behaviour.	
B. Arguments in opposition to acceptance of gifts		
Sense of obligation	Even the smallest gift inevitably creates a sense of obligation if it becomes regularized	
Slippery slope	Gifts lead to a slippery slope where the temptations become imperceptivity greater and refusal increasingly difficult.	

⁵⁵ Ibid 40

Remove temptation	Not all officers can exercise proper judgment on what is reasonable to accept. Thus, it is more sensible for the organization to remove temptation all together.
The motive is to purchase preferential treatment	Persons and companies that offer gifts are in essence, seeking to purchase preferential treatment (e.g. encourage greater police presence in the vicinity of their business)

Perhaps the strongest argument against the acceptance of gifts results from the idea that the provision of policing is deemed to be a ‘public good’⁵⁶. Being a public good, it is presumed that individuals and groups cannot or should not be prevented from using them and moreover, that policing is indivisible: it cannot meaningfully be divided amongst individuals and groups. The acceptance of gifts, at least on a regular or systematic basis may therefore, detract from the ‘democratic ethos of policing’.

It is now apparent that attempting to define corruption requires, at least, an examination of both the ‘means’ and ‘ends’ involved in such activities. A second way of exploring the boundaries of corruption is provided by Klockars’ consideration of the relationship between ‘dirty means’ and ‘legitimate ends’ in policing: what he terms as the ‘Dirty Harry Problem.’⁵⁷

The heart of the Dirty Harry Problem, according to Klockars, is the question of whether and if so, under what circumstances, a ‘morally good end’ justifies the use of ‘ethically, politically or legally dangerous means to its achievement’. The answer is that ‘dirty

⁵⁶ T.Jones and T.Newburn., *Democracy and Policing*, London: Policy Studies Institute 1994, p63

⁵⁷ C.B.Klockars, *The Dirty Harry Problem, Moral Issues in Police Work*, Totowa, New Jersey, 1985,p118

means' must be regarded and punished as 'dirty'-even though their use may be what is required of the 'just' police officer under some extreme circumstances.

'Dirty Harry' problems are a staple part of police life, Klockars argues. One of the dangers of the 'moral cynicism' which many police officers may develop as a result of the realities of police work is that they may come to regard 'dirty means' as ends in themselves: meting out punishment to those who are 'guilty' but who, because of the inefficiencies of the criminal justice system, or other difficulties, are likely to escape retribution. This begs the issue of illegally obtained evidence for purposes of securing a conviction by the police. The Police and other law enforcement agencies in Zambia have a carte blanche in terms of illegally obtained evidence or the 'Dirty Harry' syndrome.

The rule that legitimizes illegally obtained evidence in Zambia was laid down in the case of **Liswaniso v The People**⁵⁸ where Silungwe C.J. as he then was, stated that *'apart from the rule of law relating to the admissibility of in voluntary confessions, evidence illegally obtained, e.g. as a result of an illegal search and seizure or as a result of an in admissible confession is, if relevant, admissible on the ground that such evidence is a fact regardless of whether or not it violates a provision of the Constitution or some other law'*.

2.3 Conclusion

There is no straightforward solution to either the question of definition or to the ethical problems outlined in the chapter. The discussion illustrates the simple but uncomfortable fact that complex ethical problems are an inherent part of police work. From the definitions advanced in the Chapter, corruption appears to be more than bribery (to which

⁵⁸ (1976) Z.R. 277 (S.C.)

it is often reduced in legal definitions) and relates to various forms of abuse or misuse of mainly public authority, office, duties, trust or resources, for private, personal or group interest, benefit or gain⁵⁹. The legalistic definition of corruption has been adopted due to the need to confine corrupt practices to those actions whose redress could be found and enforced by the courts of law.

However, when the public describes the Zambia Police Service as being corrupt; they are not using the legal definition in the ACC Act. It is the perception of the deviant behaviour that a layman is concerned with when judging the police as being corrupt or not. This is why a police officer who fails to take action when an offence is committed is considered to be corrupt by the public. In this context, corruption is being defined in a broad sense to include those infractions against the larger society's moral and ethical standards.

The narrow legal definition of corruption explains why out of 1,960 cases reported to the ACC in 2006, only 677 were authorized for investigations⁶⁰. This means that there are certain malpractices by public officials which are not considered to be corruption from the legal perspective. However, the myriad definitions so far explored will be useful in the understanding of the nature of corruption in the Zambia Police Service. The next stage examines the sources and causes of corruption in the Zambia Police Service. This issue is turned on in Chapter Three.

⁵⁹ L.Camerer, Corruption in South Africa, *Results of an Expert Panel Survey*, Institute for Security Studies, 2001, p22

⁶⁰ ACC 2006 Report

CHAPTER THREE: CAUSES OF POLICE CORRUPTION

3.1 Introduction

In the previous chapters, this essay has looked briefly at the problem of corruption in the Zambia Police Service and has also considered definitions of corruption and typologies of corrupt practices. The basic understanding about police corruption is that it is pervasive in that corrupt practices are found in some form in a great many police agencies in all societies⁶¹. Police corruption is also a continuing problem as there is evidence of corrupt practices from all stages of police hierarchy⁶². And finally that police corruption is not simply financial: activities (including process activities) extending beyond bribery and extortion are also a form of corruption⁶³.

This Chapter looks at the sources of police corruption. There are many competing explanations for police corruption in the criminological literature. One of the traditional occupational explanations has been that it is the product of ‘bad eggs’ and atypical of the organisation⁶⁴. This chapter begins by examining briefly the reasons why the ‘bad eggs’ theory of police corruption has largely been discredited in recent years, before moving on to examine what it is about the nature of powers and context of police work that facilitates or causes corruption.

⁶¹ Ibid 49

⁶² A.Simpson, *The Literature of Police Corruption*, New York: John Jay Press, 1977, p88

⁶³ Ibid 40

⁶⁴ Ibid 34

3.2 Is it only a few ‘bad eggs’ that are corrupt?

When confronted with allegations of corruption for which there is supporting evidence, most police authorities will generally claim that the problem identified is limited to a small number of corrupt officers who are quite unrepresentative of the wider standards exhibited by the organisation⁶⁵. The history of police work, however, is full of examples where this explanation could not be sustained in the face of overwhelming evidence of organized corruption⁶⁶.

Perhaps the best known of all, is the revelations of police officer Frank Serpico in New York City to the Knapp Commission hearings which destroyed the police authorities’ argument that police corruption was confined to a few ‘rotten eggs’⁶⁷.

The Knapp Commission concluded that corrupt practices were highly and often sophiscatedly organized, and were protected and reinforced by tolerance of, or selective blindness towards it, by non-participating officers. In another Commission of Inquiry into police corruption in the United Kingdom, it was observed that the ‘rotten egg’ theory will not work any longer. This is because corrupt police officers are not natural-born criminals, nor morally wicked men, constitutionally different from their honest colleagues. The task

⁶⁵ Times of Zambia, 6 April, 2005, Director of Police Training Solomon Jere said that only a few police officers were corrupt.

⁶⁶ Ibid 9

⁶⁷ W.Knapp, Report of the Commission to Investigate Alleged Police Corruption, New York, George Braziller, 1972

of corruption control is to examine the basket and not just the eggs- the organisation, not just the individuals in it- because corrupt police officers are made, not born⁶⁸.

Further evidence, and in some respects even more worrying evidence, of the pervasiveness and embeddedness of police corruption comes from the Mollen Commission investigating allegations of corruption in New York which found that there were not only 'traditional' forms of organized corruption associated with 'regulatory forms of police work' but more insidious forms what is referred to as 'meat eating'⁶⁹. The Commission observed that the police were actively involved in planning and implementing criminal activities, sometimes in partnership with known criminals and on other occasions in competition with them. Thus the problem to be addressed was more fundamental. In Zambia, the situation is not very different as some police officers have been arrested before for 'conniving with criminals'⁷⁰

3.3 Weaknesses in the legal frame work vis a viz corruption in police work

The Zambia Police Service is established under Article 103 of the Constitution⁷¹. Article 103(3) explicitly provides that 'The Zambia Police Force shall be nationalistic, patriotic, professional, disciplined, competent and productive; and its members shall be citizens of

⁶⁸ J.R.T Wood, *Final Report of the Royal Commission into the New South Wales Police Service*: Volume 1; Corruption, 1997.

⁶⁹ Mollen Commission, *Report of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*, City of New York, Mollen Commission, 1994

⁷⁰ Zambia Daily Mail 8, July 2008, reported that a police officer in Kitwe was in court for having given uniform and a firearm to criminals.

⁷¹ Cap1 of the Laws of Zambia. The Constitution also refers to it as the 'Zambia Police Force' and not 'Service'.

Zambia and of good character'. This constitutional provision in itself enjoins police officers to be above board and avoid deviant behaviour in the execution of their duties.

However, police officers are entrusted with extensive powers and wide discretion in the exercise of their duties. At the same time they perform their every day tasks without direct supervision. Their powers and lack of supervision coupled with their frequent contact with people caught violating the law create numerous opportunities for corruption and other types of abuse⁷². It is imperative therefore to examine some specific provisions in some statutes which give certain powers to police officers and in which (powers) police officers find opportunities for corruption.

Part four of the Zambia Police Act⁷³ provides for powers, duties and privileges of police officers. Probably the most common legal power which police officers take 'advantage' of is the *power of arrest*. By virtue of the mandate given to the police in Article 104 of the Constitution⁷⁴ to inter alia preserve law and order as well as to detect and prevent crime, police officers have the power of arrest, without a warrant, particularly in cognizable offences. This power is usually exercised and based on the discretion of individual police officers and therefore prone to abuse⁷⁵.

⁷² L.Bolaji., *Anatomy of Corruption in Nigeria*, Daystar Press, Ibadan, 1970,p123

⁷³ Ibid 7

⁷⁴ Ibid 7

⁷⁵ Government Machinery for Accountability, *A Survey of Existing Laws and Institutional Framework in Zambia for Combating Corruption*, Transparency International Zambia, January 2003

There are a number of criminal offences in a variety of statutes where the police have been given powers of arrest. For instance the Criminal Procedure Code⁷⁶ in section 26 gives power to police officers to arrest without a warrant any person who is suspected of committing a cognizable offence⁷⁷; any person who commits a breach of the peace; any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody; any person in whose possession anything is found which may reasonably be suspected to be stolen property, or who may reasonably be suspected of having committed an offence.

In a number of situations, the police do not arrest offenders in a legal sense of the word but merely detain them in police custody. In common parlance a person who is detained in police custody is said to be ‘arrested’. This pedestrian understanding of the term ‘arrested’ may be also correct if we construe an arrest as a means of ‘depriving one’s liberty’⁷⁸. Figure 4 below catalogues a sample of most common complaints against the police involving the ‘power of arrest’ where the police have either solicited or received money for their personal benefit or have simply extorted money from citizens.

Table 4: Common complaints against abuse of powers of arrest/detention by police officers⁷⁹

Nature of complaint	Year reported at PPCA
Mr. Kalunga Victor shows videos at his shop in Chaisa market. He was picked by police for ‘making noise’ and thrown in police cells. The	2003

⁷⁶ Cap 88 of the Laws of Zambia.
⁷⁷ a “cognizable offence” means an offence for which a police officer may, under any written law for the time being in force, arrest without warrant.
⁷⁸ Ibid 58
⁷⁹ This information was extracted from Complaint Registers of 2003-2006 at Police Public Complaints Authority (PPAC).

police officer demanded money in order to release him	
Mr. Moyo, a driver picked up a quarrel with a police officer after which the police man took him to a police post and detained him. Mr. Moyo paid K65, 000 to be released but without a receipt.	2004
Terry Mainza was picked by police around 19:00 hrs for loitering and put in police cells. He was only released around 21:00 hrs after paying K105,000 to two policemen who arrested him.	2005
Mrs. Moonga's daughter was defiled but the police officer demanded money in order to arrest the culprit.	2006

Under Article 12(3) of the Constitution⁸⁰ the police are mandated to use force in a number of situations such as when affecting a lawful arrest, suppressing a riot, insurrection or in order to prevent the commission of a criminal offence. In these situations, police officers are expected to make objective and unbiased discretionary decisions on how to proceed.

Their decisions are not supposed to be affected by who has paid them for their meal, political inclination or mere vindictiveness. The use of force by the Zambia Police is however a form of deviant behaviour expressed through physical torture such a beating of suspects and putting them on the swing (*Kampelwa*) in order to extract confessions⁸¹. These are instances of human rights violation. For instance a Mumbwa resident who was crippled after being beaten by police officers was claiming compensation from the state⁸².

⁸⁰ Ibid 61

⁸¹ 2005 Human Rights Commission Annual Report

⁸² The LRF News Vol. 105, February 2008

Police officers have power to detain and search vehicles and persons in certain circumstances as provided for in section 23 of the CPC. Similarly, whenever investigations are being conducted, police officers can apply for a search warrant from court so as to search any premises in accordance with section 118 of the CPC. There is nothing wrong with this power per se. However, there are instances when police officers have been accused of planting evidence, stealing from suspects or soliciting bribes in order to suppress evidence⁸³.

Where a suspect resists an arrest; the police have been given powers in section 18(2) of the CPC⁸⁴ to use means reasonably necessary to effect the arrest. However, the police invariably beat up suspects even where a suspect offers no resistance to an arrest or will shoot suspects dead instead of maiming them or giving warning shots⁸⁵.

Section 23 of the CPC gives power to any police officer to detain and search vehicles and persons in certain circumstances. The public rarely doubts this power and they usually cooperate with the police⁸⁶. Similarly section 33 of the CPC gives police officers, particularly officers in charge of police stations and posts to give or deny police bond to an arrested person.

⁸³ The LRF News Vol.111, July 2008, A Mongu resident accused police of stealing K5million after searching his house

⁸⁴ Ibid 69

⁸⁵ The LRF News vol.iv, February 2008

⁸⁶ Ibid 47

The PPCA recorded a total of 69 cases between 2006 and 2007 of police officers soliciting for money in order to give police bond to detained persons⁸⁷. Sometimes even where suspects do not meet the bond conditions, police officers use their discretion to give police bond after receiving a bribe⁸⁸. Police officers also take advantage of section 309 of the Penal Code to act as ‘debt collectors’. The section criminalizes obtaining money by false pretences but the police misinterpret it to mean that anyone who fails to pay a debt should be arrested⁸⁹. Usually, a bribe is given to a police officer who assists in getting the money paid back⁹⁰.

It is apparent that corruption opportunities exist at prosecution stage where police prosecutors exercise their discretion to prosecute. For instance, section 88 of the CPC gives powers to any public prosecutor to withdrawal from prosecution in trials before subordinate courts. It is therefore possible for a prosecutor to withdraw a case on flimsy grounds when a bribe is paid. In 1998, 15 police prosecutors were arrested and prosecuted by the ACC for allegedly soliciting for bribes in order to discontinue prosecution of cases in courts of law⁹¹.

Road blocks mounted by the police and traffic patrols are also perceived to bring with them greater opportunities and likelihood of corruption through powers given to them by the Road Traffic Act⁹². In June 2004 police officers at Central Police station in Lusaka

⁸⁷ Ibid 71

⁸⁸ The State of Corruption In Zambia, Vol 2, Thematic Papers Presented at the Integrity Round Table Conference, 3rd July 1999.

⁸⁹ The LRF News, No.91, December 2006

⁹⁰ Ibid 87

⁹¹ ACC Newsletter September 1998

⁹² No.11 of 2002 of the laws of Zambia

who were not in traffic section were reported to be complaining that their colleagues in traffic section were making a lot of money and as such they also wanted to be transferred to traffic section 'to make money'⁹³.

Traffic police officers have considerable freedom to exercise in making decisions about whether to enforce particular traffic laws, giving rise to the opportunity for such decisions to be influenced by considerations of material or other gain rather than by professional judgment. In Lusaka, mini bus drivers staged a demonstration in protest against Chilenje Police officer –in Charge a Mr. Chalwe for allegedly demanding bribes pertaining to traffic offences⁹⁴.

Traffic officers are said to over-do their patrols and roadblocks. They often charge motorists for defects and offences and keep on extracting money which is not officially recorded and does not go into public coffers⁹⁵. Penalties for small traffic offences are also high such that motorists would rather pay a small bribe to a traffic officer than pay the high amount stipulated by law. The penalty for using a cell phone while driving, for example, is 1000 penalty units⁹⁶. This creates an opportunity for corrupt practices as offenders would rather pay a K50, 000 to a policeman than pay the official prohibitive penalty of K250, 000.

⁹³ Zambia Daily Mail, 13 June 2004

⁹⁴ The Post, 02 December 2008

⁹⁵ Chekelako, AFRONET publication 2002

⁹⁶ Section 169 of the Road Traffic Act No. 11 of 2002

A study of corruption in the South African Police Service (SAPS) concluded that the causes of corruption were many and varied⁹⁷. Below is a summary of causes of police corruption which in a large measure applies to the Zambia Police Service.

Table 5: Causal factors giving rise to corrupt practices in the police service⁹⁸

Discretion	The exercise of discretion is argued to have both legitimate and illegitimate bases
Low managerial visibility	A police officer's actions are often low in visibility as far as line management is concerned
Low public visibility	Much of what police officers do is not witnessed by members of the public
Managerial secrecy	Senior police officers have generally worked themselves up from the 'beat' and share many of the values held by those they manage
Status problems	Police officers are sometimes said to be poorly paid relative to their powers
Association with lawbreakers/contact with temptation	Police officers inevitably come into contact with a wide variety of people who have an interest in police not doing what they have a duty to do. Such people may have access to considerable resources

Professor Hansungule observes that corruption may take place institutionally and at individual level⁹⁹. He states that police officers, immigration officers, customs and excise officers, lands officers and teachers in Zambia engage in what is known as petty-corruption or small-scale corruption. He identifies nine factors as causes of corruption summarized below.

⁹⁷ C. Heymans and B. Lipietz, Corruption in the South African Police Service, ISS Monograph Series No.40, September 1999

⁹⁸ Ibid 94

⁹⁹ S. Mwaanga, Promoting and Protecting Integrity in Public Life in Zambia, Vol.1 ACC,2001

Table 6: Causes of corruption in Zambia

Personal greed	Heightened levels of individualism coupled by excessive love for money, wealth and influence
Lack of political commitment ¹⁰⁰	Government's lack of commitment to fight corruption tends to encourage public officials such as the police to engage in corrupt practices
Low rate of success in convictions	Very few are caught ,prosecuted and convicted for corruption, hence there is nothing to deter would be offenders ¹⁰¹
Patronizing society	Zambia's moral fibre has drastically been eroded where the corrupt are regarded highly instead of disgracing them. Society respects those who drive big cars, have big houses and a lot of money
Lack of democracy	Zambia's democracy is not working. A working democracy provides checks and balances. Transparency and accountability are also lacking thereby breeding corruption
Complex and discretionary legislation	This often leads to unethical and corrupt conduct, members of the public are unlikely to question officials' conduct and as such officials engage in corrupt interpretations and application of the law
Inadequate procedures and manuals	Without procedures and manuals there is inconsistency and uncertainty in the day-to-day operations which is the breeding ground for corruption
Lack of ethical codes of conduct	A code of conduct provides fixed guidelines according to which officials must operate, administer and direct public service. Lack of codes of conduct or their ineffective implementation fosters corruption
Poverty	When workers are not adequately compensated for their labour and skills, the temptation to be corrupt is great. Corruption can become the only means of survival where conditions permit reasonable existence.

The attitude of police officers toward their work is an important factor of causes of corruption. Kabanda writes that policemen often see the job in terms of a career for themselves rather than an occupation geared to serve society. With such an attitude, it is no wonder police officers make the most of their opportunities¹⁰². Police officers also take advantage of section 221 of the CPC which provides for payment for admission of guilty

¹⁰⁰ Prof. Hansungule was writing during the Chiluba Regime when political will to fight corruption was apparently lacking. The Mwanawasa Government however, was committed to fighting corruption, e.g. the creation of the Task Force on Corruption

¹⁰¹ According to ACC 2000 Annual Report, 403 complaints were reported to ACC, of these, 49 were prosecuted and only 10 were convicted

¹⁰² Ibid 29 p 50

by offenders instead of going to court. Usually this ‘payment’ is made to police officers in form of a bribe¹⁰³.

3.4 Conclusion

Causes of police corruption are attributed to many factors ranging from personal greed and dishonesty to inadequate remuneration. Overwhelmingly, though, police work often tends to involve a general lack of supervisory presence. Many police officers conduct their work on their own or with a partner, with much of the decision –making on the methods and tactics that they adopt in the field made by officers on the spot with few witnesses. Lack of supervision in police field work can lead to increased opportunities for corrupt behaviour in an environment that can be awash with tempting opportunities¹⁰⁴.

Many authors agree that the occupation of policing is intrinsically vulnerable to misconduct¹⁰⁵ since numerous rewarding opportunities exist even within the legal powers given to them such as the powers of arrest. In the criminal justice system, an arrest is one of the first steps of bringing the accused before court, hence very critical and should not be abused. It however, observed that police officers are rarely praised but often criticized for their efforts to provide a public service. Heymans, remarks that such lack of public praise may lead officers to seek rewards elsewhere and that the financial rewards from corruption can be great and the chances of avoiding detection rather good¹⁰⁶.

¹⁰³ Ibid 99

¹⁰⁴ L.Alison, *The Forensic Psychologist’s Case Book*, New York, McGraw Hill, 2005, p106

¹⁰⁵ Ibid 18 p23

¹⁰⁶ Ibid 85, p45

CHAPTER FOUR: THE EFFECTIVENESS OF STRATEGIES IN THE CONTROL OF POLICE CORRUPTION IN ZAMBIA

4.1 Introduction

This chapter considers the question of strategies put in place to control corruption in the Zambia Police Service and whether these strategies have been effective. The interventions are considered under four general headings: human resource management; anti-corruption policies; internal controls; and the external environment and external controls.

4.1 Human resource management

The Zambia Police Service command has acknowledged that the problems of corruption exists amongst its officers¹⁰⁷ and has responded by trying to change some employment and training practices and by implementing new procedures. Intervention at Human resource management level is considered under recruitment and training/ethics

4.1.1 Recruitment

From 1990 the Zambia Police Service started recruiting young Zambians with a minimum of Grade 12 certificate and has introduced screening of the background of all candidates¹⁰⁸. There is also a minimum age standard set at 21. In an interview, Eugen Sibote the Police College Commanding Officer stated that 18 was the minimum age but

¹⁰⁷ Ibid 9

¹⁰⁸ The Post, 15 May 2003, it was reported that 5 police recruits were caught with fake Grade 12 certificates

that it was found to be too low in that it would not allow for sufficient evaluation of adult work and behaviour. He said that the new recruitment policy of the Zambia Police Service was to seek for candidates with higher education and place them in high ranks¹⁰⁹.

This strategy seems not to have achieved the desired results of reducing corruption in the Zambia Police Service. The underlying problem being that 'police culture' has not changed such that the new recruits eventually join the old officers in malpractices¹¹⁰.

4.1.2 Training/Ethics

Reforming recruit training is the most common response in attempting to deal with police corruption¹¹¹. Goldstein noted that most police training avoided discussion of corruption in the naïve belief that discussing wrongdoing was inherently undesirable and might even encourage such behaviour. Although the Zambia Police College syllabus includes corruption, human rights and professional ethics there is very little impact in terms of reduction of malpractices let alone corrupt practices. At the time of this research, ethics for the police had not been codified except that they relying on the Code of Ethics for Public Service¹¹².

¹⁰⁹ Interview: U. Sibote, 09/10/08

¹¹⁰ C. Keith, *The Police Idea*, London, Oxford University Press 1938, p89

¹¹¹ H. Goldstein, *Problem Orienting Policing*, New York, McGraw Hill, 1975, p143

¹¹² Code of Ethics for Public Service, Produced by the office of the Secretary to Cabinet

4.2 Legal provisions to curb corruption and deviant behaviour

The Zambia Police Act has specific provisions aimed at controlling incidents of corrupt practices and deviant behaviour of police officers. However as Chief Superintendent Lameck Lungu of Lusaka Central observed, ‘enforcement and compliance to these legal provisions has been problematic’¹¹³. For instance, section 30(1) of the Zambia Police Act outlines a number of offences which fall within the broad definition of corruption some of which are mentioned below. It provides inter alia that a police officer below the rank of Assistant Superintendent commits an offence against discipline if he does any of the following;

- (i) without good and sufficient cause makes any unlawful or unnecessary arrest;*
- (ii) uses any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty;*
- (o) discharging without orders or just cause any firearm which has been issued to him;*
- (vii) fails to report any matter which it is his duty to report;*
- (i) acts in a disorderly manner, or in any manner prejudicial to discipline or likely to bring discredit on the reputation of the Force;*

The only blemish with the preceding provisions is that they are targeted at junior officers and leave out the seniors. This in itself is a weakness because it is based on the premise that senior police officers are not involved in corruption or deviant behaviour. There is also a problem of enforcement of these legal provisions such that the effect and essence of having such provisions in the Act has not been felt, mainly because the Police are still ranked as the most corrupt institution¹¹⁴.

¹¹³ Interview: L.Lungu, 08/10/08

¹¹⁴ Ibid 5

4.3 Internal controls

Internal controls refer to those policies that seek to change the organization in ways that would serve to prevent the commission of corrupt practices. Below is a summary of internal control measures put in place by the Zambia Police Service.

Table 7 Internal controls of corruption

Preventive control	
Reducing opportunities for corruption	Unnecessary road blocks which are identified as a source of corruption have been done away with. ¹¹⁵
Professional standards Committee	This is an administrative arrangement where the committee ensures that police work is done according to the rules and also compliance with the law ¹¹⁶
Transfers	Rotating of officers on a regular basis so as to avoid officers staying in one section or at one station for too long
Recognition	Officers of good conduct are rewarded ¹¹⁷
Punitive control	
Detection	A system where information about rule violation is gathered and offenders punished. The sources of intelligence about police corruption are citizens, police officers themselves and through probing police activities

The above measures good as they seem, have not yielded the desired results mainly because individual police officers still have the powers of discretion which they exercise in their day-to-day enforcement of the law. There are also no statistics available to prove that such measures have borne fruit. The Bribe Payers Index shows that corruption in the Zambia Police Service is not coming down at all¹¹⁸

¹¹⁵ However, road patrols and police roach checks are still rife.

¹¹⁶ Sub Inspector Gregory Mwase described it as a 'white elephant', as its impact is not felt. Interview: Mwase 11/12/08

¹¹⁷ The Post, 27 September 2008, Inspector General of Police recognised 122 officers in Lusaka who had no disciplinary record

¹¹⁸ Ibid 48

4.4 External environment and external controls

There are considerable pressures on the Zambia Police Service to be rid of corruption and the Government has set up institutions to help curb corrupt practices.

4.4.1 Anti-Corruption Commission

The ACC as an institution provides an independent reporting and investigation of corrupt practices and is mandated generally by law to spearhead the fight against corruption in the country. However, investigating corruption cases is difficult because of the element of satisfied customer relationship. Both parties may not be willing to ‘talk’ and the transaction is usually done in secrecy where there may not be witnesses to report¹¹⁹. The legal definition of corruption in the ACC Act does not include deviant behaviour which people consider as police corruption. Further, the ACC Act does not provide for protection of whistle blowers which is an effective tool of obtaining information on corruption¹²⁰.

Apart from prosecution, the ACC in section 9 of the ACC Act¹²¹ gives advice on ways and means of preventing corruption in public institutions. In this regard, the ACC has established **Integrity Committees** in five public institutions which are perceived to be most corrupt, and one of them being the Zambia Police Service. The main functions of the committees include spearheading and facilitating the process of preventing corruption in

¹¹⁹ Ibid 109

¹²⁰ *Trends in the forms of corruption since democratization in Zambia*, a paper presented by Mrs. K. Ng’andu of ACC at a workshop for church leaders in Lusaka, 2001

¹²¹ Ibid 2

the respective organisations, being responsible for ensuring that Codes of ethics are understood by all staff, receiving, considering and providing redress on all complaints emanating from within and outside the organisation relating to ethical issues and maladministration¹²².

Zambia Police Service Integrity Committee member Musole Biemba said the committee had helped a great deal in controlling police corruption¹²³. However, the effectiveness of this committee is seriously doubted. For instance, there are only four Integrity Committees members in the entire Police Service and are only based at Police Headquarters in Lusaka.

4.4.2 Police Public Complaints Authority

The Police Public Complaints Authority (PPCA) was created under Part X Section 57A of the Police amendment Act No. 14 of 1999. It receives and investigates complaints from the public against police actions which result in serious injury or death of a person and submits its findings, recommendations and directions to the Director of Public Prosecution (DPP) for possible prosecution. Submissions are also made to the Inspector General of Police for disciplinary action or other administrative action or to the ACC or any other relevant body. The PPCA is however, not effective in that it is seriously understaffed, under funded and has no representation in other districts apart from Lusaka¹²⁴. A few cases that are reported to the PPCA take long to be resolved and this discourages members of the public.

¹²² *Preventing Corruption through Integrity Committees, An ACC pamphlet, 2006*

¹²³ Interview: Chief Superintendent M.Biemba, 14/10/08

¹²⁴ PPCA 2005 Annual Report

4.4.3 The civil society

The Church and some Non Governmental Organisations like Transparency International Zambia (TIZ) have dedicated themselves to fighting corruption in the country. The TIZ for example advocates and lobbies for zero tolerance of corruption and conducts surveys on the prevalence of corruption in public institutions such as the Zambia Police Service. However, apart from agitating against corruption the civil society have no legal powers to go further than that.

4.5 Conclusion

Running throughout this chapter has been the assumption that it is important to prevent or control corrupt activities- notwithstanding the fact that corruption may be difficult to define and, in practice, may sometimes not be easily distinguishable from deviant behaviour which falls short of corruption. It is further assumed that efforts to control or prevent corruption are to be seen as positive developments and it is imperative that the parameters of prevention strategies are acknowledged. The reform of a corrupt Zambia Police Service is a major social change and can only be achieved by concerted efforts by the government, the public and the police themselves. Perhaps what needs to change as well is the public's attitude towards corruption¹²⁵. People should desist from enticing police officers with bribes in order to get way with the law. This change of people's attitude can be achieved through education and corruption awareness programs.

¹²⁵ Ibid 87 p33

CHAPTER FIVE: THE WAY FOWARD

5.1 Conclusion and Recommendations

Police corruption is a complex phenomenon, which does not readily submit to simple analysis. It is a problem that has and will continue to affect us all, whether we are civilians or law enforcement officers. Since its beginnings, many aspects of policing have changed; however, one aspect that has remained relatively unchanged is the existence of corruption¹²⁶. It is also important to acknowledge that outright elimination of corrupt practices in a law enforcement agency like the Zambia Police Service is generally unrealistic. Hence the term ‘controlling’ corruption is preferred.

The general message arising from this essay is that corruption is very difficult to define primarily because it is, at heart, an ethical problem. From a legal perspective, the powers of arrest given to police officers are often abused and have weaknesses that tend to encourage corrupt practices. It is also evident that police culture is extremely powerful and overlooking its importance is perhaps the cause of failed attempts at organizational change¹²⁷. This chapter therefore considers workable measures of fighting corruption in the Zambia Police Service.

¹²⁶ Analysis of Police Corruption, www.copcrimes.com

¹²⁷ Interview: Police officer from Chilanga Police Station(preferred to remain anonymous), 13/10/08

5.2.1 Prevention

It is widely agreed that the prevention of corruption should be at the forefront of reform efforts¹²⁸. Relying on a ‘big stick’ approach (enforcement) to deal with corruption after the event can be uncertain, ineffective and wasteful. The ACC’s prosecution and particularly conviction rate of police officers involved in corrupt practices over the years has not been impressive¹²⁹ and despite all these efforts, there is no indication that police corruption is reducing¹³⁰ and as such prosecution is considered not to be a deterrent factor in corrupt practices.

5.2.2 Manuals for police work

It was established that there are no manuals in the Zambia Police Service for the work that police officers do¹³¹. Manuals indicate the exact procedures or correct steps that police officers should follow when performing their functions or duties. Manuals can also regulate and control the element of discretion in police work thereby circumventing opportunities for corruption. Formally, the police are supposed to arrest everyone whom they see committing an offence or, with regard to more serious offences, everyone whom they have reasonable cause to believe has committed an offence¹³². Discretion, however, is inevitable and sometimes necessary but the fundamental problem is how and when to exercise it.

¹²⁸ Ibid 13 p269

¹²⁹ Ibid 90

¹³⁰ Ibid 48

¹³¹ Ibid 99

¹³² R. Wayne, *Arrest*, Boston, Little Brown &Co, 1965, p75

5.2.3 Enhance screening at recruitment stage

It is imperative that the Zambia Police Service raises standards in relation to recruitment and screening. One way of effecting this is by using scientific methods of testing the honesty of police recruits through the use of *polygraph testing*. The latter (though controversial) has become one of the quickest and most accurate ways of establishing incidents of honesty¹³³ and is used by a number of police agencies in the world. Such a mechanism will reduce on recruitment of dishonest police officers who may become perpetrators of corruption later. Further, school leavers should not be employed purely on the basis of the academic attainments without testimonials of good character from the last schools they attended¹³⁴.

5.2.4 Improve remuneration

A comprehensive anti-corruption strategy that takes into account the income of police officers is critical to having a successful anti-corruption fight in the Zambia Police Service. It is acknowledged that one of the major reasons why police officers get involved in bribery is that their incomes are extremely low.¹³⁵ Unless this issue of income for police officers is addressed with the seriousness it deserves, the fight against police corruption is in vain¹³⁶.

¹³³ Ibid 87 p115

¹³⁴ Ibid 85

¹³⁵ Jesuit Centre for Theological Reflection (JCTR) 'Basic Needs Basket', February 2008

¹³⁶ Bribe Payers Index, Zambia 2007, TIZ Publication

5.2.5 Provision of heavy penalties

There should be a legal provision of a minimum sentence of five years for those convicted of corruption be it police officers or not. In most countries such as Hong Kong, Singapore, Malaysia and China where corruption has been taken seriously, the judicial punishments are heavy so as to send messages that corruption will not be tolerated and to deter would be offenders¹³⁷. Professor Hansungule argues that the lenient penalties coupled with the low rate of convictions make the criminals not to fear the ACC. 'They feel that even if they engage in corrupt practices, nothing will happen to them'¹³⁸.

5.2.6 Ethical policing

Much corrupt behaviour by police officers such as bribery, brutality, protection of criminal activity, is in itself illegal and therefore clearly unethical. In this regard, it is imperative that any anti-corruption strategy should place emphasis on 'ethical policing'. There is considerable evidence to suggest that police agencies have tended to down play or to completely ignore, the ethical dilemmas that their officers inevitably have to confront¹³⁹. Relatively little emphasis, if any, is put on ethics training for new recruits at Zambia Police College in Lilayi or for those in service. The code of ethics for public service, is rarely used as living documents in the day-to-day practice¹⁴⁰.

¹³⁷ Ibid 119

¹³⁸ Ibid 124

¹³⁹ Ibid 53 p47

¹⁴⁰ www.anticorruption.info/corr

A comparative research of countries with low levels of corruption such as Hong Kong, Singapore and Botswana revealed that their anti-corruption strategies are based on a *Confucian culture*, which highly espouses morality, ethics, **goodness** and integrity in public life which characterizes public administration and behavior¹⁴¹. If it is agreed that corruption is human made, then it can be prevented. The law is not the upper limit of ethical behaviour. It is the barest minimum.

5.2.7 Community policing

Community policing or neighbourhood policing is a policing strategy and philosophy based on the notion that community interaction and support can help control crime¹⁴². It aims at establishing an active and equal partnership between the police and the public through which crime and community safety issues can jointly be discussed and solutions determined and implemented¹⁴³. This approach makes the police transparent, accountable and effective thereby reducing or controlling instances of corrupt practices. Community policing also encourages professionalism in carrying out police duties. However, at the time of the research, it was observed that the Zambia Police Service had drastically reduced if not abandoned community policing country wide¹⁴⁴.

¹⁴¹ D.Chikalanga, Promoting Integrity, Transparency And Accountability In Public Life: Lessons From Countries With Low Corruption Occurrence, June 2008

¹⁴² B. Linda, *Leadership Effectiveness in Community Policing*, Bristol, Indiana: Wyndham Hall Press ,1999 ,p115

¹⁴³ Community policing. www.kenyapolice.go.ke

¹⁴⁴ Reason given, was shortage of police officers: Interview: Musole, 05/01/09

5.2.8 Sensitisation of the public

Human nature will always provide ample opportunity for corruption wherever the possibility for personal gain exists. Additional laws to control this problem are rarely required, but effective mechanisms whereby individuals can report known problems are very important. Institutions such as the Permanent Human Rights Commission and the Commission for Investigations can play a critical role in curbing malpractices. The former has jurisdiction to handle cases of human rights abuse while the latter handles cases of maladministration including abuse of office¹⁴⁵. However the public is hardly aware of these two important institutions¹⁴⁶. What is required therefore is to actively sensitise the public about the existence of these institutions and the services they offer.

Police corruption is often viewed as a victimless crime because the victim is society rather than an individual. Often, the attention goes to the officers who "crossed the line" or "made a mistake", too often we tend to forget the psychological and social effects police corruption has on the victims and their communities¹⁴⁷. Nevertheless, it imperative to come to grips with this demeaning human problem. The fight must continue, as giving up now could spell disastrous consequences. The fight would require enormous resources and considerable time¹⁴⁸. The latter would be a better price to pay than the chaos that uncontrolled police corruption would wreck in our society.

¹⁴⁵ Section 8 of Cap 39 mandates the Commission to investigate maladministration and abuse of office of any public officer

¹⁴⁶ Ibid 30

¹⁴⁷ F. Anechiario and J. Jacobs, *The pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective*, University of Chicago Press, 1996, p129

¹⁴⁸ Times of Zambia 11, 2009, Attorney General Mumba Malila justified Government spending on corruption fight.

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