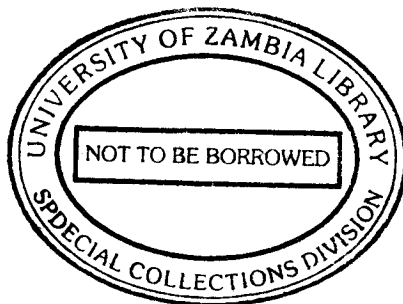


**THE IMPACT OF HUMAN RIGHTS EDUCATION ON LAW ENFORCEMENT
OFFICERS: AN EVALUATION OF THE EFFECT OF HUMAN RIGHTS
EDUCATION ON ZAMBIA POLICE.**



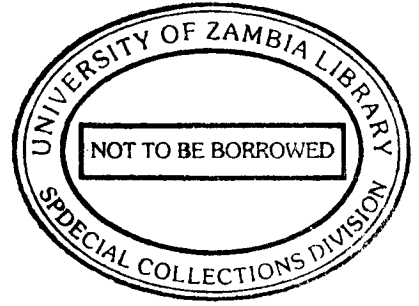
BY

**JAMES MATALIRO
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UNZA

2005

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**



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OFFICERS: AN EVALUATION OF THE EFFECT OF HUMAN RIGHTS
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BY

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OBLIGATORY ESSAY

Submitted in partial fulfillment for the award of a Bachelor of Laws Degree (LL.B)

UNIVERSITY OF ZAMBIA

DECEMBER 2005.

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

I recommend that this Obligatory Essay prepared under my supervision by James Mataliro

Entitled

**THE IMPACT OF HUMAN RIGHTS EDUCATION ON LAW ENFORCEMENT
OFFICERS: *AN EVALUATION OF THE EFFECT OF HUMAN RIGHTS
EDUCATION ON ZAMBIA POLICE***

**be accepted for examination. I have checked it carefully and am satisfied that it
fulfils the requirements relating to format as laid down in the regulations governing
Obligatory Essays.**

22.12.05

DATE

A. W. Chanda

PROF. A.W. CHANDA

DECLARATION

I, JAMES MATALIRO solemnly declare that this work represents my own ideas and it is not a production of any other work produced or submitted by any person to the University of Zambia or any other institution.

Date: 22.12.05.....

Sign: .....
JAMES MATALIRO

DEDICATIONS

TO

**ALL
LOVERS
OF
LOVE**

1JOHN 4:7

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TABLE OF CONTENT

	Page.
Submission.....	i
Recommendation.....	ii
Declaration.....	iii
Dedication.....	iv
Acknowledgment.....	v
Table of Content.....	vii
Table of Cases.....	ix
<u>CHAPTER ONE</u>	1
<u>INTRODUCTION</u>	1
1.0 Historical Background	1
1.1 Introduction and Development of the Zambia Police Force	1
1.2 Introduction and Development of Human Rights in Zambia	4
1.3 Law enforcement and Human rights	7
1.4 Summary	8
<u>CHAPTER TWO</u>	10
2.0 Training and Education Policy in the Zambia Police Force	10
2.1 Introduction	10
2.2 Scope of Training and Education	10
2.3 Implementation of Training Policy	13
2.4 Nature of Training from 1994	13
2.5 Importance of Human Rights Education in the Zambia Police Force	19
2.6 Effects of Lack of Human Rights Education and Training	22
2.6 Summary	22
<u>CHAPTER THREE</u>	23
3.0 Impact of Human Rights Education on the Zambia Police Force	23
3.1 Introduction	23
3.2 Human Rights Violations by the Police from 1994	23
3.2.1 Right to Life	27
3.2.2 Right to Privacy of Individual and Property	30

3.2.3 Freedom of Assembly and Association.....	31
3.2.4 Right to Individual Liberty.....	37
3.2.5 Freedom of Movement.....	38
3.2.6 Freedom of Expression.....	39
3.2.7 Freedom from Torture, Inhuman and Degrading Treatment.....	43
3.3 Summary.....	46

CHAPTER FOUR47

4.0 Factors Influencing Human Rights Abuse by the Police.....	47
4.1 Introduction.....	47
4.1 Level of Human Rights Awareness in Zambia.....	47
4.2 Police Professionalism and its Political Independence.....	49
4.3 Economic Factors.....	52
4.4 Institutional Safeguards and their Impact.....	53
4.4.1 The Police Public Complaints Authority.....	54
4.4.2 The Police Professional Standard Unit.....	55
4.5 Summary.....	56

CHAPTER FIVE.....57

5.0 Developing a Democratic Police Force: Proposals.....	57
5.1 Introduction.....	57
5.2 Legal Framework.....	57
5.3 Effective Training and Developing Human Rights Culture in Zambia Police...60	
5.4 Funding.....	61
5.5 Condition of service.....	62
5.6 Summary.....	63
Bibliography.....	64
Thesis/Obligatory Essays.....	64
Articles.....	65
Statutes.....	65
Newspapers.....	66
Other Sources.....	67

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CHAPTER ONE

INTRODUCTION

1.0 HISTORICAL BACKGROUND

1.1 INTRODUCTION AND DEVELOPMENT OF THE ZAMBIA POLICE FORCE

The origin of the Zambia police force is traced back to 1889, the time of British South African Company (B.S.A.) occupation of Northern Rhodesia.¹ The company achieved the occupation by taking control of two territories, North-Eastern Rhodesia and North-Western Rhodesia. The twofold occupation of the territory gave rise to the two Police Forces, the North-Eastern Rhodesia Police Force under Sir Harry Johnson who was based in Nyasaland; and the North-Western Rhodesia Police Force under the command of Colonel Colin Harding from South Africa.² However, the formal establishment of the two Police Forces was approved in the letter of the High Commissioner for South African of 23rd May 1900. This was a formal document founding the Force although its formation was only under gazette by the 31st August 1901 proclamation. Its final establishment authority came in the 1905 Order in Council. The two Forces were later merged in 1911 and formed Northern Rhodesia Police (NRP) when North-Eastern Rhodesia and North-Western Rhodesia were amalgamated.³

Throughout organization, the two Forces were militaristic in nature up to 1911 when there was need for a civil police. As such, the police was divided into military and civil Police Force in 1913. But this was not a significant splitting. A significant separation however, came in 1932 when the civil Police Force was separated from the military police. The 1932 Police Force was

¹ Nyambe, N. "Zambia Police 50 Years Old 1932-1982" Nkhwazi Magazine, April 1982. p51.

² Ibid

³ F.X. Musonda, **History & Reformation of Zambia police service** (Lusaka; University of Zambia 2002) p 8

organized under the command of Captain P.R. Wardroper. This police remained separate up to independence. The training however, remained military and officers were taught repressive methods when handling any group that was opposing the colonial administration established in 1924.⁴ A training depot was established in Livingstone in 1927.⁵ The scope of training did not vary from that of the old police. Military skills were taught to recruits and no or very little attempt was made to turn the whole Police Force into a civil one. Although H.G Hart, one of the Commissioners of police, had published a pamphlet that contained some provisions for the need of the officers to be civil, the officers were, in practice, oppressive to the natives who mistrusted them.⁶ As such, the relationship between the police, especially the black policemen, and the local people was acrimonious and sour. This was because police officers of the black folk were more 'vicious' than the white folk.⁷

In 1937, there was an attempt to overhaul the Police Force in terms of training. Sir Herbert Dowbigging, the Commissioner, enunciated this program. The program included intensive training of the officers in police duties and of raising educational standards of African police officers.⁸ This program however, was merely intended to equip the police with organized military police work. This was necessary in order to meet colonial objectives. The program did not attempt to equip the officers with more civilized methods of policing. As a result, there was no change in the police as police brutality did not end but took an organized form. The police-public relationship continued to be bad and unrelenting abuse steeped up.⁹ The relationship grew

⁴Supra note 1 at 52

⁵ Ibid p 10

⁶ Supra note 1 p 54.

⁷ Ibid

⁸ Supra note 1 at 54.

⁹ Musonda records at p. 12 that the police used maximum force to suppress the 1935 and 1940 riots.

even worse towards the years of independence struggles where people were harassed, beaten and even killed for being supporters of the nationalist movement. The level of human rights abuse was high. Dr Kaunda explains that one of his colleagues with whom he was detained, was made to answer a call of nature in full view of other detainees and the officers.¹⁰

In 1955 the Livingstone training deport was closed following the opening of a new training school at Lilayi near Lusaka. There was however, no improvement in the training curricular to include civil methods of policing. The change was only of physical displacement of the institution and did not include change of the training system. The officers trained at Lilayi were as adamant as the others in violence and abuse of human rights.¹¹

After independence there was need, therefore, to establish an effective and appropriate police institution. In 1965, the Zambia Police Act, which came into effect in 1966, repealed the Northern Rhodesia Police Ordinance. The functions and objectives of the NRP were retained entirely and there was no change in the training curriculum to equip the police with civil police skills. This was so, regardless of a Bill of Rights enshrined in the Zambian constitution.¹² The police continued, both deliberately and in ignorance, to abuse human rights. After independence, there was a mass exodus of white police officers. This left more of semi-literate officers¹³. However, this did not trigger any need to train officers, although some officers were sent out of the country for training, which in effect was incapable of transforming the educational levels in the force.

¹⁰ A brief outline of Zambia's struggle for Independence, National Archives of Zambia; 1974 PV1 as quoted by E.C. Musonda, *Obligatory Essay*, 1992.

¹¹ *Supra* note 1 at 54.

¹² *Zambian Constitution of 1963*.

¹³ *Supra* note 3 at 15

The face of the police continued to be the same throughout the Second Republic. The whole period did not provide any training program intended to impart skills befitting a police service in an open society; or at least those in harmony with human rights provisions that Zambia, in theory, had accepted and acceded. Gross abuse of human rights was the order of the life of the police. With a state of emergency in place, many people were arbitrarily arrested and detained. Torture was a common method of extracting evidence from suspects.¹⁴ The trend was expected to halt with the re-introduction of democracy and multiparty system in 1991. This was however not so as the police, despite of some changes in the training strategies, have continued to abuse human rights and being a tool for scoring political goals.

1.2 INTRODUCTION AND DEVELOPMENT OF HUMAN RIGHTS IN ZAMBIA

Human rights are those rights that human beings have by virtue of their humanity and inherent dignity rather than by virtue of law.¹⁵ They are moral rights which every human being, everywhere, at all times ought to have simply because he is rational and moral.¹⁶

The idea of human rights originated from the historical concept called Natural Rights. Its history stretches far back to the ancient regimes of the west, and has developed as an aspect of western political philosophies. It owes its background to the Judeo-Greco-Roman Christians.¹⁷ The theory of natural law is predicated on the assumption that there are natural laws, both theological and metaphysical, which confer certain specific rights upon individual human beings.

¹⁴ A.W. Chanda, 'Human rights in Zambia's Third Republic: An Overview' Legality Journal (Special Ed.) 1998 p60.

¹⁵ G. Feltoe, "Policing & Human rights" Occasional Papers: Policing in a Democratic Society, Michael Schlicht (Harare: Konrad Adenauer Foundation) p.37

¹⁶ Chanda A.W. "Zambia: A Case Study in Human Rights in Commonwealth Africa" JSD Thesis, Yale Law School, 1992. p.1

¹⁷ L.S. Zimba, *The Constitutional Protection of Fundamental Rights & Freedoms in Zambia: An Historical & Comparative Study*. PhD Thesis 1979 p19.

The current manifestation of the human rights idea in Zambia, however, is traced back to the establishment of International and Regional organizations in the middle of the 20th century. This however, does not mean that before that there were no human rights in Zambia. Before the coming into existence of the present form of the idea of human rights, the idea was latently observed among the Zambian societies that existed before colonization. This fact is predicated on the fact that there was respect for human rights as enshrined in the Universal Declaration of Human Rights (UDHR).¹⁸ For instance, there was respect for life as it could not be taken away arbitrarily, unless in pursuance of a perceived particular customary norm of great importance. There was respect for property right, personal liberty, freedom of assembly and association, and these rights were protected by sanctions that were applied against anyone who tried to abrogate any of these rights.

The coming of the colonial system in Zambia, however, brought a different outlook of human rights. When the colonialists came and colonized this country around 1890's, they imposed on the native societies English law, which was by and large, common law. The ideals of human rights were protected by common law. Therefore, the extension of common law to this country meant that even the people of Zambia were to enjoy human rights in the same way as the people in England.¹⁹ Certain provisions in the enactments, which were passed during the period that were meant to protect African interests, also strengthened the idea.²⁰

The establishment of international and regional organizations such as the United Nations and the European Community impacted so much on the development of human rights. The preamble of

¹⁸ Ibid

¹⁹ Supra note 16 at p.58.

²⁰ Supra note 17 at p.138.

the UN Charter requires every state party to reaffirm faith in fundamental rights and the dignity and worth of the human person.²¹ Therefore, when Zambia subscribed its membership to the UN, undertook to adhere to the Charter, which has influenced the development of human rights to this present form. The major impact on the development, however, is owed to the adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950. Under the Convention, article 63, called the colonial clause, obliged state parties to extend the application of the convention beyond the frontiers of the metropolitan territories to their overseas territories and colonial possessions.²² As such, the colonial clause was used by the United Kingdom government on October 23 1953 to extend the application of the Convention and its protocols to Zambia.²³

The inclusion of the Bill of Rights in the Zambia Independence Constitution of 1963 was also a profound event in the development of the idea in Zambia. The provisions in the bill of rights, which have remained almost the same up to this day, are a reflection of the rights as outlined in the Universal Declaration of Human Rights (UDHR).²⁴ The development was further strengthened by the subscription of Zambia as a member of the Organization of African Unity and the acceding and signing of many international and regional human rights instruments such as the International Conventional on Civil and Political Rights, (ICCPR) and the Covenant on Economic, Social and Cultural Rights, (CESCR) of 1966.

²¹ The United Nations Charter

²² Vasak K. **The European Convention of Human rights Beyond the Frontiers of Europe**. ICCO Vol. 12 of 1963 p. 1207.

²³ Supra not 20 at p.86.

²⁴ Ibid p18.

1.3 LAW ENFORCEMENT AND HUMAN RIGHTS.

Enforcement of law includes the collection of evidence that a law has been contravened, and the arrest of the offender.²⁵ This task in Zambia is on the shoulders of the Police and other security agencies. However, many law enforcement officers have come to believe that the process of law enforcement is a difficult task and that human rights are an impediment to the process. At times, this is also the perception of some government officials.²⁶ However, such a belief is far much misplaced. The principle of human rights is an important aspect of law enforcement and policing as a whole. The protection of human rights is a central domain of police work. There can hardly be human rights in the absence of effective policing.²⁷ The function of law enforcement is the protection of human rights as stated in the Bill of Rights and various human rights instruments, including the twin principles of individual freedom and human dignity. It is the duty of the police to ensure that the citizens and visitors of this country enjoy human rights as enshrined in the Bill of Rights and international human rights instruments. Therefore, when enforcing the law, the police must behave with humanity and compassion and must not ride roughshod over the rights of the people.²⁸ The police can in fact maximize their efficiency if respect for human rights is upheld in the course of their duty. If the police do not respect the rights of the people, then the public will be hostile towards the police and unwilling to assist them. Human rights rules are laws in their own right and must be enforced by being observed by the law enforcers. If these rules are broken the public will have no respect for the law and the enforcers of the law.²⁹

²⁵ Human Rights and Policing: Towards Ethical Policing. Resource Book (Harare: SARPCO & Sahrit) p13

²⁶ Permanent Secretary of Northwestern province remarked that the police have failed to curb prostitution in the province due to human rights concept. The Post. 26th July, 2005.

²⁷ Supra note 25 at p11

²⁸ Feltoe p.37

²⁹ Ibid 38

There are many practical effects for non-observance of human rights by the law enforcers. Public confidence in the police is eroded and exacerbates civil unrest. It also creates a rift between the police and the public, thereby hampering effective police work that is dependent, to a larger extent, on public co-operation. The trend can also lead to the prosecution and conviction of innocent persons and letting the guilty go unpunished.³⁰ On the other hand, respect of human rights by the law enforcers does not only ensure that they act in a manner that is lawful and ethical, but also that the policing process is made easier as the public are in co-operation with police in tracking down crime. This leads to a warm police-public relationship and contribute to the fair administration of justice and enhancement of confidence in the system.³¹ Therefore, the ideals of human rights cannot be divorced from the process of law enforcement. The two are inseparable, as without one the other cannot exist.

1.4 SUMMARY

It is clear, therefore, that the history of the Zambia Police Force is coexistent with the colonization of Zambia. It started as a military organization and was later turned into civil police. Human rights notions cannot, therefore, be thought as being a western idea. Human rights in Zambia have been in existence before colonization, though not in the form we perceive them now. The development of human rights was as a result of the emergence of regional and international organizations such as the United Nations, the European Community, and Organization for African Unity. The accession and signing by Zambia of many regional and international human rights instruments also played a major role. It must be noted also in conclusion that human rights and law enforcement can not be divorced as they are

³⁰ Forward to Human Rights & Law Enforcement. A Manual on Human Rights Training for Police, Professional Training Series No. 5 United Nations Commission for Human Right Jose Ayala Lasso 1997.

³¹ Supra note 25 p.11

CHAPTER TWO

2.0 TRAINING AND EDUCATION POLICY IN ZAMBIA POLICE FORCE

2.1 Introduction.

This chapter explores the Zambia police training policy. The first part looks at the policy and the implementing mechanisms. The second part of the chapter considers the nature of training that has existed since 1994. In this part, it will be shown how much has been put in by both the police and other institutions, in educating the police in human rights issues. The last part considers the importance of training and education in the Zambia Police Force and the subsequent effect of lack of such training. The argument in this chapter, therefore, is that there has been some considerable effort that has been put in to educate the police. As such, it is evident that the police officers are, though not perfectly, well trained and informed in human rights issues and that much is expected from them.

2.2 SCOPE OF TRAINING AND EDUCATION

The Zambia Police Training Policy was formulated in 1985 and has remained the same for a long time. The policy has very limited training programs considering the nature of the society Zambia is. It does not provide more programs that are aimed at creating and strengthening the human rights culture in the Force. It was intended simply to strengthen the institution and better its service in line with the political objectives that existed at the time of its formulation. The aim, however, was to equip personnel only with necessary knowledge and skills they required to carry out their work efficiently, taking into account, not only the diversity of police work itself, but also changes in the law and circumstances that may add to or change the responsibility of the force.¹

¹ Zambia Police Force Training Policy (1985). P4

The Zambia Police Force, as an institution, has many sections whose members are trained and retrained for specialization; and to make them responsive in the changing political moods of our society.

A major program of the policy is that of training new entrants into the service, called recruits. It is undertaken whenever new entrants are required into the Force.² This is the initial training that is given to all officers in the service and is meant to transform recruits into capable officers ready to embrace the profession. The program is undertaken to train recruit constables and direct entrants as Assistant Superintendents.³ The content of the syllabi of the two new entrants is the same except that that for Assistant Superintendents includes the management and administrative skills course in addition to the normal syllabus.⁴

The policy includes refresher training program for all personnel in all branches of the regular Force and in all ranks up to and including the rank of senior Assistant Commissioner.⁵ This program is divided into two categories. There is the cadet program and the Senior Police Officers' program. However, the division of the programs is only for convenience purposes and not of academic significance as the courses they do are the same. In both programs the course content is the same as that of new recruits. The only addition is the managerial and administration skills course.

It is also the training policy of the Zambia Police Force to train reserve police officers and the training of civilians newly appointed. The policy also includes any other training and education

² Ibid.
³ Up to early 1990, direct entry also included entrants with Grade 12 certificates who joined as Sub- Inspectors.
⁴ Kennedy Kaoma, **Democratization and The Challenge of Policing Initiative and Strategies in Zambia: A Comparative Approach to a Fragile Democracy**, Obligatory Essay
⁵ Ibid, p.7.

program specifically authorized by the Inspector General of Police from time to time.⁶ This category includes a number of programs. It includes educational programs undertaken by officers in other institutions within and outside the country in various fields of study. However, the policy is that the course to be undertaken must be of relevance to police work or related in some kind, such as legal studies, social sciences, studies in administration, criminal investigations, public prosecutions and many others. At most, such is the kind of education that widens officers' perspective horizon leading to better policing skills that have human dignity at the center of their service. As such, it is incumbent upon the Force to sponsor as many officers to these institutions for better policing skills. However, due to funding constraints, the Force has failed to meet the increasing demand from officers who want to further their education and consequently fail to take up all these officers for sponsorship. This has led to many officers sponsoring themselves and ending up doing programs that are not even related to police work, thereby defeating the policy requirements.

It is apparent from the above that the policy does not include any aspect of human rights training and education. The policy was formulated in 1985, a time when human rights issues were given a blind eye, even though Zambia was a party to a number of international instruments which made provision for respect of human rights such as the Universal Declaration for Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Social Rights (ICESR), apart from having enshrined a justiciable bill of rights in the constitution. This could probably explain why there was gross abuse of human rights as there was no provision for legal and policy direction to the education on respect and protection of human rights by the police. Nevertheless, in practice, the Police

⁶ Ibid

Reform Program introduced in 1995 augments the policy. As it will be shown later in this chapter, the program was a dawn of human rights issues that lacked in the service for almost a century of its origin.

2.3 IMPLEMENTATION OF THE TRAINING POLICY

The implementation of the training policy is done by the training institutions of the Force and/or at division Headquarters or district, as may be applicable.⁷ The major institutions are the Zambia Police College situated in Lusaka, Paramilitary Police Training Camp that is next to the Police College and the School of Public Order Maintenance, formally known as Kamfinsa Mobile Police Training School. The training institutions conduct a number of programs while simple and short ones are done at divisional level. The policy is also implemented by other organizations outside the Force. For instance, certain technical training and education programs such as that of training police lawyers, engineers and similar programs are undertaken by institutions such as the University of Zambia.

2.4 NATURE OF TRAINING FROM 1994

The content of all these programs covered in the training policy of the Zambia Police Force, were those designed to equip the officers with skills of doing police work that was befitting the political dispensation of the time. The nature of training was one that was not aimed at establishing a much more civil police, but one that ended up creating a culture of brutality. The system remained almost the same from its inception in 1932 when there was a significant separation of the civil Police Force from the military police.⁸ The emphasis of training was on using mechanical techniques as means of policing the society. The syllabi at the training

⁷ Ibid. p.8.

⁸Musonda E.C. (Obligatory Essay1992) p. 16

institutions were tailored to provide basic necessary skills in law to enable the graduates to do the police duties in an elementary, legal and organized manner. There was no information given to them relating to policing in an open society. Much emphasis was also on drills and musketry, which skills were intended to equip the officers with physical vigil in policing the society. The colonial idea in emphasizing this particular aspect of training was that the black policemen were of humble education background; as such, they were only used to apprehend offenders and formal arrests were made by white policemen.⁹ But even then, the teaching of good policing system involves respect for human dignity even at the time of apprehending a suspect and not only at the time of his formal arrest. Human dignity does not diminish with the commission of a crime. As such, there were two types of syllabi that were introduced in 1955 upon opening Lilayi as a new training school, that of the direct entrants and that of recruit constables. The syllabus for the direct entrants was comprehensive and detailed as it was intended for the new entrants from United Kingdom.¹⁰ Unfortunately, the same system continued to be emphasized even after independence and this explains the continued abuse of human rights in the post -independence era.

There was, however, a renaissance in the training system in the Zambia Police Force in the mid 1990s. This followed the rising of Mr. Francis Ndhlovu to the office of Inspector General of police. Due to the poor and unsuitable services delivered by the police, taking into account the political Changes that ushered in democracy in Zambia, it was recommended that there be an overhaul in the training system of the Force. The Inspector General stated in a letter to Amnesty International in June 1998 that,

⁹ Ibid

¹⁰ Ibid

*“Our Police Reform Program emphasizes respect for human rights as aptly articulated in our Mission Statement. Indeed, we have since made teaching of human rights law a core component of training curricula in all our police training institutions. Needless to say, our Reform Program having been approved for implementation in 1995, it may be too early to expect a complete change or transformation of traditional policing practices and habits that have been ingrained in the system over the past decades. This fact, far from being an apology, shows in part the colossal task before us and we are determined to live up to people’s expectations.”*¹¹

is was aimed at transforming the brutal mentality of the officers that crystallized during the 27 years of emergency rule, and attain a well-behaved and desirable service in an open society. Therefore, a Police Reform Program was launched in 1995.¹²

the program had a number of incentives. It provided for the inclusion of a human rights course in the syllabi of recruits and in-service training programs. A program was drawn up in which police officers were to be drawn from all stations across the country to attend refresher courses at Chilayi and Kamfisa training institutions.¹³ The program worked well as human rights information was brought to the attention of both new entrants and serving officers. The weakness of the program, however, was that the human rights information was not integrated in all the subjects but existed as a subject on its own and that the content concentrated much on the rights of a victim of crime and rights of a child. As such, officers could not know when and how to apply human rights knowledge in their general duties such as during the time of investigations and arrest. The program continued up to 1999 when the in-service program halted due to lack of funds.¹⁴

¹¹ <http://web.amnesty.org>.

¹² F.X. Musonda, **History & Reformation of Zambia Police Service** (Lusaka; University of Zambia Press 2002)

p.23

¹³ Ibid p 26

¹⁴ Ibid.

Another approach of the reform program was the introduction of the community policing system. This was aimed at bringing police into liaison with the community in curbing crime and consequently cultivating rapport and relationship with the community.¹⁵

Apart from that, the reform program also introduced the weekly lecture programs at all police stations in the country. These lectures are conducted at station level where once in a week senior police officers deliver lectures in legal and human rights issues.¹⁶ The weakness of this program however, lies in lacking personnel knowledgeable enough to handle such lectures. But with the introduction of HURID training program of training senior police officers, who mostly are officers in-charge of these stations, this problem is being partially addressed.

There has been also a 'within the house' training program that was undertaken at Lilayi Police College. This was aimed at re-orienting the trainers at the institutions to human rights issues, especially those under drill and musketry department, who usually lead the recruit operations in town during the time of training at the institution.¹⁷

In pursuance of the United Nations and Amnesty International recommendations, the police training syllabi have been changed to integrate human rights issues in all the courses offered at the institutions other than having human rights as a course on its own.¹⁸ This is to equip the officers with the knowledge of human rights at the time of making arrests, detaining and investigations of crimes, including that on the use of firearms and force. The program is aimed at, apart from curing the defect that existed at the inception of the PRP where human rights was a

¹⁵Police Reform Program, 12

¹⁶Ibid.

¹⁷ Interview with Ms Mbahwe, the Second in Command Police Training College, Lusaka, 22nd July 2005.

¹⁸ Ibid

subject on its own, developing a human rights culture in all aspects of police duties and subsequently changing police behavior during their tour of duty.¹⁹

The PRP is one of the many ways in which the police have received information on human rights and good policing system. Apart from the program, seminars and workshops, both sponsored by the police and other organizations, have been and are being held to equip the police with good policing skills in an open society.²⁰ Many Non Governmental Organizations have come on board to help the police with different programs aimed at bringing changes in the way policing in Zambia ought to be done, in an effort to nurture our young democracy. The organizations have various programs ranging from conducting workshops and seminars on human rights issues for police officers to sponsoring police officers to undergo specialized training in human rights. One of such organization is the Institute for Human Rights, Intellectual Property and Development (HURID).

HURID has, as from 2002, undertaken steps to help the police in this program. It has embarked on a number of programs in this respect. It sponsors police officers at the University of Zambia to undertake a one-year Postgraduate Diploma course in Human Rights Law Program. This program has started with senior officers and is intended to run down the ranks up to the grass roots of the institution by sponsoring junior officers to undertake certificate in law program. The organization has also embarked on the capacity building program for Zambia police personnel in human rights. This includes dissemination of human rights information to the police officers and this is implemented by holding seminars and workshops. This program has been going on since

¹⁹ Amnesty International 1999 Zambia: Human Rights Report. <http://web.amnesty.org>. (Last visited on September 14th 2005)

²⁰ F.X. Musonda, **History & Reformation of Zambia police service** (Lusaka; University of Zambia 2002) p.26

August 2003.²¹ There are many NGOs with similar programs such Inter-African Network for Human Rights and Development (AFRONET). These institutions organize workshops to discuss human rights and the police have been in attendance in most of these programs. Apart from that, they also sponsor human rights awareness radio and television programs.

Besides that, the Human Rights Commission has, for the period since its inception in 1997, taken major strides in educating the public and the police in human rights issues. The Commission has embarked on a number of human rights education programs for the police. These programs have included the holding of seminars and workshops in which the police have been in attendance. Most of these seminars are centered on fundamental issues like the Public Order (Amendment) Act and presenters are mostly renowned judicial officers and academicians.²² Apart from that, the Commission has also made the Zambia Police College a member of the Human Rights Committee, which was formed to embark on the human rights education program.²³ The Commission over the same period has also undertaken other programs aimed at enhancing human rights values in the country such as conducting radio programs. Such programs are aimed at educating the public to which the police officers are members.²⁴

Therefore, it can be stated here that in practice, there has been a significant change in the scope of the Zambia Police Force Training Policy. It now accommodates human rights issues. Therefore, the training system from 1995 to date has been, and is still that which has placed emphasis on human rights issues and adds value to policing system in a democracy. Apart from

²¹ An interview with Information Officer, HURID.

²² Human Rights Commission Report, 2000 p. 16-17.

²³ Ibid p20

²⁴ Interview with Mr. Kasankha the Educational & Information Officer, Human Rights Commission, Lusaka, 1st September 2005.

that, there have been significant efforts that have been put in, both by the police and other supporting institutions, to make the police appreciate human rights values. It follows, therefore, that with this change of training and education in human rights, most police officers are aware of human rights. As such, any continued abuse of human rights by the police ought to be attributed to some other factors lying beyond the lack of knowledge in human rights issues. Some of these factors are discussed in chapter four of this work.

2.5 IMPORTANCE OF HUMAN RIGHTS EDUCATION IN THE ZAMBIA POLICE SERVICE

Training and educating law enforcement officers in human rights issues is as important as their existence in a society, especially the Zambia Police Service whose need is obvious. This is so for a number of reasons. The record of the Zambia Police force on respect and protection of human rights has been so poor since its inception. The police crushed the 1935 riots with brutal force ending up with six deaths and injuring many innocent people.²⁵ A similar incident followed a few years later when the police again used unjustified force to stop rioting miners in 1940, where seventeen people were shot dead and sixty-six others were brutally injured.²⁶ The same trend was passed over to the post-independence period. The police used maximum force to intervene in political clashes between UNIP and ANC supporters in 1965. The whole period was therefore, characterized by gross abuse of human rights by the state through the use of the police as a necessary instrument. One scholar, in describing the human rights situation in Second Republic remarks that:

²⁵ Supra note 20 p.12

²⁶ Ibid.

*“This era was marked by massive nationalization of privately owned companies and the harassment of opposition parties and their eventual proscription on the alleged national security grounds. Hundreds of opposition party leaders and supporters were detained or restricted without trial under the emergency powers.”*²⁷

The reason for all this was attributed to lack of proper training of the officers. Francis Musonda, former Inspector General of Police, observes that, “African policemen were accorded with a poor standard of welfare, training and education.”²⁸ The effects of this were obvious. There was misunderstanding and abuse of laws, among other things. Due to the misunderstanding of the law, some senior police officers detained people under regulation 33(6) of the Emergency Regulations Act for offences that did not fall within the purview of the Act.

The court in **Banda v Attorney General**²⁹ lamented over this kind of misunderstanding and abuse of the police powers under the Regulations. To state that the trend has now changed is falling short of telling the truth. One officer was convicted recently for killing a person whom he detained for failing to pay back a debt. During his trial, the officer displayed his ignorance of the law by stating in his defense that he was trained to kill.³⁰

Therefore, continued and effective training and education of police officers is obvious if a democratic society was to be achieved. The training, however, should cover all officers in the force. The United Nations High Commissioner for Human Rights has noted that,

*“It is clearly important that law enforcement officials engaged in actual policing duties at the ‘street level’ should be aware of human rights and humanitarian standards and that those standards should guide their attitudes and behavior.”*³¹

This is true whether such officials carry out general policing duties or are specialists in such matters as investigations or maintenance of public order. This is equally so even to officers

²⁷ A.W. Chanda, “Human Rights in Zambia’s Third Republic: An Overview”, **Legality Journal**, 1998 p59.

²⁸ Supra note 25 p15

²⁹ (1978) (SC) Ndulo & Turner, Civil Liberties p203.

³⁰ **The People v Chew** 2003 (HC) (unreported)

³¹ High Commissioner for Human Rights Center, **Professional Training Series** No5 p7

holding senior ranks in the police. This is because the control of abuse of human rights is also dependent on them. Many cases of abuse of human rights are, on many occasions, a result of decisions made by these senior officers. For instance, the decisions to cancel public meetings are vested in senior officers at a station or division. To this effect, the Commissioner for United Nations Human Rights Center stated that,

“It is important to train senior law enforcement officers in order to give credibility to the training programs for enforcement agencies as a whole and because of the significance not only in the organization but also within the political and criminal justice system.”³²

It is also important to note that it is continuous and effective training that can bring a culture for respect of human rights in the Force. Such training helps also to develop personal ethos in the delivery of their police service to the community and obey the law even that on human rights. “It is incumbent on the police as law enforcement officers to obey the law-including laws enacted for the protection of human rights.”³³ The bad culture that existed throughout the history of the Force, of falling on torture and inhuman treatment as the only available means for an officer to effectively investigate a matter, should be buried. There are a lot of innovations in the policing systems that have come along with democratic rule. As such, it is obvious that the police should have an effective on-going program to bring to the attention of the officers important issues of human rights. An open society needs a responsive police that is ready to uphold the rule of law and good governance. The Zambian constitution has a justiciable bill of rights and there are many international instruments that make provision for human rights. It is thorough training and education that can make officers appreciate these provisions.

³² Ibid

³³ Ibid p36

2.6 EFFECTS OF LACK OF HUMAN RIGHTS TRAINING AND EDUCATION IN ZAMBIA POLICE SERVICE

Human rights and democracy are inseparable. There cannot be democracy in a state where there is no respect for human rights as “democracy is based upon the principle that governments are instituted to secure basic rights for their citizens and that they derive their powers from the consent of the governed”.³⁴ And police as an institution that has been endowed with powers to enforce the laws, have a duty also to uphold the instruments providing for the protection of human rights. It follows therefore, that in the absence of awareness of these human rights issues among the officers, there is gross abuse of human rights as it has been the case in Zambia since the inception of the Zambia Police Force.

2.7 Summary.

In conclusion, it can therefore be said that the scope of the Zambia Police Force Training Policy is one that is so constrained and had it not been for the innovative idea of introducing the PRP in 1994, the same system should have continued. The introduction of the PRP on the other hand has brought significant change in the training system of the Force. Police officers have been educated enough, though not sufficiently, to observe and protect human rights. Therefore, the continued abuse of human rights by the police cannot wholly be attributed to insufficient education given, as the training is enough to induce a basic understanding of the need for the respect of human rights.

³⁴ Dinah Shelton, “Subsidiarity, Democracy & Human Rights” in **Broadening the frontiers of Human Rights**, by Donna Gomien (ed.) (New York: Oxford University Press Inc.) p.43 at 49

CHAPTER THREE

3.0 IMPACT OF HUMAN RIGHTS EDUCATION ON THE ZAMBIA POLICE FORCE.

3.1 Introduction

This chapter endeavours to assess the impact of human rights education on the Zambia Police Force. In the preceding chapter, it was observed that considerable efforts by the police and other institutions have, and are still, being made to bring into light issues of human rights which are critical in this country. In order to make this assessment, I shall describe the extent of police protection and respect of human rights before the introduction of human rights education and then the current situation shall be laid bare in order to give a qualitative analysis. The argument in this chapter is that, as much as there are some successes that have been made in certain areas, the situation has remained more or less the same. The police have continued to abuse human rights irrespective of the reforms.

3.2 HUMAN RIGHTS VIOLATIONS BY THE POLICE FROM 1994.

The police have been one of the major culprits in the violation of human rights in all the phases of Zambia's political history. There are many reasons that can be advanced but the major and obvious one is that the police have been and are an effective tool for maintaining the status quo of every successive government that has ever ruled Zambia.¹ The only difference between them is found in the degree of severity of police brutality in each epoch.

During the colonial period the police committed less human rights violations than those of Zambia after independence. As much as the colonial period was rocked with massive violations of human rights in general, the police played a subservient role. The most violated rights were those not directly connected to police work, such as the right to vote, freedom from

¹ K Chanda, "Zambia" *Police Brutality in Southern Africa: A Human Rights Perspective*, (Afronet: Lusaka, 2000) p.183

discrimination based on race (to which even the native policemen also suffered), property rights, etc.² These rights were abused due to more of political malaise than police brutality. The police could be blamed for violations of rights such as right to personal liberty, torture and inhuman treatment, movement, association and assembly, and to some extent, freedom of expression and the violations were not as rampant as they are today. But as regards the violations that were critical at the time, such as the right to vote, the police have less to be blamed for.

After independence, however, the situation changed. The denial of rights such as the right to vote, freedom from discrimination on the ground of race dissipated but certain rights remained subject of continued abuse. The situation was worsened with the proclamation of a state of emergency. Dr A.W. Chanda (as he then was), a renowned academician, observed as follows:

“This era was marked by massive nationalization of privately owned companies, and the harassment of opposition parties and their eventual proscription on alleged national security grounds. Hundreds of opposition party leaders and supporters were detained or restricted without trial under the emergency powers.”³

The police became a major abuser of human rights and have remained so. In a bid to wield power, the United Independence Party (UNIP) government used the police to suppress any group that challenged their continued existence in power. They used the police to stamp out any movement that was seen and perceived to be a threat.⁴ For instance, the police viciously descended on United Party (UP) headed by Nalumino Mundia who broke away from UNIP and formed his party. The police arrested and detained him together with his followers. They denied his party permit to hold public meetings. The police also vehemently suppressed the United

² For more information on the extent of abuse of these rights, see Chanda A.W. **“Zambia: A Case Study in Human Rights in Commonwealth Africa.”** JSD Thesis, Yale Law School, 1992.

³ A.W. Chanda, **“Human Rights in Zambia’s Third Republic: An Overview,”** Legality Journal 1998 p 59

⁴ K Chanda, **“Zambia” Police Brutality in Southern Africa: A Human Rights Perspective,** (Afronet: Lusaka, 2000) p.183

Progressive Party (UPP) formed in 1971 and headed by Mwansa Kapwepwe.⁵ Torture and inhuman treatment during the Second Republic was rife. The police tortured detainees and made illegal and arbitrary arrests and detentions with impunity. The police seriously flouted the Emergency Regulations. They used to detain people under the regulations even for offences that did not fall within the purview of the regulations, such as petty thefts and aggravated robbery,⁶ which offences could fully be dealt with using the penal code. They also detained witnesses arbitrarily.⁷

The police also abused their power at a wholesale rate whenever Dr Kaunda addressed meeting in any town. The paramilitary police, assisted by UNIP cadres, closed all shops and markets. They restricted movement of both people and goods, thereby flouting freedom of movement with impunity.⁸ The police forced people to attend such meetings and anyone who resisted was mercilessly brutalized and branded as an enemy of the people. The right to individual privacy was grossly eroded as arbitrary searches and seizures were rampant in the Second Republic. The police took photographs of people they tortured while nude.⁹ People's homes were searched at awkward hours and property seized arbitrarily during such illegal operations.

Therefore, the police abused human rights at a higher scale during the Second Republic than the colonial era. To this effect, Kabazo Chanda observed that,

*"Brutal actions by the police during the Kaunda rule from 1964-1991 by far outnumbered all the incidents that occurred in the two phases of colonial rule. Kaunda's Police committed more cruel acts against government critics."*¹⁰

⁵ Ibid, p.189.

⁶ **Banda v The People** (1978) ZR 163

⁷ **Mulwanda v The People** (1976) ZR 133

⁸ Supra note 4

⁹ K Chanda, "Zambia" **Police Brutality in Southern Africa: A Human Rights Perspective**, (Afronet: Lusaka, 2000) p.190

¹⁰ Supra note 9 p. 189

Such abuse was perpetrated even though the Zambian Bill of Rights was in place and entrenched in the Republican Constitution. Apart from that, the ICCPR and the UDHR were in place and Zambia is a party to these instruments, which proscribe the abuse of these rights. In 1979 the United Nations General Assembly adopted a code of Conduct for Law Enforcement Officers. Article 2 provides that,

*“In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons”.*¹¹

But this document was disregarded. Article 1 states that,

*“Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession”.*¹²

However, during the period there was high insecurity of both life and property. The police failed to protect the citizens as crime was high which led to loss of life and property. Apart from that, the police took life of many people through extra-judicial killings. Suspects were shot dead even when they were not armed. Honorable Aaron Milner, as Minister of Home Affairs addressed Parliament on 24th July 1974 thus stating that:

*“...It will not be long before we completely eliminate robbers, even if we might be forced to use crude and extremely ruthless methods in the interest of law abiding citizens.”*¹³

It is therefore, evident that the police committed more abuse during the Second Republic. However, the trend continued even after 1991. When President Chiluba ascended to power in 1991, there was an obvious expectation of a paradigmatic shift from the culture of human rights abuse by the police having introduced democracy in Zambia to that which embraces democratic values. The MMD government had promised to upset the situation and bring in sanity in the

¹¹ Code of Conduct For Law Enforcement Officers, (1979)

¹² Ibid

¹³ Parliamentary Debate, 3rd National Assembly on the Penal Code (Amendment) Bill No. 2 of 1974.

country where people could fully enjoy their rights. Of course, there were some immediate changes that took place. For instance, the abuse of human rights that went along with Kaunda meetings died together with the 'vigilante police'. Illegal searches and seizures were minimized and the abuse by the police of the Emergency Regulations ceased together with the expiry of the State of Emergency. But this did not help much as there was a continued trend of abuse of human rights in other aspects. The system of abusing human rights continued and the police were easily exposed at this time because Zambia had embraced some values of democracy that expose the police to public ridicule and condemnation. Some writers have categorically stated that the Chiluba era saw a massive abuse of human rights by the police to a greater extent than that existed in the Second Republic. Retired Justice Kabazo Chanda again analyses the two periods and remarks that,

*"Not to be outdone by Dr Kaunda's heartlessness in using the police against political dissidents, Mr. Chiluba, the current president, has proved to be a more ruthless and shameless dictator than his predecessor was."*¹⁴

Therefore, there is a continued abuse of human rights even after human rights education was introduced to Zambia Police Training system. A closer look is given in the following discussion.

3.2.1 RIGHT TO LIFE

The right to life can be considered as the supreme right. It is the pivot upon which all other rights are dependent. There is more than enough legislation on the protection of this right, both under local and international legislation. Article 12 of the Zambian Constitution provides for the protection of this right. Sections 199 and 200 of the Penal Code¹⁵ proscribe the taking away of

¹⁴ K Chanda, "Zambia" **Police Brutality in Southern Africa: A Human Rights Perspective**, (Afronet: Lusaka, 2000) p.190

¹⁵ Chapter 87 of the Laws of Zambia.

life. At international level, the UDHR and the ICCPR, among other instruments, also protect this right. Article 6 provides that,

*“Every human being has inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life....”*¹⁶

However, the police have taken a roughshod ride over this right. They have continued to abuse this right without any undertaking to reduce the abuse. Extra-judicial killings are rampant in each succeeding year. There have been so many reports of extra judicial killings by the police in the period 1995 up to date. In 1995, the police were reported to have extra judicially shot dead 30 people.¹⁷ In 1996 more than 12 people were reported shot dead most of whom they alleged were trying to escape capture.¹⁸ The actual figures may even be more than those reported in the media. In 1998, the police shot dead about 30 people.¹⁹ In 1999 AFRONET recorded 15 cases of people who had been shot dead by the police in Lusaka alone.²⁰ The number could be higher, given the inaccessibility of information at district, let alone at national level on the actual figure.

Therefore, it suffices to say that in this area the police have failed to make positive scores. Although the emphasis has been made to induce respect for human life, the police have failed to respond positively.

The use of force is governed by two sets of principles: The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. The former was adopted on the 17th September 1990 and the latter was adopted by resolution 1989/65 of the United Nations

¹⁶ International Covenant on Civil and Political Rights 1966
¹⁷ <http://web.amnesty.org>. (Last visited on September 14th 2005)
¹⁸ Ibid
¹⁹ InterAfrican Network for human rights and Development (AFRONET) Zambia Human Rights Report (1998)

²⁰ Ibid (1999)

Economic and Social Council on 24th May 1989. The Principles on the Prevention and Investigation of Extra-legal, Arbitrary and Summary Execution include the requirement that such killing should be strictly controlled to avoid arbitrary killing by officials responsible for arrests and detention and those authorized to use force and firearms. The killing of a person who is attempting to escape from arrest is obviously an extremely drastic measure. Because killing is a more drastic measure, the law lays down that such killings are only lawful in extreme circumstances and only if stringent requirements are met. United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials under principles 9, 10 and 11 in effect provide that lethal force should not be used except when strictly unavoidable in order to protect the officer's life or that of others. The objectives in the use of firearms should be for self defence or in defence of others against imminent threat to life or serious injury; to prevent the perpetration of a particularly serious crime involving great threat to life; and to arrest a person presenting such danger and resisting the police officer's authority, or to prevent his or her escape. The use of force must be based on the principles of respect for human dignity, necessity and proportionality. However, even in the limelight of all these instruments the police have failed to respect the dignity of human life by perpetrating extra judicial killings.

The respect for human life as provided in all the instruments also entails that the police need to protect human life of every individual in the country. In other words, the instruments impose an obligation on the police to obey the law in the course of their duty. A sense of insecurity that has swept through the country ending up in perpetual loss of human life at the hands of criminals is also a violation of the right to life by the police, for failing to protect the right, since they are the vanguard of society, endowed with the role of securing human life. The Zambia police have tried and failed to tick in this area. There have been many reports about violent deaths. Many people

have been killed in circumstances where the police could have saved life if they were to be diligent and robust in their way of operations. The death of Ronald Penza, Paul Tembo and many others attest to this fact. C.L. Mundia the chairperson of the Law Association of Zambia (as he then was) commented as follows, *“regrettably, the events of the past five years or so have shown unprecedented rise in violent crimes against our people in various stations of life, be they leaders or ordinary citizens. This dramatic development may be the beginning of many worse things to come....”*²¹ Therefore, to this end, the police, for whatever reasons, have failed to outshine the years before the introduction of human rights education in the institution, thereby recording a negative score on the effect of the education on them in particular, and the law enforcement agents in general.

3.2.2 RIGHT TO PRIVACY OF INDIVIDUAL AND PROPERTY

As it was noted above, the Second Republic was rocked with the abuse of the right to privacy of individual and property. In the Zambian constitution article 16(1) provides as follows,

*“Except as provided in this Article, property of any description shall not be compulsorily taken possession of, and interest in or right over property of any description shall not be compulsorily acquired, unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired.”*²²

And article 17(1) provides that,

*“Except with his own consent, a person shall not be subjected to the search of his person or his property or the entry by others on his premises.”*²³

International instruments such as the ICCPR²⁴ and the African Charter on Human and Peoples Rights also protect this right.²⁵

²¹ Speech read at the funeral of the late Paul Tembo July 2001. The Post July 10 2001.

²² Article 16 (1) of the Constitution of Zambia.

²³ Article 17(1) of the Constitution of Zambia

²⁴ Article

However, the police perpetrated the abuse of these rights. For example, there were unlawful searches of persons and houses of people and in some cases property was seized arbitrarily. This operation was commonly known as ‘clean up’ which occurred during awkward hours of the night. Peoples’ luggage was opened and searched at every roadblock of major roads manned by the Zambia Police officers. Property was seized arbitrarily and the system enhanced corruption. However, during the period 1994 up to now, the situation has not remained the same as the incidents of the abuse of this right have reduced although there are some incidents to which the police have arbitrarily abused this right. They have conducted unjustified searches and seized goods arbitrarily from people. But the general comment is that there has been an improvement as there are no more such unjustified searches and seizures of property and there have been some improvements in the manner in which roadblock operations have been conducted

3.2.3 FREEDOM OF ASSEMBLY AND ASSOCIATION

This is a point at which most African police systems have tumbled and failed to make a difference between a democratic society and a dictatorial government. The major reason is that of lack of political independence of the police from the ruling regime. The Zambia Police have from time to time in all the epochs failed to achieve this. They have perpetually failed to give protection and realization of freedom of assembly and association but instead they have worked against it vehemently. This has been so through out the political history of Zambia. The human rights education has completely failed to have an impact to reduce the abuse and hindrance of the enjoyment of these fundamental rights. Chilombo Mwendela observes with dismay and states that,

²⁵Article

*“After 27 years of one party rule, Zambians were ready to start afresh, leave behind memories of the Zambia police’s rigid enforcement of the perennial state of emergency that the country lived under for most of that period. But, with growing dismay, many have come to the conclusion that the Police Reforms are long way from realization.”*²⁶

The legal protection of these rights ranges from constitutional protection through international instruments up to case law. Article 21(1) of the Zambian Constitution provides that,

*“Except with his own consent a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.”*²⁷

Rules of law have failed to impact on the police to any greater extent in protecting these rights. Although some legislation is undemocratic and void of human rights values, it is mostly the managers, the police, of these laws that have failed lamentably to obey the law. There has been much abuse of the same laws to the extent of diminishing these rights.

The abuse of the Public Order Act,²⁸ in particular, has been a concern as it has undermined the enjoyment of these rights. There was immense abuse of the Public Order Act during the Second Republic, though not to any greater extent than the Third Republic. Under this Act, which was introduced during the colonial period and carried on after independence, there was need for any group of persons who wanted to assemble or conduct a procession in any public place to obtain police permit.²⁹ The failure to get a permit made the event an offence of an unlawful assembly.³⁰

The police used this provision to deny people, especially groups opposed to the government, the enjoyment of this fundamental right. The MMD suffered a great deal to the police abuse of the discretionary powers that this Act gave them during their struggle to reintroduce multi party

²⁶ Chilombo Mwendela, “Reforming the Police service in Zambia” **Observer Magazine**, Vol.3, October 2000 p.26.

²⁷ Article 21(1) of the Constitution of Zambia as amended by Act No. 19 of 1996.

²⁸ Chapter 113 of the Laws of Zambia (Now repealed)

²⁹ Section 5(4) of the Public Order Act Cap 113

³⁰ Section 7 of the Public Order Act Cap 113

democracy in Zambia in the early 1990s. The Party promised in its campaign messages that it would not allow the current state of the Act to persist³¹ and promised to repeal the law as soon as it got into power. However, no sooner did it get to power than it changed mind and retained the Act. The police under MMD government continued to abuse the Act by denying opposition parties permits to assemble and associate freely. This led to litigation, which challenged the constitutionality of the Act in the case of **Christine Mulundika and Seven Others, v Attorney General in 1995**.³² In this case, the applicant and seven others, including the former Republican President, Dr. Kenneth Kaunda, were charged in a Magistrate's court with unlawful Assembly contrary to section 5 of the Public Order Act.³³ Section 5 required anyone who wished to hold a public meeting, procession or demonstration to apply to the police for a permit. The police were entitled to reject the application, or if they decided to allow the said event, they could impose conditions. Among these conditions were: the persons who may or may not be permitted to address such assembly or public meeting; the matters that may not be discussed at such assembly or public meeting, etc. Section 7 made it an offence to contravene section 5, which was punishable by imprisonment of up to six months or a fine not exceeding one thousand five hundred penalty units, or to both. The Supreme Court noted that the requirement of prior permission to gather and to speak, which permission can be denied sometimes for good and at other times for bad cause not contemplated by the Constitutional derogation, directly affected the guaranteed freedoms of speech and assembly. The court also held that the criminalisation of a procession or meeting held without a permit irrespective of the likelihood of occurrence of any threat to public safety or public order; and the lack of adequate safeguards against arbitrary decisions was an affront to people's guaranteed rights. The result of the litigation was the

³¹ Public Order Act, Cap 113.

³² (1995 - 1997) ZR 20 (SC)

³³ CAP. 113 of the Laws of Zambia.

striking off of section 5(4) of the Act. A new Act³⁴ came out following the amendment of the old Act.

Thus, the law has undergone some changes. Before the amendment, section 5(4) required prior permission in order to hold a public meeting. The amended Act under section 5(4) no longer requires prior permission. Instead, a notice of at least seven days in a prescribed form only needs to be given to the police. The Police are no longer empowered to decide who can address a public meeting or what subject cannot be discussed. However, the criminalisation of any procession without such notice has been maintained and worse still; the penalty was enhanced from six months imprisonment to that of up to five years.³⁵

Efforts have been made to educate the police on the effect and proper administration of the new Act through seminars and workshops. However, even after these seminars and workshops have been conducted to teach the police on how to administer the Public Order Act the efforts have yielded negative results. Abuse of the amended Act has permeated the police with much ease as they now simply say that they don't have enough manpower to police the event. Consequently, they have continued to abuse the Act to deny people their fundamental freedom of assembly and association at greater extent now regardless of the police training and the PRP, which was introduced in 1995. For instance, the police harassed Nervous Mumba who tried to convene a meeting after they denied him a permit.³⁶ On 24th November 1999, the police denied a permit to Movement of Morale Re-armament, a Kabwe based NGO on the ground that it would cause the

³⁴ Public Order (Amendment) Act

³⁵ Section 5(3) of the Public Order (Amendment) Act

³⁶ The Post September 25 1997 "Cops Harass Mumba"

breach of peace.³⁷ On 5th October 1999 the police in Kitwe fired tear gas canisters and arrested twenty-six Copperbelt University Students who wanted to peacefully protest against the delayed meal allowance payment.³⁸ In February, the police in Kapiri denied permit to Kapiri Glass Factory workers who wanted to demonstrate against the closure of their company. No reason was given for the denial.³⁹ In 2000 the police refused to allow a proposed procession of Resident Doctors Association who wanted to demonstrate against poor conditions prevailing in hospitals and their working conditions. A senior police officer in Lusaka refused to take the notice and stated that there was no manpower to police their procession and proposed no alternative date as required by the Act (Amendment). The Resident Doctors defied the police refusal and went ahead with their procession but amusingly enough, the same senior officer who said there was no manpower to police the event sent trucks of police officers that came and stopped the procession and arrested the whole group.⁴⁰ There were many denials of permits during the run up campaign period to the 2001 presidential and parliamentary general elections. The Electoral Commission of Zambia (ECZ) Chairperson Judge Bobby Bwalya lamentably condemned the police for stopping meetings of opposition political parties. He categorically stated that,

*"The police have done a lot of wrongs to the community. We are concerned about that.... The police have been stopping meetings even when security was not at risk. It seems the police do not know what they are supposed to do."*⁴¹

Dr A.W. Chanda observed that the right to assemble is still at the mercy of the police. He stated that, *"the right to assemble is still enjoyed at the discretion of the police."*⁴² In 2002, the same trend continued. On March 6 2003 the police in Kitwe stopped a planned rally in Kitwe of

³⁷ Human Rights Report 1999 (AFRONET) p.46.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ **Resident Doctors Association of Zambia and 51 Others v Attorney General (2003) SC**

⁴¹ The post July 16 2001

⁴² A.W. Chanda, "Governance and Human Rights" **The human rights Observer** November 2001 p11

Michael Sata, the president of the opposition Patriotic Front citing a presidential visit to Kitwe on the same day.⁴³ There is nothing wrong for the police to say that due to lack of manpower they cannot police the two events if that is being said in good faith. But to stop a meeting merely because the president is visiting the province lacks that and is an affront to human rights of those who may wish to gather and associate. The reason should go further than a mere presidential visit. As if that was not enough, the police in Lusaka stopped a Lusaka rally by the same Sata on 20th March 2003 citing unfavorable security situation in the city.⁴⁴ Following the Ministerial directives,⁴⁵ the police brutally disrupted a demonstration on the constitutional review process in Lusaka.⁴⁶

The police have also wantonly insisted on the obtaining of permit even when the current legislation⁴⁷ does not demand for the permit following the **Christine Mulundika and Others v Attorney General** case. The law demands notification of the police of any meeting or procession to be held. They have instead stood on firm ground to misapply the law. The amazing thing is that even those who are highly educated have been in the forefront of perpetrating the abuse. The solution to this seems to rise far beyond the education of the police in human rights issues. Therefore, the human rights education in this regard has tremendously yielded negative results. The situation has not improved at all apart from worsening. As such, the approach to be used in order to address the problem should be changed and be moved from mere education to further measures.

Amnesty International, Zambia: Applying the Law Fairly or Fatally, <http://web.amnesty.org> (Last visited on 14th September, 2005)

Ibid

The Post December 20 2004 "Sondashi Directs Cops to Arrest Demonstrators"

The Post December 21 2004

Public Order Act (Amendment) Cap

3.2.4 RIGHT TO INDIVIDUAL LIBERTY

Individual liberty is paramount to any individual. Under the Zambian constitution the right is enshrined in the bill of rights. Under article 13 (1) it is stated,

*“A person shall not be deprived of his personal liberty except as may be authorized by law ...”*⁴⁸

International instruments have also protected this right.⁴⁹

But it is a known fact that this right has not been protected and respected by the police. During the Second Republic, arbitrary derogations to this right by the police was rife. By abusing the Emergency and Public Security Regulations, the police arbitrarily arrested and detained innocent people even on trumped up offences and charges.⁵⁰ The regulations were promulgated pursuant to section 4 of the Preservation of Public Security Act. It provided that whenever the Republican President was satisfied that public security was in jeopardy, he could detain any person he suspected of being behind the alleged public insecurity. The Republican President had power under regulation 33(1) to make an order for the detention of any person he feels may cause public insecurity if let free. Under regulation 33(6), police officers of a prescribed rank had power to arrest and detain any person if he had reasons to believe that there were grounds that would justify his detention under the Presidential detention orders under regulation 33(1). Thus, the police abused these powers by arresting persons who would not be detained under presidential orders. The police could even detain a person for failure to pay a debt. This was gross abuse of the regulations.

Even if the respect and protection of this right has been brought to the knowledge of the police, the police have continued to detain people arbitrarily, thereby abusing this right. The education

⁴⁸ Article 13(1)

⁴⁹ Article 9 of the ICCPR and article 6 of the ACHPR provide for the right to liberty and security of person. They prohibit arbitrary arrest or detention. They provide that deprivation of liberty should only be on grounds and procedures established by law.

⁵⁰ **Banda v The People** (1978) ZR 163.

has not impacted on the officers to any greater extent, as the attitude of the police remains the same. The police arrest people for merely picking a quarrel with them. For instance, the police in Mongu arrested a person for arguing with a police constable over the price of a chicken.⁵¹ In Gwembe the police arrested an employee of Southern Water and Sewerage Company for disconnecting water supply to the police officers' houses for a colossal backlog of water bills.⁵²

The police also have continued the abuse of personal liberty by failure to grant police bond to suspects even when they qualify. The Zambia Human Rights Commission Chairperson, Mr. Mumba Malila, noted as follows when he was giving an overview of police behavior in the year 2004,

*"The police used their discretion of giving out bonds very poorly and not judiciary because even people with minor offences were unnecessarily detained. This sparked congestion thereby violating people's human rights by subjecting them to inhumane conditions."*⁵³

The police have also detained people for failure to pay debts. All this type of behavior makes the whole process of human rights education rhetoric.

3.2.5 FREEDOM OF MOVEMENT

Freedom of movement is an important aspect of human rights. Many rights are dependent on this right. For instance, the right to freedom of association and assembly cannot be enjoyed if freedom of movement is proscribed or not guaranteed. Article 22 (1) of the Constitution provides that "...except in accordance with any written law, a citizen shall not be deprived of his freedom of movement..." Article 12 of the ICCPR and article 12 of the African Charter on Human and

⁵¹ Amnesty International, Zambia: Applying the Law Fairly or Fatally, <http://web.amnesty.org> (Last visited August 18, 2005)

⁵² The Post, January 8, 2005

⁵³ The Post, January 1, 2005

People's Rights (ACHPR) also make provision for the same right. It is, therefore, the duty of the police to ensure that this right is fully realized and enjoyed by all.

The period of Second Republic was a time in which this right was highly restricted. The constitution and other international instruments on human rights, like the ICCPR and the Universal Declaration of Human Rights (UDHR), also offer protection of this right. However, the unjustified state of emergency grossly impugned this right. People were restricted arbitrarily from enjoying their right to freedom of movement. The police manned numerous roadblocks around the country to control criminal activities.⁵⁴ There has not been much improvement on this apart from a positive record on the reduction of these roadblocks. The police have, however, continued to disrespect this right. They have continued to man these unjustified roadblocks ostensibly to inspect vehicles for safety compliance. At times the police extort money and goods from motorists at these roadblocks. The police have also continued to violate this right by failure to defeat a sense of insecurity that has rocked this country. People fail to move freely not because the police would abuse the right directly but indirectly by fearing being attacked by criminals.⁵⁵ As such, the police can fully protect this right by providing security or an environment that would enhance the enjoyment of this right.

3.2.6 FREEDOM OF EXPRESSION

Freedom of expression is one of the important rights that cannot be done away with and have an orderly society. It plays a vital role in a democracy. It is the lifeblood of any democracy. The

⁵⁴Bureau of Democracy, Human Rights and Labor, Zambia Country Reports on Human Rights Practices-2003 Africa. <http://www.state.gov/g/drl/ris/hrrpt/2003> (Last visited September 15th 2005).

⁵⁵ Reports of people being killed have become rampant such that, people have resorted not to move especially during night hours.

constitution enshrines the freedom of expression in article 20 and under sub article (1) it is provided that,

*“Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.”*⁵⁶

The article reflects in large measure, article 19 of the International Covenant on Civil and Political Rights, 1966 and the Universal Declaration of Human Rights, 1948 as well as article 10 of the European Covenant for the Protection of human Rights and fundamental Freedoms, 1950.

The Second Republic was rocked with the abuse of this right. The police arrested and detained persons who were heard criticizing the government, whether constructively or not. The police vehemently enforced laws that made provision for the censoring of writings.⁵⁷ The trend has not changed and Dr A.W Chanda has stated that section 53 is clearly incompatible with democracy, as the existence of a free press is entirely dependent on the goodwill of the President and that as long as we have timid judges who are reluctant to review the President’s actions, this power will continue to be abused.⁵⁸ While the police cannot now arrest any person who speaks against the government in the same way as the police would in the second republic, they still abuse this right by arresting the pressmen and refusing people to demonstrate. People should be allowed to enjoy their right to express their views without unnecessary impediments as the right to freedom of expression is one of the most important freedoms and has been held so in many cases within and outside our jurisdiction. In **Christine Mulundika and Seven Others** case, the court

⁵⁶ Article 20(1) of the Zambia Constitution

⁵⁷ Section 53 (1) of the Penal Code grants the President absolute discretion to prohibit any publication or series of publications within or outside Zambia, that he considers to be contrary to the public interest.

⁵⁸ A.W. Chanda, **Freedom of Expression and the Zambian Law in Zambia**. ZLJ Vol. 30, 1998.

emphasized this and quoted with approval the case of **Handyside v UK**⁵⁹ where it was aptly stated that,

“Freedom of expression constitutes one of the essential foundations of a (democratic) society, one of the basic conditions for its progress and for the development of every man . . . it is applicable not only to information or ideas that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those which offend, shock or disturb the state or any other sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society".”

In the case of **The State v The Ivory Trumpet Publishing Company Limited and Others** Araka CJ., said at page 747,

*“Freedom of speech is, no doubt, the very foundation of every democratic society; for without free discussion particularly on political issues, no public education of enlightenment, so essential for the proper functioning and execution of the processes of responsible government, is possible.”*⁶⁰

Justice Brandeis of the United States Supreme Court in **Whitney v California** also said, at page 375

“Those who won our independence believed that the final end of the state was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means . . . They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American Government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law - the argument of force

⁵⁹ European Court of Human Rights--7 December 1986, Series A No 24) Para 49.

⁶⁰ (1984) 5 NCLR 736.

in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed."⁶¹

In **Re Munhumeso and Others**, four functions of freedom of speech were outlined in the following terms,

*"Freedom of expression, one of the most precious of all the guaranteed freedoms, has four broad special purposes to serve: (i) it helps an individual to obtain self fulfillment; (ii) it assists in the discovery of truth; (iii) it strengthens the capacity of an individual to participate in decision making; and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change."*⁶²

Therefore, the police should ensure that all such groups and individuals who want to demonstrate and express their views on matters of public interest do so with minimum restriction. They must provide a platform and security. They should arrest those that may interfere with the group that is exercising this right legitimately. But it has been a trend that the police would deny people this right by not allowing them to demonstrate peacefully. They give reasons that other violent people opposed to their views may attack such demonstrators. This however, is the refusal to protect people with a legitimate cause and let the illegitimate wishes of those opposed prevail.

But in **Rangarajan v Jagjivan Ram and Others** it was stated at page 424 that,

*"In a democracy it is not necessary that everyone should sing the same song Democracy is a government by the people via open discussion The public discussion with people's participation is a basic feature . . . of democracy; democracy . . . can neither work nor prosper unless people go out to share their views. The truth is that public discussion on issues relating to administration has positive value."*⁶³

The police should ensure, therefore, that different views on matter of public concern are expressed without unnecessary interference. Instead of upholding the wishes of opposed group by denying the right on the ground that some people opposing them would harm them, they must

⁶¹ 274 US 357 (71 Law ed).

⁶² [1994] 1 LRC 282.

⁶³ [1990] LRC (const) 412.

at such time provide security to ensure that those with a legitimate cause to enjoy the right do so freely.

Arrest of journalists has also taken root and police consequently have abused this right. Issuance of threats of arrest of those who publicly oppose the government is an impediment to the enjoyment of this right. Taking advantage and laying emphasis on ambiguous and broadly drafted laws is also a way in which the police have abused their powers. They always hide in between such laws and fire the missiles of human rights abuse. For instance, the police have from time and again abused section 69 of the penal code by arresting people whose remarks they think are disparaging attacks on the President. The section provides that,

“Any person who, with intent to bring the President into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner, is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding three years.”

Thus, slander and libel against the President is criminal and the fact that most police officers have crude understanding on the civil law of defamation, they do not hesitate to put people behind bars even on published matters that are not defamatory as such.

3.2.7 FREEDOM FROM TORTURE AND DEGRADING TREATMENT

The Zambian constitution makes provision under article 15 for freedom from torture and inhuman and degrading treatment. The article states as follows, *“A person shall not be subjected to torture or to inhuman or degrading punishment or other like treatment.”*⁶⁴ There are also a number of international instruments that also make provision for this right such as the ICCPR⁶⁵

⁶⁴ Article 15 of the Zambian Constitution (as amended by Act No. 19 of 1996)

⁶⁵ Article 7.

and the African Charter on Human rights and People's Rights.⁶⁶ Most important, Zambia took a positive first step toward eradicating the problem of torture and inhuman and degrading treatment on 7 October 1998 when it acceded to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which it ratified in August 1999. Zambia is now obliged under Article 2(1) of CAT to take "effective legislative, administrative, judicial or other measures to prevent acts of torture..." These obligations include making inadmissible as evidence in a court of law any statements obtained by torture, independent and impartial investigations into all allegations of torture, and the prosecution of perpetrators of torture. So far, however, the Zambian Government has not taken such steps. Just like the Second Republic police, the police have continued to commit acts of torture in the course of their work.

The Second Republic recorded massive cases of torture and degrading treatment. Some cases have been litigated upon while others have not. The police made it as a normal way of doing their job to extract evidence from suspects through torture. The police tortured most political opponents whom they arrested. For instance, they tortured Edward Shamwana, Chimba,⁶⁷ and Mwamba Luchembe among others.⁶⁸ The system has not changed. The police have continued to use torture during interrogations with suspects. For instance, the police and other state agents tortured the 1997 aborted coup suspects in the same or even much barbaric manner. One of the suspects had his eardrum perforated by the police torture.⁶⁹ In 1998 there were so many reports

⁶⁶ Article 5.

⁶⁷ Supra note 14

⁶⁸ Mwanakatwe J. **End of Kaunda Era** (Lusaka: Multimedia Publications 1994) p.74

⁶⁹ A Hamachila, "Human Rights and Civil Society: The Case of Zambia," **Observer Magazine** Vol. 3 October 2000

of police torture.⁷⁰ Commenting on the torture situation in Zambia, Amnesty International observed that torture was still rife. It noted that,

*“There is a systematic pattern of torture and ill-treatment by Zambian police officers during the arrest, interrogation and detention in custody of criminal suspects. As is the case in police shootings, the majority of victims of police ill treatment and torture are criminal suspects whose names and cases are rarely mentioned in the national media. Such obscurity allows police a free hand to abuse these ordinary Zambian citizens.”*⁷¹

And George Kunda, president of the Law Association of Zambia (as he then was), told Amnesty

International in April 1998 that as a lawyer, he found that rural suspects are commonly tortured. He stated that,

*“This is a matter of routine [for police] to torture, especially those who don’t have a lawyer. In rural areas, there are no human rights at all. Torture is easy. No one is watching. The police are the law; they can torture you all night in cases of theft... The police will always deny it. But you can clearly see in court the evidence of beatings, and they [suspects] are gasping until squeaking from being choked. Over a long period of time, with the background of a dictatorial system, some police officers are continuing to use the same methods they learned.”*⁷²

Another lawyer in private practice, who had previously worked as a state advocate, estimated that police would ill-treat or torture up to 95 percent of the suspects in a theft or robbery with complete impunity. He stated, *“In the past five years, there’s only one case that I know of -- in 1997 -- in which an officer was arrested for hitting or torturing a suspect.”*⁷³ All this has been so irrespective of a wealth of legal protection of this right. Zambia police have failed to make positive strides in this matter. The police have tortured so many people since the human rights education program was introduced. They tortured coup suspects and they have continued to torture suspects during investigation of crimes. This has been encouraged by the existence of

⁷⁰ AFRONET, Human Rights Report 1998, p. 9.
⁷¹ Amnesty International, Applying the Law Fairly or Fatally, <http://web.amnesty.org> (Last visited on October 25th 2005)
⁷² Amnesty International Interview with George Kunda, in Zambia, on 2 April 1998.
⁷³ Amnesty International, Applying the Law Fairly or Fatally, <http://web.amnesty.org> (Last visited on October 25th 2005)

bad laws such as the principle in **Liswaniso v The People**,⁷⁴ of admitting evidence wrongly obtained. As such the police have failed to let go such old fashion methods of investigations.

The pattern of torture takes many forms. For instance, they deny food to suspects they detain in the cells. They do not allow them to have access to their relatives and at most their legal representatives. They detain suspects in dirty cells while others are detained for no reason at all but simply to torture a person in order to teach such a one a lesson. The failure to give any reason for the arrest and detention also amounts to torture. The police have continued to use excessive force in dispersing rioting groups and even those that lawfully exercise their constitutionally entrenched rights. They violently disrupted a peaceful demonstration of opposition parties over constitutional reforms in December 2004.⁷⁵ The pattern of police brutality, therefore, has remained the same.

SUMMARY

As it has been observed in the above discussion, the levels of human rights abuse by the police are still rife. There are still more reports of extra-judicial killings, suppression of freedom of speech, and personal liberty. Torture is still practiced by the police as they still find pleasure in its use during investigations. There has been of course some improvement in certain areas. But at most, there is still rampant abuse. Zambia being a country striving to fully embrace democratic values, police observance of human rights should be obvious and apparent to every police officer.

⁷⁴ (1976) ZR 277 (SC)

⁷⁵ The post 21 December 2004

CHAPTER FOUR

4.0 FACTORS INFLUENCING HUMAN RIGHTS ABUSE BY THE ZAMBIA POLICE

4.1 INTRODUCTION.

It has been observed from the previous chapter that the levels of human rights abuse by the police are still high. It may be asked why this is so. The major question before the introduction of human rights education was lack of education. But it is now clear that the problem is not wholly the lack of training but that it also lies far beyond the need for training. This chapter, therefore, tries to elucidate some of many causes or factors that have influenced the continued abuse of human rights by the police.

4.2 LEVELS OF HUMAN RIGHTS AWARENESS IN ZAMBIA

As observed in the first chapter, the idea of human rights has never been new to the Zambian society. However, the current notion of human rights appears, to many people in Zambia, to be a new phenomenon. The reintroduction of multiparty democracy presupposed opening wide the flood gates to the enjoyment of human rights, which for the whole period of one party rule, were unjustifiably suppressed. Democracy and human rights are twin brothers. The more democratic a society becomes, the more the assurance of enjoyment of human rights is given.

The response to high levels of abuse of human rights prompted the government to answer calls from the international community to come up with a system that would enhance human rights. This led to the establishment of the Zambian Human Rights Commission in 1997 following the Munyama Commission Report.

The Commission is empowered under the Act¹ to increase levels of human rights awareness. The Commission, working under inadequate funding, has tried to bring human rights awareness to the people.² Other civil organisations such as Women for Change, Women and Law in South Africa (WLSA), Non-Governmental Organisation Co-ordinating Committee (NGOCC), Foundation for Democratic Process (FODEP), Zambia Civic Education Association (ZCEA), AFRONET, HURID and many others put up different measures to educate the public on human rights.³

However, there is still much of ignorance of human rights issues, especially as regard the rights that an individual has before the law. This low awareness in human rights has led the police to take advantage of the situation to perpetrate the abuse of human rights. It is one of the major factors that have fuelled the escalating abuse of human rights by the police as many people, especially in rural areas, crudely know their rights. They hardly know that they need to know immediately the reason of their arrest and detention, and that they have a right to legal representation, among other rights. They consider the police to have unfettered powers in their tour of duty so that they can do anything. They think that the police can deal with them in any way, even to the extent of abusing their rights. One person whose rights were abused by the police stated that, *"the police is the government with powers to do anything and that they have power to kill."*⁴ The attitude of the people towards the police is shocking to the extent that even if the police abuse their rights, it is normal to them.⁵

¹ The Human Rights Commission Act Chapter 48 of the Laws of Zambia.

² Interview with Mr Kasanka, Information Officer, Human Rights Commission.

³ Government of the Republic of Zambia, Zambia's 12th Periodic Report on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. 2005.

⁴ Chilombo Bridget Maaka, Obligatory Essay UNZA 1998, p. 71.

⁵ Ibid

The problem is also attributed to other factors. The levels of illiteracy are high such that people are not in a position to know what their rights are. Poor national programs of human rights awareness have also hampered this.⁶ The laws are in English, including the constitution. As such, not many people know their guaranteed rights.

The few people who are enlightened with human rights issues drag their feet to sue the police for abuse of their rights. Consequently, there is nothing to hinder the police from continuing abusing the rights. The failure to bring litigation, of course, is as a result of poverty, taking into account the fact that human rights actions are commenced in High Court, to which the majority of people have less access due to high fees, and that cases take too long to be disposed of. As such, people are reluctant to commence actions against the police for abusing their rights.

4.3 POLICE PROFESSIONALISM AND ITS POLITICAL INDEPENDENCE.

The provision of police service requires professionalism. Police work is a profession. The police all over the world are expected to deliver their service with high levels of integrity and professionalism. The Zambia Police Force is mandated by the Republican constitution⁷ to be professional but the police lack professionalism in their delivery of its service to the public. There are a number of causes but the major one is lack of political independence. Political interference occurs when politicians manipulate police officers by giving instructions contrary to human rights standards. This has resulted in human rights violations of opposition party members and the general public at large.⁸ There cannot be police professionalism where the Police Force is

⁶ A.W. Chanda, 'Human rights in Zambia's Third Republic: An Overview' Legality Journal (Special Ed.) 1998 p.70

⁷ Article 103 (3)

⁸ G. Mudzongo, *Promoting police Observance of human Rights: The mainstreaming Model of Human Rights Education in Police Training* (Harare: Human rights Trust of Southern Africa 2003) p.30

a political tool and is used by politicians to score political goals. Throughout the history of the Zambia Police Force, the police have been under the grip of the ruling regime.⁹ Francis Musonda observed that,

*“Police chiefs found themselves pledging loyalty to the ruling party but paid little or no attention to the observance of the rule of law. At the senior police officers political education seminar ...police commanders endorsed support for the party pledging ‘total loyalty, dedication and unflinching support’ to the party and its government.”*¹⁰

Thus, a culture to support the ruling regime at all costs was established. The Third Republic has made no difference at all. It has now become a culture among the police that the police have to tow along the ruling party and frown on the opposition.¹¹

The situation has been hampered by the abuse of law. Firstly, the president has powers to appoint and disappoint the Inspector General.¹² Thus, the tenure of office of the Inspector General of Police is contingent on the discretion of the president as he can fire the police Chief at any time. As a result, the Inspector General and the police as a whole are not independent. An Inspector General who proves to be against the government when trying to exercise professionalism is prone to being fired. This is evidenced in the sucking of Zunga Siakalima as the Inspector General recently. The Inspector General was ordered by the President to arrest Michael Sata, president for an opposition party for allegedly having instigated miners in Luanshya to plant explosives under ground. Instead, the Inspector General delayed to carry out the instruction and he was subsequently fired¹³

⁹ K Chanda Police Brutality Zambia p.183

¹⁰ F.X. Musonda, **History & Reformation of Zambia police service** (Lusaka; University of Zambia 2002) 19-20.

¹¹ Most police officers interviewed in this research expressed a similar opinion.

¹² Article 61 (2) of the Constitution of Zambia.

¹³ The Post August 1st 2005

Secondly, there is confusion of taking the police to be part of the Defence Force where the president is the Commander in Chief; and that since he is vested with executive powers, he can order the police to arrest people. This is a misconception of the law. Article 33 (1) provides that, *"There shall be a President of the Republic of Zambia who shall be the Head of State and of the Government and the Commander-in-Chief of the Defence Force."* This article does not mean that the president is the Commander in Chief of the Zambia Police Force. Zambia Police Force does not form part of the Zambia Defence Force, over which the president is Commander in Chief. The Defence Force is constitutionally established under Article 100 (1) that provides that, *"There shall be an armed force to be known as the Zambia Defence Force."* And Zambia Police Force is established by article 103 (1) and it provides that, *"There shall be a police force to be known as the Zambia Police Force and such other police forces as Parliament may by law prescribe."* Thus, this does not mean that the President is the Commander in Chief of Zambia Police Force for him to exercise police functions. Section 3 (1) and (2) of the Zambia Police Act Chapter 107 gives the President and Minister Power to exercise control over the Inspector General of Police. But this control is purely administrative and not professional. He has to leave actual police work, which includes the making of the decision as to who to arrest or not, to the trained and skilled officers. The president need not make such minute decisions of police work, more so in a democratic society. This undermines police confidence in their work. Just as he has to leave the decision of who to enroll as a grade one pupil to a head-teacher of a particular school, and the decision of which drug to prescribe to a patient, to a particular medical officer, so he should leave the decision of arrest to the trained police officers, although all these powers are executive in nature and vest in him. Some of these executive powers cannot be exercised directly but only vicariously through skilled personnel.

Government ministers have the attitude of ordering the police to arrest people they feel need to be put behind bars.¹⁴ This has no legal basis and amounts to abuse of ministerial powers. There is no law in this country that gives any minister power to order the police to arrest a person. This has seriously compromised police professionalism. Thus, Chilombo observed that, *"the police are always under pressure from politicians, resulting in them to work unprofessionally."*¹⁵

The power of arrest is a preserve of each police officer's discretion. It is up to each police officer to decide whether or not to arrest an offender. As such, the pressure that is exerted on the police has led the police to abandon their professionalism and bow down to political pressure. Consequently, whenever a government official issues instructions for the arrest of any person, the police carryout such instructions regardless of whether such an arrest is an affront to anyone's human rights. This situation benumbs paralyses police professionalism.

4.4 ECONOMIC FACTORS

The poor economic levels that Zambia is facing have had a negative impact on the police observance of human rights. Firstly, the people are adversely affected by poverty such that they cannot enforce their rights, which are abrogated by the police. This is because most people's income is too little to afford civil litigation.¹⁶

Secondly, the poor funding to the service has also worked against a stable improvement of human rights culture in the Force. The police perform their duties with insufficient funding. This has led to certain programs designed to improve human rights to halt. For instance, the PRP has

¹⁴ The Dec. 20, 2004 Post Newspaper Quoted Ludwig Sondashi, the then acting Home Affairs Minister, having ordered the police to arrest demonstrators.

¹⁵ M. Chilombo 'Reforming the Police Service in Zambia' **Observer Magazine** 2002, p.26.

¹⁶ Chilombo Bridget Maaka, Obligatory Essay UNZA 1998, p. 71.

been halted due to lack of funds. Since 1999 there has never been any in-service training program at Police Training Institutions.¹⁷

Poor conditions of service and low salaries have also led the officers working under frustration thereby disobeying the law in the course of their duty. The officers have resorted to shortcuts in the performance of their duties. These shortcuts and other underhand methods¹⁸ have led the police to continue abusing people's rights. For instance, the police no longer give urgency to deserving reports due to lack of transport or other logistics to protect the society against loss of property and person. This has led to the loss of the right to the protection of person and property.

4.5 INSTITUTIONAL SAFEGUARDS AND THEIR IMPACT ON THE OBSERVANCE OF HUMAN RIGHTS BY THE POLICE.

In an attempt to control human rights abuse by the police, some institutions have come on board. It was part of the Zambia Police Service Strategic Development Plan (1995-2001) to establish an independent Police Public Complaint Authority.¹⁹ Following the Munyama Commission Report, the Zambian Human Rights Commission was established in 1997. These two institutions and the internal Police Professional Standard Unit, a section within the police that provides a check on the misadministration and performance of police work, have played a significant role in safeguarding against abuse of human rights by the police. The Human Rights Commission has been receiving many reports including those involving the police. For instance, in 2000, the Commission received 87 reports involving torture, unlawful detentions and delayed justice and

¹⁷ Interview with Miss Mbahwe, Deputy Commanding Officer, Zambia Police College. 23rd July, 2005.

¹⁸ It is now a rule that a victim of crime need to provide certain logistics such as stationary, transport, and money in order to have his or her matter investigated.

¹⁹ Supra note 9 p.24

only 10 cases were resolved.²⁰ This however, does not mean that there were less cases of police abuse of human rights in the country as the number could be higher, given the inaccessibility of information at district, let alone at national level on the actual figure. In 2001 there were 93 police related reports made to the Commission and only 27 were resolved.²¹ In 2002 the Commission received 87 complaints involving the police.²²

Thus, although the commission was set up to provide a check on the police abuse of human rights, its impact is less significant. This is because of lack of independence in its operations and financial constraints which has crippled its development to cover the whole country. The other reason is that the commission has less power to deal with the erring officers. As such, the officers have less to fear from the Commission.

4.4.1 THE POLICE PUBLIC COMPLAINT AUTHORITY

The institution was established following an amendment to the Zambia Police Act.²³ Under section 57A of the Act, the Authority has power to investigate all complaints referred to it. Since it became operational on 7th May, 2003, it has handled many cases and made recommendations for dismissal and disciplinary action against the erring officers.²⁴ By June 2004, the Authority had received 510 complaints²⁵ and by December 2004, the Authority had received a total number of 787 complaints. Out of the complaints, only 27 cases were disposed of and the rest were pending. Among those disposed of, 17 officers were administratively disciplined and 10 were dismissed from the Force and among them was an Officer-in-charge of a named Police Station in

²⁰ Human Rights Commission Report 2000, p.8.

²¹ Human Rights Commission Report, 2001,p.10.

²² Human Rights Commission Report, 2003, p.6.

²³ Chapter 107 of the Laws of Zambia.

Southern Province.²⁶ By November 2005, the Authority had received 660 complaints.²⁷ Thus, it can be observed that the Authority is not effectively checking the abuse as there is a big number of cases pending. This will soon have a negative response to the members of the public as they will have no hope in the institution. However, this effect is attributed to the setbacks the institution is facing. The major setback is that of lack of power. The Authority can only end at making recommendations. It cannot punish nor prosecute the erring officers. Most times such recommendations are not obeyed and the erring officers continue working thereby not seeing the impact of the Authority. Secondly, the institution is poorly funded.²⁸ It has suffered poor funding, lack of office accommodation; and non-finalisation of regulations to guide it. As such, the operations are not fully blown up and have failed to expand itself to cover the whole country. The Authority operates only in Lusaka and the cases it has handled many of them are those arising out of Lusaka.²⁹

4.4.2 THE POLICE PROFESSIONAL STANDARD UNIT

This is an internal section that was established in 2002 to monitor police professionalism. This was an initiative of former Inspector General Silous Ngangula, following public complaints against lack of professionalism in the Force. This has, to some extent, given a check on the Police Professionalism including the observance of human rights.³⁰ In 2003, the Unit received a total number of 157 complaints from members of the public and out of those complaints, only 6

²⁴ Government of the Republic of Zambia, Zambia's 12th Periodic Report on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. 2005. p.47

²⁵ Ibid. p. 70.

²⁶ Police Standard Unit Annual Report, 2004, Police Force Headquarters, Lusaka.

²⁷ Interview with Mr Punza, Director Police Standard Unit, Lusaka, 9th December, 2005, Police Force Headquarters, Lusaka.

²⁸ Interview with the Information Officer

²⁹ Government of the Republic of Zambia, Zambia's 12th Periodic Report on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. 2005. p.70.

were disposed of.³¹ In 2004, the Unit received 87 complaints and 11 were dealt with and by November 2005, the unit had received 104 complaints.³² The Unit does not receive many complaints as people opt to report to the PPCA, which they deem to be more independent than the Unit.³³ But the Unit is also not free from setbacks. It has suffered low funding and as such it has failed to expand its work to cover the whole service, as a result it only has an office at Service Headquarters and in other divisions there are no offices. However, some officers have been asked to perform its function but this has not worked well. Apart from that its powers are greatly constrained as it can only make recommendations and the common punishment given to the erring officers has been a transfer. But there is no guarantee that the transferred officer will change where he has gone. Mostly, these transfers simply aggravate the officers' attitude.

4.4 SUMMARY

It can therefore, be stated that the police abuse of human rights is not as a result of lack of human rights education and awareness only. It goes far beyond that. Therefore, there is need to look beyond educating the police in human rights issues in order promote police observance of human rights. There ought to be legal transformation in the legal system of our country so that the laws must provide police independence.

³⁰ Zambia Police Report, 2002, Police Force Headquarters.

³¹ Police Professional Standard Unit Report, 2003, Police Force Headquarters, Lusaka.

³² Interview with Mr Punza, Director Police Standard Unit, Lusaka, 9th December, 2005, Police Force Headquarters, Lusaka.

³³ Ibid.

CHAPTER FIVE

5.0 DEVELOPING A DEMOCRATIC POLICE FORCE: PROPOSALS

5.1 INTRODUCTION.

It has been discovered that the police, though they have acquired some training in human rights, are still abusing people's rights. But the fact that the police are doing so does not mean that nothing can be done. There are some measures that can be adopted to arrest and improve the situation. Therefore, this chapter endeavours to make some proposals as to what can be done in order to abate the situation. Abuse of human rights is an antithesis of democracy. Thus, in order to create a democratic society in Zambia, the Zambia Police must observe certain standards in their operations.

5.2 LEGAL FRAMEWORK

Some of the measures to be taken into consideration in order to bring up a democratic police involve change in legal framework. A good legal system is one with laws that ensures total respect for human dignity. It is one with laws containing enough safeguards of abuse of human rights. Unfortunately, most of the laws that Zambia has are ancient and obsolete. Most of the laws were inherited, if not from United Kingdom which country has not maintained them but repealed them, then, it is from colonial laws. These laws were enacted to provide for the situation that prevailed then. The country by then had a different political outlook from that we now have. Continued use of such laws is incoherent with democratic values that modern and civilised societies embrace. The Republic constitution is one such piece of legislation. Apart from having limited categories of rights, the Bill of Rights was poorly drafted to meet international standards of human rights protection. It contains wide derogation clauses that have the effect of negating the essential content of the rights protected. Most of the rights can be

restricted on the grounds of defence, public safety, public order, public morality and public health and it is such wide derogations that are used to justify human rights abuse. It is left to law enforcer's sole discretion to determine what constitute public safety, public order, and more often than not, the courts have upheld the abuse of such discretion. For instance, in the case of **The People v Bright Mwape and Fred Mmembe**¹ the two petitioners were charged with defamation of the President contrary to section 69 of the penal code. They challenged the constitutionality of this section on the ground that it was in conflict with articles 20 which guarantees freedom of expression and 23 which guarantees freedom from discrimination. The court, while conceding the infringement of the rights, sustained the impugned law on the ground that it was required in the interest of defence, public safety, and public order. Therefore, there is dire need to revisit the Bill of Rights to widen up the range of rights and close up the wide derogatory clauses.

The Public Order Act is another example of the laws that need to be reformed. At the time the Public Order Act was enacted, there was no entrenched Bill of Rights. The drafters and the lawmakers had a different outlook of human rights from the way we perceive them now. Thus, the spirit and ethos of the Public Order Act, though it was amended in 1996, is still incompatible with an open society. The police are still able to deny the enjoyment of the rights by simply stating that they have no manpower to police the event. The effect of this is that of subjecting the rights to prior licence, a situation that was criticised in the case of **Christine Mulundika and seven others v Attorney General**,² and in **Resident Doctors Association and Others v Attorney General**. Therefore, it is important that the Act is reformed so that even though the

¹ HPR/36/94

² (1995-1997) ZR 20 (SC)

police have no manpower, the event should take place especially so where the Act requires that marshals must be provided. Therefore, it is fallacious that a meeting should be postponed for lack of police presence when marshals are available to ensure peace and order. Criminalisation of an assembly held in breach of section 5(4) and (5) of the Act is undesirable. This is against the principles of criminal law as it is not possible to impute criminality to conduct that is not criminal in itself. Thus, the act of disobeying section 5(4) and (5) does not satisfy the ingredients of a crime of unlawful assembly as provided for by the penal code. There are instances where the need of an event cannot wait. Therefore, our Act should pluck a leaf from the United Kingdom's Public Order Act that makes it a defence for a person charged with organising or attending an illegal procession to prove that the failure to observe the conditions arose from circumstances beyond his control.³

Section 69 of the penal code is another piece of legislation that needs to be revisited. This section criminalizes defamation just because it is the president being the victim. There is no need for this. The civil law of defamation is enough to take care of all the inflammatory remarks that can be levelled against the incumbent Republican President. Therefore, there can never be any justification to maintain the law at the expense of human rights as such, it must be repealed.

Apart from being abused, bad laws have a chilling effect on the enjoyment of the rights. The functions of the police among others are to enforce laws. If a country has legislation that does not meet minimum human rights standards, police still have to enforce such undemocratic legislation. Therefore, it is a challenge to human rights and policing; and because the laws are as such, the police cannot help but violate human rights because they have to enforce the law,

³ United Kingdom Public Order Act 1986 S. 11 (8) & (9), S12 (5) & (60).

whether bad or good. Therefore, a legal system with laws embraced with democratic values is a vital factor for police observance of human rights.

There has to be legal safeguards put in place to protect the police from being under undue control of politicians. The law should protect the police against politicians. This can be achieved through having express legislation that protects the interest of an officer who refuses to obey unlawful instructions of politicians. Most police officers, especially those about to retire, commit acts that violate human rights, not because they do not know the consequences of their acts, but to secure their job and retire ordinarily other than on public interest as it usually happens when an officers runs roughshod with politicians. The Constitution should also be amended to provide for the appointment of the Police Chief and his deputy by an independent body so that he is not appointed to merely protect the interest of the incumbent President, and his tenure of office must be protected against the whims and caprice of the appointing authority.

5.3 EFFECTIVE TRAINING AND DEVELOPING HUMAN RIGHTS CULTURE IN THE ZAMBIA POLICE FORCE.

Some police officers hold the view that human rights are an impediment to police duties. Even some senior government officials hold similar views.⁴ They still genuinely believe that positive response to human rights will make them weak and that human rights were opposition politics, meant for discrediting the ruling party, thus dealing with the opposition and civil organisation that promote human rights ruthlessly.⁵ Consequently, the culture that prevails among police officers is that they are always obliged to side with the ruling regime and oppress the opposition.

⁴ Permanent Secretary of Northwestern Province remarked that the police have failed to curb prostitution in the Province due to human rights. The Post, 26th July, 2005.

⁵ G. Mudzongo, **Promoting police Observance of human Rights: The mainstreaming Model of Human Rights Education in Police Training** (Harare: Human Rights Trust of Southern Africa, 2003), p.32.

This perception affects political rights such as freedom of association, assembly and expression. Such perception is inimical to democracy. Therefore, there is need for an effective training and development of a culture respecting human rights. Bad habits stick and stick hard. Therefore, the police must not only be subjected to ordinary training where the officers will simply acquire some rough ideas on human rights issues but that the nature of training must be able to inculcate good habits and culture. You cannot do what is right unless you know what right is. Thus, the police should be on a continued training program. It may not always be the nature of law that may be prone to be abused but also the attitude of the managers of law. Therefore, there is need to have the police to develop a sense of responsibility in their tour of duty and observe human rights. There must be some incentives that must be put in place to encourage this development such as honouring some police officers with some prizes and meddles, other than normal promotions (since even those officers who abuse human rights get promoted), for having highly observed and upheld human rights values. This should be done at important occasions such as Independence Day.

5.4 FUNDING

The economy in Zambia is monetised. Thus, without proper funding, there cannot be any achievement of police observance of human rights when there is no money to support the programs that may be put in place. It has been stated that only well resourced police agencies endowed with advanced and sophisticated training programs could meet some of these.⁶ Already, the PRP has ground to a halt because of lack of funds.⁷ Thus, the government should consider funding the police adequately. The government should in fact be funding the police programs

⁶ R. Crawshaw et.al, Human Rights and Policing: Standards for Good Behaviour and a Strategy for change (Kluwer Law International: The Hague, 1998) 227

⁷ Interview with Miss Mbahwe, Deputy Commanding Officer, Zambia Police College.

that enhance human rights directly rather than leaving it to the discretion of the police themselves to decide how much should be allocated to such programs when the general grant is received.

5.5 CONDITIONS OF SERVICE

There ought to be improvements in the conditions of service of these officers so that their frustration can be dissipated. The officers ought to be provided with good work places and logistics. There must be improvements in their welfare because you cannot expect the police to treat the members of the public with civility and humility, if they are being abused by not being well looked after. Therefore, they must be well taken care of such that even when they are taught what the benefits of respecting human dignity are, they will have already known and appreciated what human dignity is through the way they are respected by the state. But where their basic rights, like the right to shelter and food are compromised, they are very unlikely to respect other peoples' political rights. They will always find somewhere to vent out their frustration. Therefore, their salaries must be improved so that they do not compromise their professionalism by indulging in illegal acts such as bribery and other vices. The government should build more housing units for police officers and renovate those that are in bad shape. The government should also build better police stations and repair old ones. Most Police Stations in Zambia were built in colonial period and are rarely or not renovated at all while others have no cells at all, thus bundling both men, women and child suspects in one place. Provision of logistics such as stationary, fuel, and others should be continuous so that the police don't give lame reasons such as, because they do not have fuel, they cannot follow up a report, or that there is no stationary as such the complainant should pay some money for a medical report form and other police forms. These should always be available at all Police Stations.

5.6 SUMMARY.

In conclusion, it can therefore be said that democratic policing cannot only be achieved through training the police in human rights issues. The state should go further than that by making some changes in the legal frame work and have responsible politicians who should work according to law and avoid arbitrariness. There ought also to be a continued, robust and effective police training that should aim at inculcating, not only the human rights knowledge, but also a culture for respect of human rights. Respect for human dignity should be the centre of every police officer's working objectives.

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