The National Prosecution Authority Act of 2010: What is its relevance to the criminal justice delivery system in Zambia?

BY

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A dissertation submitted to the University of Zambia Law Faculty in partial fulfilment of the requirements for the Award of the Bachelor of Laws (LLB) Degree.

2012
DECLARATION

I SITUMBEKO MASIALETI COMPUTER NUMBER 27068960 hereby declare that the contents of this directed research are entirely based on my own findings and it has not previously been submitted for a degree at the University of Zambia or any other University. All other works referred to in this essay have been duly acknowledged. I bear absolute responsibility for all errors, defects or any omissions herein.

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DEDICATION

This paper is dedicated to my parents and siblings as well as my late sister Namakau for all the support you have given, making it possible for me to pursue my LLB. Namakau, it is only proper that this work stands as an attribute to your life. May your soul rest in eternal peace.
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ABSTRACT

This research focused on discussing the relevance of the newly enacted National Prosecution Authority Act in providing a framework for the effective administration of criminal justice in Zambia. It examined whether the National Prosecution Authority Act has adequately and effectively addressed prevailing factors that affect the work of prosecutors in the prosecution service. The study methodology was based on both primary and secondary sources which comprised interviews with those in the prosecution service, from police prosecutors as well as state advocates and lecturers in law at NIPA as well as evaluation of other academic materials.

The study revealed that the National Prosecution Authorities Act is a relevant piece of legislation as it addresses some factors that affect the prosecution service. These include creating an independent body that oversees the works of all prosecutors as they are all under one body, providing ways in which witnesses can be managed properly and inserting sections in the Act that help to provide for an effective administration of criminal justice. Certain sections such as section 6 protects the Autonomy of the Authority, section 8 gives the functions of the Director of Public Prosecutions, the functions set out in this Act are extended as compared to those found in the constitution. Section 10(6), sets out the prosecutors functions as a way of promoting and ensuring the proper role of prosecutors and also providing a framework of these duties found in the United Nations Guidelines in national legislation. Section 15 provides for the establishment of the witness management fund.

Further, the research identified shortfalls in the Act and has therefore given recommendations in order to fill up such shortfalls. It recommends that amendments to the Act should be made and these inter alia include ways in which it can protect witnesses, provide expressly for the function of the Chief State Advocate and State Advocates.
TABLE OF STATUTES

The National Prosecution Authorities Act No.34 of 2010

The constitution of Zambia, Chapter 1 of the Laws of Zambia

The Criminal Procedure Code, Chapter 88 of the Laws of Zambia

The Rome Statute 1998
LIST OF ACRONYMS

NPA Act: National Prosecution Authority Act

ZAWA: Zambia Wildlife Authority

NAPSA: National Pension Scheme Authority

ACC: Anti-Corruption Commission

DPP: Director of Public Prosecutions

DEC: Drug Enforcement Commission
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CHAPTER ONE

GENERAL INTRODUCTION

1.0 INTRODUCTION

Law regulates human conduct, providing sanctions for its violation and justice is the proper administration of that law. The prosecution service is central to the administration of criminal justice system in any country. Its effectiveness and efficiency directly reflect on the performance and service of the whole criminal justice system.

Institutions established to administer justice should apply rules of law in the approved manner in order to uphold justice. These institutions should accept and apply the rules as they are legally expected to be applied because this is what is meant by the term ‘administration of justice’.

This means that those administering the law should adhere to the principle of rule of law for justice to prevail. It is often said justice delayed is justice denied. “The need therefore to deliver justice without delay, connotes the importance of the concept of justice which concept denotes the proper administration of law.” Criminal justice system is defined as a “confederation of agencies that perform different functions in the interpretation and enforcement of criminal laws and the primary criminal justice agencies are the police, prosecutors, courts and the prisons”. In other words, this refers to the whole process from the initial investigation of a crime through to acquittal or to conviction and sentence in the criminal courts.

Crime in Zambia, like in many other countries, manifests itself in several ways and it is the duty of prosecutors to ensure that criminals are rightly convicted. Scholars have defined what a crime is

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1 John Shand and Peter Stein, Legal Values of Western Society: (Edinburg: Edinburg University press, 1975), 74.
2 F.E Dowrick, Justice According to the English Lawyers (Manchester: At the Manchester press, 1959), 176.
A crime may be defined as an act or omission or state of affairs which contravenes the law and which may be followed by prosecution in criminal proceedings with the attendant consequences, following conviction, of punishment.\(^4\)

This act or omission may give rise to either criminal or civil liability. “One of the most important differences between civil and criminal law is that the state plays a major role in the proceedings of criminal offences.”\(^5\) Criminal law is in the domain of public law, as opposed to private law which regulates the relationship between individuals or groups without the intervention of the state in many cases. Criminal law is a branch of law which concerns itself with crimes committed against the public authority by the public. In criminal law, the litigation is always filed by the government, who is called the prosecution.

As a way of addressing the problem of crime, an array of institutions has been created to deal with the different aspects of crime. The prosecution service is a key role player in the criminal justice system. The prosecution service has the responsibility of ensuring the successful operation of the criminal justice system. For example, even proper and sound investigation by the police will not lead to a conviction when the prosecution fails to present the evidence properly in court. Prosecutors are independent criminal justice professionals with wide discretion whose duty is to see that justice is done. This means that they are under a duty to vindicate the innocent, find the guilty and protect society and victims by doing their job flawlessly.\(^6\)

The office of the Director of Public Prosecution (DPP) is constitutionally created and the DPP is vested with power to institute criminal proceedings before a court of law and even to discontinue the

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proceedings already commenced, though only where judgment is not delivered. The functions of the DPP as outlined in article 56 of the constitution are to:

1. Institute and undertake criminal proceedings against any person before any court other than a court martial, in respect of any offence alleged to have been committed by that person,
2. Take over and continue such criminal proceedings as have been instituted by any other person or authority,
3. Discontinue at any stage, before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.

The office of the DPP is a department under the ministry of justice which is responsible for prosecuting people charged with criminal offences. The office is headed by the Director of Public Prosecutions who is appointed by the president subject to ratification by parliament.

Because of the bulk of work involved in prosecution, under section 86 of the Criminal Procedure Code (CPC), the Director of Public Prosecution is empowered to appoint generally, as in any case or for any specified class of cases in any district, one or more officers to be called public prosecutors. Under the same section, subsection 2 states, “the DPP may appoint any person employed in the public service to be a public prosecutor for the purpose of any proceedings instituted on behalf of the people.” These include officers employed by the Drug Enforcement Commission (DEC), Anti-Corruption Commission (ACC), Zambia Police Service, Department of immigration and Zambia Wildlife Authority (ZAWA). Additionally, in the discharge of his functions, the DPP is assisted by lawyers who are called State Advocates. The DPP has delegated his power to them under section 82 of the Criminal Procedure Code. These prosecute serious offences such as murder and aggravated robbery in the High Court and the

7 The Constitution Chapter 1 of the laws of Zambia Article 56 (3)
Supreme Court while the majority of criminal prosecutions in Zambia are conducted by public prosecutors in the Subordinate Court.

The discussion in this research focuses on the National Prosecution Authority Act (NPA Act) No.34 of 2010. Before this NPA Act, the principle guiding legislation was found in the constitution which provided for the office of the DPP and the CPC which conferred on him the power to appoint other people to carry out the work of prosecuting. One of the functions of the Act through the Board of Authority under section 7 will be to appoint state advocates and prosecutors and promote standards of practice by state advocates and prosecutors in criminal prosecution.\(^8\)

This Act recognises the need to have prosecutors under one body. Section 14 of the Act provides that the DPP shall adopt a code of conduct which shall bind the Chief State Advocate, Deputy Chief State Advocates, State Advocates and the prosecutors. Additionally section 6 of the Act provides for autonomy, it states that the National Prosecution Authority shall not in the performance of its functions be subject to the direction or control of any person or authority other than the Director of Public Prosecutions. The preamble of the Act, states that the Act is to provide a framework for the effective administration of criminal justice.

1.1 STATEMENT OF THE PROBLEM

Background research on this topic has shown that the reason why parliament decided to enact this Act, the first of its kind is so that it could deal with some of the problems that were persisting in the
prosecution system; these are issues of delays in dealing with criminal cases, high levels of acquittals, management of witnesses\(^9\).

In Zambia, the power to institute and undertake criminal proceeding is vested in the Director of Public Prosecutions (DPP) and because of so much work, the DPP is able to delegate his duties to other bodies such as DEC, NAPSA, ZAWA, ACC using section 86 of the Criminal Procedure Code which provides the DPP with Power to appoint public prosecutors.

This study investigates whether the recent enactment of the National Prosecution Authority Act No.34 of 2010 is a relevant piece of legislation in Zambia or not and if it is what is it that it brings fourth to ensure that access to criminal justice is more accessible and effective.

1.2 OBJECTIVES

1. To make thorough exploration into the historical machinery of justice in the prosecution service and see how it has operated till now when the Act has been enacted.

2. Elucidate the role of Prosecutors

3. To find out the justification for introducing the National Prosecution Authorities Act of 2010

4. To find out how the Act is to provide for the effect administration of justice

5. To identify what measures have been put in place in the NPA Act to manage witnesses

1.3 RESEARCH QUESTIONS

i) What is the rationale for establishing the National Prosecution Act?

\(^9\) Mulaye, Jolezya, Jane- "Prosecution in Zambia: why the failures?" Submitted in partial fulfillment for the award of Bachelor of Laws Degree(2003), 35.
ii) What is the role of Prosecutors

iii) Does this Act effectively tackle the problems that were been faced by the prosecution service before its enactment?

iv) How is the witness management fund provided for in the Act going to help witnesses?

v) What can be done to make this a better Act?

1.4 SCOPE OF THE STUDY

The research is confined to the role of the DPP and public prosecutors that are appointed by the DPP in the dispensation of justice and taking into account whether this new Act will enhance the delivery of justice. The study analyses the provisions of the Act so as to establish whether the National Prosecution Act is a relevant piece of legislation.

1.5 PURPOSE OF THE STUDY

This research will basically concern itself with enactment of the National Prosecution Authorities Act (NPA) by looking at its relevance and applicability in Zambia. This research looks into how the prosecution service has been operating over the years and how this Act is to provide for the effective administration of justice according to its preamble. Research in this area of prosecution has shown that circumstances prevailing on the ground are not favourable in bringing about the much desired result of ensuring that justice is served as there is political interference in the area of prosecution. This paper is important and comes at a time when there is so much interference in the work of prosecutors from outside forces.

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10 The Times Newspaper It is sad that President Sata has continued to disregard the Law- Mwiimbu, Friday, October 28, 2011
The paper identifies why the National Prosecutions Authorities Act is a relevant piece of legislation. The research is also important because it establishes how this Act is to implement an effective prosecution mechanism so as to maintain the rule of law and contribute to fair and equitable criminal justice and the effective protection of citizens against crime.

The research is justified on the basis that it is important to have a National Prosecution Authority Act that will provide for the autonomy and effectiveness of the prosecution service. However, whether this piece of legislation is relevant or not is what this research tries to find out.

1.6 SIGNIFICANCE OF THE RESEARCH

This research is of great significance as it is targeted at contributing to the understanding of the relevance of the NPA Act; it will benefit the legal system in that the research discusses the salient provisions of the Act and from the recommendations that will be made, either improve on it or not. It follows therefore, that this research when it is successfully carried out will benefit the majority of Zambians in appreciating the importance of having a piece of legislation that governs the work done by prosecutors. This research is also a contribution to the understanding of the obligations of prosecutors and the importance of having an autonomous prosecution service

1.7 METHODOLOGY

This study is based on both primary and secondary information. This embraces both desk research and field investigations. In this regard the desk research is done through the collection of secondary data in the form of law reports, books, journals, dissertations, as well as the internet. Field investigations are in the form of open ended interviews conducted with the relevant officials.
1.8 OUTLINE OF CHAPTERS

CHAPTER 1

GENERAL INTRODUCTION

This chapter contains the introduction, statement of the problem, research objectives, as well as the significance of the study, research methodology and the chapter layout.

CHAPTER 2

HISTORICAL DEVELOPMENT OF THE ZAMBIAN JUSTICE SYSTEM

This chapter examines the historical development of the Zambian machinery of justice from colonial rule up until now as well as the role of the prosecutor during this time period.

CHAPTER 3

FACTORS AFFECTING THE PROSECUTION SYSTEM

This chapter discusses the major challenges faced by the prosecution service over the years and what impact these have had on the administration of justice.

CHAPTER 4

A CRITICAL ANALYSIS OF THE NATIONAL PROSECUTION AUTHORITY ACT: WHAT IS ITS RELEVANCE?

The relevancy of the National Prosecution Act in Zambia is what is discussed under this chapter. It seeks to establish whether the Act has dwelt comprehensively with the problems identified in chapter three.
CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

This chapter highlights the conclusions reached in the light of the investigations made in the foregoing chapters and makes recommendations in possible areas of reform in the law regarding prosecutors.

1.9 CONCLUSION

The prosecution service is vital to the administration of justice in Zambia. This chapter has shown the principal pieces of legislation in the area of prosecutions, these being the Constitution and the Criminal Procedure Code. In order to improve the efficiency and effectiveness of the DPP’s office and safeguard its independence, the government mandated the Ministry of Legal Affairs as it was then to produce a comprehensive national criminal prosecutions policy in the year 2000.11 Today it is now an Act, known as the National Prosecution Authorities Act (chapter 34 of the Laws of Zambia). The finding that lack of national legislation which oversees the works of the prosecution service has been detrimental to the prosecution service12 has therefore prompted this research which aims at analysing the effectiveness and relevancy of the National Prosecution Authority Act in promoting an effective administration of criminal justice in Zambia. In order to state whether this Act is relevant or not, this research has to look at the history of prosecution law, thus the next chapter outlines the historical background before the enactment of the Act.

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12 Mulaye, Jolezya, Jane- Prosecution in Zambia: why the failures? Submitted in partial fulfillment for the award of Bachelor of Laws Degree(2003)
CHAPTER TWO

HISTORICAL DEVELOPMENT OF THE ZAMBIAN JUSTICE SYSTEM

2.0 INTRODUCTION

The right to justice does not only lie with the laid down laws and procedures as stipulated in the Acts of Parliament or numerous statutes, it also involves people that are given the power to administer this justice. The people given the responsibility to administer justice have to do so within the confines of the law so as to avoid occasioning injustice to the people concerned. The law provides under Article 18 of the constitution that if a person is charged with a criminal offence, that person is to be afforded a fair hearing within a reasonable time by an independent and impartial court. In essence, the right to be heard as provided for by the constitution under Article 18 can only be achieved if people administering this right adhere to this provision. Justice administration in Zambia involves several institutions, both government and non-governmental institutions.

This paper in this chapter seeks to show the prosecution system in Zambia has developed with view to establishing how relevant the enactment of the National Prosecution Authorities Act is to Zambia. The chapter further states the salient provisions of the Act and how some relate to bringing about an effective administration of justice in helping to understand the role of prosecutors in the course of their duties.

These institutions include the judicature, ministry of justice, office of the Director of Public Prosecutions, the police, the Legal Aid Board and the Human Rights Commission. Like many other laws in Zambia, the prosecution system in Zambia is modelled on the English Act, the

This chapter looks at the historical development of the Zambian machinery of justice system from before the advent of white settlers up until now. Additionally, the chapter looks at the role of prosecutors.

2.1 TRADITIONAL SOCIETY

The machinery of justice can be traced back to the time before the African society was ruled by white settlers. The natives had their own customary law under which disputes were settled without following the procedure of arrest-prosecution, imprisonment and adjudication in different institutions. “Whenever there was a dispute, it was taken to village elders such as head men and chiefs who listened to both parties to the dispute and made a ruling almost immediately.”¹ In cases of a dispute involving theft of some property, the procedure depended on the circumstances of the case. “A person caught in the act of stealing was punished without having to go through procedure as there was no presumption of innocence in such an instance.”² In a situation where an alleged thief was not known, all the members of the village where the theft took place were requested to participate in some kind of a ritual trial. A substance would be prepared using roots and administered in some way to the people. It was the effect of the substance which determined whether or not an individual was guilty.³ The procedure did not end with punishment but rather the headman or chief over the case would inquire from the guilty

party as to what made the individual resort to stealing so that it should be solved. The parties would then be asked to reconcile as good relationships among the people were of paramount importance. Compensation was also enforced.⁴

2.2 COLONIAL RULE

With the arrival of the white settlers, the customary machinery system of justice began to slowly weaken; it was discarded in favour of the introduced legal system brought about by the white settlers. However, in some territories, customary law was allowed to continue subject to the new legal system. Section 14 of the British South African Company (BSA Co) Charter of 1889 stated as follows “in the administration of justice to the people in the territory, careful regard shall be had to the customs and laws of the class or tribe or nation to which they belong... but subject to any British laws which may be in force in any of the territories.”

The white settlers had until 1911 had ruled North Eastern Rhodesia and North Western Rhodesia as two separate territories. A more elaborate machinery of justice started developing when the two territories merged in 1911 and formed Northern Rhodesia and especially when common law was introduced in about 1924.⁵

Until that particular time, there had been neither police force, nor the prison department as most cases involving natives were still dealt with by the village elders. ‘Courts, however, did exist and disputes between natives were resolved in native courts, presided over by native commissioners.’⁶

⁴ Max Gluckman, *The Judicial Process among the Barotse of Northern Rhodesia (Zambia)*, 99.
It was after the merger that the police was introduced by virtue of the Northern Rhodesia Police Proclamation.7 To enable proper operation of the machinery of justice, the white settlers did not end with the police force alone but introduced the system of imprisonment as well. The purpose of the prison was to detain arrested people for questioning. With this development, awareness of the requirements of justice increased and hence a person could not be kept in prison without undergoing trial in a court of law. There were to be three main parties in the court, the accused, the lawyer and presiding officer. Unfortunately, the prosecutors were not lawyers but police officers who automatically qualified for the job without going through any prosecution training.8 These prosecutors worked on behalf of the state.

2.3 THE POSITION AFTER INDEPENDENCE TO DATE

This position changed after independence when the old system of allowing police officers to carry out prosecution work without training was abolished and a prosecutor’s course was introduced. All prosecutors, though police officers were required to take the course. “These prosecutors handled the non serious cases; all serious cases such as aggravated robbery were handled by the Director of Public Prosecutions”9.

In order to improve the efficiency and effectiveness of the DPP’s office and safeguard its independence, the government in the year 2000 produced a comprehensive national criminal prosecutions policy as a first step towards building a national prosecution service that would be open and honest in its dealings with the public. The draft national criminal prosecution policy contained the following recommendations: The government should enact legislation to establish an independent national prosecutions authority. The reasons behind having the national

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7 Proclamation No. 17 of 1912
8 Government Notice No. 160 of 1961
prosecution authority were to implement a system where the prosecution function should be separated from the investigative function and accordingly the practice of appointing police officers as prosecutors should be discontinued. Furthermore, it was recommended that “Public prosecutors should be seconded from the DPP’s office to the Zambia Police Service, ACC, DEC and other law enforcement agencies to deal with cases as they arise.”\textsuperscript{10} This it was believed would “reduce the delays occasioned by the need to transfer cases to the DPP’s office for legal advice or consent to prosecute”\textsuperscript{11}. As a result of recommendations, the National Prosecutions Authorities Act was enacted in the year 2010. The rationale behind the creation of the NPA Act was to enact legislation that would provide for the powers and functions of the National Prosecution Authority; provide a framework for the effective administration of criminal justice; establish the Witness Management Fund; and to provide for matters connected with, or incidental to, the foregoing as the preamble to the Act states.

2.4 SALIENT PROVISIONS OF THE ACT

This part states the relevant provisions of the Act that help to bring about a prosecution service that is effective and efficient. The National Prosecution Authorities Act contains 22 sections, however, for purposes of this research paper, sections that are to be looked at are section 3, 5, 6, 7, 8 (1) and (3), 10 (6) and (7), 14, 15 and 17 as they are essential to this discussion.

Section 3 of the Act establishes the National Prosecution Authority which shall be a body corporate with perpetual succession and a common seal capable of suing and being sued.

\textsuperscript{10} Ambassador Ochieng Adala, \textit{the criminal justice system in Zambia; enhancing the delivery of security in Africa} (April 2009), 76.
This means that this Authority created has a legal personality of its own independent of that of the members forming it, so that although its members die, there is perpetual succession. This provides a guarantee that the authority will always be there though the officers may change.

**Sections 5 of the Act provides for the functions of the authority inter alia**

- appointment of state advocates and prosecutors and promote appropriate standards of practice by State Advocates and prosecutors in criminal prosecution, develop, promote and enforce internationally comparable practice standards for prosecutors.

This implies having in national legislation provisions that endorse practice standard for prosecutors that are recognised on an international level. All these functions are to be carried out by the Board of Authority created under section 7.

The Act further provides under the same section that it is, to promote

- an understanding of professional ethics amongst the prosecutors and ensure that the rules and guidelines for professional ethics are responsive to the effective administration of criminal justice, implement an effective prosecution mechanism, conduct research into the various disciplines of law, cooperate with the police, the courts, the legal profession and other government agencies or institutions so as to ensure the fairness and effectiveness of prosecutions. Do all such other things as are necessary or incidental to the performance of the functions under that Act.

**Section 5 (c) states that the function of the authority is to ‘promote the integrity and enhance the status of State Advocates and prosecutors so as to promote honourable and good practice and increase the confidence of the public in State Advocates and prosecutors’. This function is essential in improving the standards of prosecutors and thereby increasing the confidence of the public in prosecutors and State Advocates.**

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12 The National Prosecution Authority Act No. 34 of 2010 Section 5 (a)
13 The National Prosecution Authority Act No. 34 of 2010 Section 5 (b)
14 The National Prosecution Authority Act No. 34 of 2010 Section 5 (d)
15 The National Prosecution Authority Act No. 34 of 2010 Section 5 (e)
16 The National Prosecution Authority Act No. 34 of 2010 Section 5 (f)
17 The National Prosecution Authority Act No. 34 of 2010 Section 5 (g)
18 The National Prosecution Authority Act No. 34 of 2010 Section 5 (h)
Section 6 provides for autonomy of the authority, that 'except otherwise, the authority shall not, in the performance of its functions, be subject to the direction or control of any person or authority other than Director of Public Prosecutions'. This is imperative to ensure that there is no interference from other institutions of government.

Section 7 provides for the board of the authority, which shall consist of the DPP as chairman, a representative of Attorney General as vice chairman, director of administration, a representative from public service management division, representative of the ministry responsible for labour and two other persons appointed by the minister. Unlike before the enactment of this Act, this did not exist. This board is important as it is there to regulate what goes on within the prosecution system. The board is to meet once every three months and make decisions on behalf of the National prosecution Authority.

It is observed that the composition of the Board should have included officers from investigative wings such as the police, the anti-corruption, drug enforcement etc. so that these could act as a link between the authority and the investigation wings. This board of authority does not include experts in the field of criminal law; it does not include anyone from the judiciary either.

Additionally, the members comprising this board of authority can be said not competent enough to handle matters of prosecution. One is left to wonder what role a representative of the public service management division and a representative from the ministry responsible for labour have to do with issues of prosecution. There also seems to be a repetition here, both these two bodies are institutions that deal with conditions of civil servants, what then is the point of having both in the Board of Authority established under this Act? There seems to be no point in having these

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19 Interview: Mr. Palo 17/02/2012
two included on the board. It is suggested that instead of having these, the Law Association of Zambia (LAZ) would be a better body to have included in this board of authority.\(^\text{20}\)

The functions of the Director of Public Prosecutions are outlined in section 8 (1). This section has extended the functions of the Director of Public Prosecutions compared to those found in the constitution under Article 56 (1) (3). These functions that have been added are as follows:

- to set the qualifications for the appointment of prosecutors\(^\text{21}\), advice prosecutors on all matters relating to criminal offences\(^\text{22}\), review a decision to prosecute, or not to prosecute, any criminal offence\(^\text{23}\), advise the minister on all matters relating to the administration of criminal justice\(^\text{24}\), liaise with the Chief State Advocate, the Deputy Chief State Advocates, the prosecutors, the legal profession and the legal institutions in order to foster common practices and to promote co-operation in the handling of complaints in respect of the authority\(^\text{25}\), assist the Deputy Chief State Advocates and Prosecutors in achieving the effective and fair administration of criminal justice\(^\text{26}\), appoint such experts as are necessary to assist the Director of Public Prosecutions carry out any functions under this Act.\(^\text{27}\)

This section gives the DPP the mandate to put in place measure that will ensure that prosecutors have certain qualifications before they can be appointed as prosecutors, this provision can be construed to mean that it helps to deal with the issue of unqualified prosecutors. Further, this provision widens the powers of the DPP to ensure the effective administration of criminal justice by giving the DPP the power review decisions to prosecute and where necessary, appoint experts in a given area to prosecute.

**Section 8 (3)** provides that where by any written law, the sanction, fiat or written consent of the DPP is necessary for the commencement or continuance of the prosecution of any offence, the director of public prosecutions may order, in writing, that all or any of the powers vested in the

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\(^{20}\) Interview: Mr. Milimo 22/01/2012

\(^{21}\) The National Prosecution Authority Act No. 34 of 2010 Section 8 (d)

\(^{22}\) The National Prosecution Authority Act No. 34 of 2010 Section 8 (e)

\(^{23}\) The National Prosecution Authority Act No. 34 of 2010 Section 8 (f)

\(^{24}\) The National Prosecution Authority Act No. 34 of 2010 Section 8 (g)

\(^{25}\) The National Prosecution Authority Act No. 34 of 2010 Section 8 (h)

\(^{26}\) The National Prosecution Authority Act No. 34 of 2010 Section 8 (i)

\(^{27}\) The National Prosecution Authority Act No. 34 of 2010 Section 8 (k)
DPP to issue the sanction, fiat or written consent may be exercised by the Chief State Advocate or a Deputy Chief State Advocate...

Section 9 of the Act provides for the appointment of Chief State Advocates, Deputy Chief State Advocates, State Advocates, prosecutors and other staff. The Act states the function of the Deputy Chief State Advocate which is to be responsible for supervising the operations of the authority in a province.

Section 15 provides for establishment of fund for witnesses. The fund is to be used to ferry witness to and from court, for the counselling of witnesses before testifying in any matter before court and for any matter relating to witness management.28

1.5 CONCLUSION

This research paper in this chapter has briefly looked at how the law was administered by the natives during the time before the white settlers arrived. It has shown that when the white settlers arrived, they brought with them a new way of administering criminal justice, they introduced the police force and disputes between natives were resolved in native courts presided by native commissioners. As the law developed systems of imprisonment were introduced and since then the law has recognised the importance of prosecutors. Furthermore, this chapter has brought out the salient provisions of the Act and discussed them.

The next chapter looks at the role of prosecutors and identifies the problems existing in the prosecution service that is affecting the work of prosecutors.

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28 The National Prosecution Authority Act No. 34 of 2010 section 17
CHAPTER 3

THE ROLE OF PROSECUTORS AND FACTORS AFFECTING THE PROSECUTION SYSTEM

3.0 INTRODUCTION

It is stated that “there are many aspects in the responsibility of prosecutors to promote and strengthen the rule of law, including their duty to combat impunity and safeguard the rights of the accused as well as witnesses.”¹ One can only function well if he or she knows what is to be expected of them. The paper looks at the role of a prosecutor as well as the challenges faced by prosecutors in the prosecution service.

3.1 THE ROLE OF THE DPP AND PUBLIC PROSECUTORS

The objective of this research is to understand the basis upon which the Act is to help the prosecution service. To understand the role of prosecutors is significant to the efficient administration of criminal justice. The public needs to know why prosecutors exist, their role in the criminal dispensation of justice. Likewise prosecutors need to fully understand what their role in society is in order to be efficient and effective. It is from this background that this research outlines that role of prosecutors, their duties and rights and also highlights what the United Nations Guidelines on the role of prosecutors provides. The NPA Act in section 8 (1) outlines the functions of the DPP and in section 10 (6) it provides that a prosecutor in the performance of his duties shall consider a number of things listed out in that particular section.

¹Professor Yvon Dandurand, A working paper commissioned by the Organizing Committee, University College of the Fraser Valley (Abbotsford) and Senior Associate of the International Centre for Criminal Law Reform and Criminal Justice Policy, British Columbia–Canada 2007
Public prosecutors as well as the DPP carry out their functions on behalf of the state. The "DPP has authority over the exercising of all the powers and the performance of all the duties and functions conferred upon, imposed or assigned to, prosecutors". The DPP needs to provide the required tactical and technical leadership to prosecutors in the country. He or she should be accountable for the effective service delivery so as to contribute towards an effective justice system. The DPP appoints prosecutors pursuant to section 86 of the laws of Zambia. The primary function of a prosecutor is to assist the court in coming to a just verdict. There are other certain factors prosecutors should take into account when deciding whether or not to institute a prosecution: "the strength of the state’s case, the admissibility of the state’s evidence, the credibility of the state’s witness, the strength of the defence’s case, and the extent to which the prosecution would be in the public interest." In doing this, the prosecutor represents the public interest. Section 10 (6) (b) of the NPA Act states that,

in the performance of a prosecutors duties, a prosecutor shall protect public interest, act with objectivity, take proper account of the position of the suspect and the victim and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect.

The prosecutor helps the state by maintaining law and order by performing his or her duties well. A prosecutor is supposed to be an impartial officer whose overriding concern is to deliver justice according to the law. To ensure fair, effective, impartial and efficient prosecution of criminal offences, a prosecutor should uphold standards and principles which are recognised internationally. As already stated one of the function of the Authority established under the Act is to try to promote and enforce comparable practice standards for prosecution. Prosecutors have discretion at different stages of the criminal justice process. They have the discretion "whether or not to institute criminal proceedings against an accused, whether or not to withdraw charges or

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2 The National Prosecution Authority Act No. 34 of 2010  Section 8(1)
stop the prosecution against an accused, or whether or not to oppose an application for bail, or to release an accused who is in custody following an arrest.”\(^4\) When exercising their discretion prosecutors must act impartially and in good faith. They should not allow their judgments to be influenced by factors such as “their personal views regarding the nature of the offence, or the race, national origin, gender, religious beliefs, status, political beliefs or sexual orientation of the victim, witnesses or the accused.”\(^5\) Of relevance to the statement made above, the NPA Act does state that in the performance of prosecutors’ duties, “a prosecutor shall carry out the prosecutor’s function impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination.”\(^6\)

Section 14 deals with code of conduct for prosecutors and State Advocates; it states that

the Director of Public Prosecutions shall in consultation with the minister and after consultation with the Chief State Advocate and Deputy State Advocates, adopt a code of conduct which shall bind the Chief State Advocate, Deputy Chief State Advocate and the prosecutors. In subsection 2, it states that the code of conduct shall be published in the Gazette for general information.

This section is providing for transparency and accountability of the functions of the prosecutors and State Advocates. As it is code of conduct is published for general information, it gives the public the opportunity to access this document and to know what is expected of prosecutors and State Advocates. This is a way of helping to have an informed citizenry concerning the conduct of those in the prosecution service.

\(^5\) Rome Statute article 68
\(^6\) The National Prosecution Authority Act No. 34 of 2010 Section 10 (6) (a)
3.2 DUTIES AND RIGHTS OF THE PROSECUTORS

There are a number of duties and rights of a prosecutor. According to the statement of essential duties and rights of prosecutors, prosecutors are expected to

- Carry out their functions impartially, remain unaffected by individual interests and public and media pressures and therefore, shall have regard only to public interest.
- Additionally, prosecutors are to act with objectivity at all times, have regard to all relevant circumstances, irrespective of whether they are to the advantage of the suspect.
- Assist the court to arrive at the truth and to deliver justice according to the law and dictates of fairness.
- In the constitution of criminal proceedings they will proceed only when a case is well founded upon evidence reasonably believed to be reliable and admissible and will not continue with a prosecution in the absence of such evidence.

Just as the prosecutor has many duties, so are his or her rights. In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with accepted standards, prosecutors shall and should be protected against arbitrary action by government. Their rights include

- In the performance of their duties, they shall be free from intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability
- When personal safety is threatened as a result of their prosecution functions, they shall have a right to be protected together with their families by the authorities.

• Reasonable conditions of service and adequate remuneration proportionate to the crucial role they perform.

• Prosecutors are under a general duty to place before the court any information relevant to the refusal or grant of bail and might reasonably be held liable for negligently failing to fulfill that duty.

The rights and duties mentioned in this part are contained in a British document called the Statement of Essential Duties and Rights of Prosecutors. This document not being either a convention or statute can only be used for reference. However, from this document the legislators can appreciate the importance of setting out the duties and rights of prosecutors so that as prosecutors carry out their duties, they too know their rights, for example the right to be protected.

Thus one way of providing a framework for the effective administration of criminal justice will be to have a provision in the Act clearly stating the rights of the prosecutor in the performance of his duties. The NPA Act at the moment spells out what is expected of prosecutors in carrying out their duties but does not state the rights available to the prosecutor in carrying out his/her duties.

Furthermore, it has been pointed out that it is important for prosecutors to function well and for them to perform as they ought to, they should know their duties as well as their rights. Just like citizens in any given society need to know their rights and obligations to serve the country well, the prosecutors too need to be familiar with their duties so that in the carrying out of their duties they know what is expected of them and what they expect in return from the public. Prosecutors need to know that in the carrying out of their duties, they have a right to be protected.
3.3 UNITED NATIONS GUIDELINES ON THE ROLE OF PROSECUTORS

The UN Guidelines have been formulated to assist member states in their task of “securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings within the framework of the states’ national legislation and practice.” The guidelines contain recommendations with regard to the “qualification, selection and training of prosecutors, their status and conditions of service and their freedom of expression and association”.

It is stated that in the performance of their duties, prosecutors shall:

a) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect

b) be fair, independent and objective

The prosecutor’s decision to prosecute should not be influenced by:

a) The prosecutor’s personal feelings concerning the offence, the suspect or the victim

b) The race, religion, sex, creed, political inclinations, beliefs or activities of the suspect or any other person involved

c) Likely political advantages or disadvantages to the government or any political party, group or individual.

The prosecutor must follow the following ethics of the profession:

i. Ensuring that the prosecution case is firmly and fairly put forward

ii. Testing the defence case vigorously but with courtesy and temperance

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8 UN Guidelines, preamble.
10 UN Guidelines section 10-13
11 UN Guidelines section 11
iii. Avoiding submissions of fact or law which do not have a sound basis

iv. Avoiding prejudice or emotion in the conduct of the case

v. Revealing the existence of material that may assist the accused

vi. Inviting the court to stop proceedings if a point is reached at which he concludes that there is no longer a reasonable prospect of conviction

vii. Using legitimate means to achieve a just disposal of the issues in contention

3.4 RELEVANCE OF THE GUIDING PRINCIPLES

The basic principles on the role of prosecutors as set forth in the United Nations Guideline, have been formulated to assist Member States in their task of promoting and ensuring the proper role of prosecutors, they are to be respected and taken into account by governments within the framework of their national legislation and practice and should be brought to the attention of prosecutors as well as other persons, such as judges, lawyers, members of the executive and the legislature, and the public in general.

The NPA Act in section 5 makes reference to the implementation and observance of these internationally set standards as a way of improving the criminal justice system in the area of prosecution. Furthermore, section 10 (6) provides that in the performance of a prosecutor’s duties, a prosecutor shall;

carry out the prosecutor’s functions impartially and avoid all political, social, religious, racial, cultural, sexual or any kind of discrimination\(^{13}\), protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantages or advantages of the suspect,\(^ {14}\) keep matters in the possession of the prosecutor confidential, unless the performance of duty or the

\(^{13}\) The National Prosecution Authority Act No. 34 of 2010 Section 10 (a)
\(^{14}\) The National Prosecution Authority Act No. 34 of 2010 Section 10 (b)
needs of justice require otherwise;\textsuperscript{15} and consider the views and concerns of a victim
where the victim’s interests are affected and ensure that the victim is informed of the
rights.\textsuperscript{16}

Section 10 (7) states a prosecutor shall, “in order to ensure the fairness and effectiveness of
prosecution, cooperate with the police, the courts, the legal profession, public defenders and
other government agencies or institutions.” This allows for the prosecutor to interact with bodies
connected to the administration of justice so as to bring about an effective criminal justice
system.

In essence section 10 basically gives guidelines on what is expected of prosecutors while
carrying out their duties. These are drawn from the United Nations Guidelines on prosecutors.
Zambia being a member of the United Nations has the task of promoting and ensuring the proper
conduct of prosecutors and what is been done in this Act is simply providing for this framework
in national legislation.

“Most prosecutors especially those from the police service who have not gone through proper
training do not know what is expected of them as they carry out their duties.”\textsuperscript{17} Hence one way
that the Act is contributing to the effective administration of justice is by setting out clearly in
the Act what is expected of a prosecutor in the performance of his duties.

3.5 FACTORS AFFECTING THE PROSECUTION SERVICE

The public prosecution service faces a number of problems. This has placed a number of
constraints in carrying out their duties. They lack the most basic materials required to run an
effective prosecution service. They lack good conditions of services such as computers, desks

\textsuperscript{15} The National Prosecution Authority Act No. 34 of 2010 Section 10 (c)
\textsuperscript{16} The National Prosecution Authority Act No. 34 of 2010 Section 10 (d)
\textsuperscript{17} Interview: Mr. Denis Manda 04/01/2012
and chairs. Additionally, they lack transport measures that could help them move from one place to the next.\textsuperscript{18} The respondent spoken to demonstrated this by taking me into one of the offices he shared with many other prosecutors which barely had enough computers, let alone chairs. The few computers that were there looked new and was informed that they were recently donated to them by a non-governmental institution called Access to Justice. This non-governmental group also presented to them one bus to help ferry prosecutors to the different places that they had to go. This off course though in the right path of helping to enhance the delivery of justice is not the least to say very insufficient. More still needs to be done. In addition, the prosecuting performance is negatively affected as prosecutors do not receive the necessary support in their work. The office equipment of prosecutors it was found out was insufficient in terms of (cell-) phones, fax and copy machines, legal commentaries, and computers with access to online court decisions and law journals. Furthermore, they lack materials like law reports and statute books making their research very difficult to do\textsuperscript{19}.

Furthermore, “it is argued that the efficiency and effectiveness of the office of the DPP is compromised by the fact that the office is not funded directly by Parliament but through the Ministry of Justice.”\textsuperscript{20} This problem is critical in that because of lack of proper funding from the government, “it has resulted in the prosecution service not having adequate resources such as law journals and facilities such as transportation for prosecutors as well as witnesses.”\textsuperscript{21}

The Act does not make mention of how it is to help resolve these issues raised, however, it is the opinion of the respondent interviewed that because this Act establishes a prosecution system that is independent, the contention is that it will be funded directly by parliament and not through the

\textsuperscript{18} Interview: Mr. Dennis Manda 04/01/2012
\textsuperscript{19} Interview: Mr. Dennis Manda 04/01/2012


\textsuperscript{21} Interview: Mr. Chendela Musonda 03/02/2012
government ministry which at the moment is the ministry of justice. Once it is able to get direct funding from parliament it is argued that it will promote realistic and effective financial planning which will encompass buying of equipment and providing the necessary basic resources required to run an efficient prosecution system. It is envisaged that financial autonomy would, in the long run, help to build a prosecution system that is essentially competent for the effective operation of the office of the Director of Public Prosecutions.

3.5.1 LACK OF ACADEMIC QUALIFICATIONS AND TRAINING

Most of the prosecutors are police officers who lack the academic qualification to prosecute and so can hardly contend with the defence lawyers that are fully trained in these high institutions of learning as these untrained prosecutors cannot adequately argue matters of law. Such lack of proper qualifications poses a serious threat in the criminal justice system as reliance is placed on a workforce that is either ill trained or not trained at all to conduct work as significant as prosecuting on which various people’s lives are at stake as when these people are found guilty, their freedom is taken away.

For those that undergo some form of training, public prosecutors in Zambia are trained at the National Institute of Public Administration (NIPA). There is a basic Prosecution Program and the Advanced Program. The qualification needed to pursue these programmes is a grade 12 certificate. These basic programs run for six months while the advanced program runs for nine months. The courses offered are as follows; criminal law, the law of evidence, communication skill, they are taught how to interrogate, question the witness, that is cross examination and examination in chief. They are also taught criminal procedure as well as interpretation of statutes.

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22 Interview: Mr. Dennis Manda 04/01/2012
The general idea is that for one to prosecute they ought to have gone through this training offered at NIPA; however, this is not the case in practice. In practice, it has been noted that prosecutors actually fall into three different categories. There are those officers trained at NIPA, those that just learn from other institutions, not necessarily prosecution but then end up doing prosecution work and finally those that learn through experience. The last group which is not so common now but was prevailing in the previous years had officers who were untrained but because they were considered to be very intellectual, they were transferred to prosecutions and were coached by the senior officers till they became efficient.

It is argued by lecturers offering these courses as well as the prosecutors themselves that this kind of training though good in that it offers some general understanding in prosecution is not sufficient. Much needs to be learnt to be on the same footing with the learned defence counsels.

3.5.2 TOO MANY PEOPLE GIVEN THE POWER TO PROSECUTE

As it stands, anybody can apply to the DPP to prosecute a matter, it is hence not shocking that a number of other institutions other than the police do seek the DPP’s approval to prosecute matters in their own institutions. Though this might be seen as a good thing as it takes away much of the work load from the police prosecutors as well as allowing some of the prosecution work to be done by experts in that field. This can be dangerous, in that it provides a breeding ground for corruption and therefore certain cases end up not even been prosecuted.

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23 Interview: Mr. Dennis Manda 04/01/2012
24 Interview: Mr. Chendela Musonda 03/02/2012
25 Interview: Mr. Chendela Musonda 03/02/2012
26 DPP has power given to him to appoint public prosecutors through section 86-89 of the Criminal Procedure Code
27 Interview: Mr. Milimo 22/01/2012
It was found that the office of the DPP lacks the necessary capacity partly because of professional fragmentation.\textsuperscript{28} What is meant by this is that the DPP office which is responsible for prosecuting people has no co-ordination among the various prosecutors that the DPP gives mandate to prosecute in these various institutions The location of public prosecutors in different institutions is perceived to have a negative impact on the ability of the DPP’s office to deal with prosecution matters effectively and expeditiously and generally cannot benefit from the advantages associated with having a cohesive pool of professionals.\textsuperscript{29} This means that because of having so many prosecutors in different institutions that do not work as a team thus resulting in division, the prosecution system is placed in such a situation whereby it is unable to function effectively. As a result, it contributes to difficulties in enhancing prosecutorial capacity in the office of the DPP.

3.5.3 LACK OF SPECIALISATION

Another problem mentioned is that there is no specialisation especially for the prosecutors in the police service because a single prosecutor handles rape cases, aggravated robbery cases, fraud cases and much more. When compared to other jurisdictions, for instance South African where the prosecution service is separated from the police function, prosecutors have levels of specialisation so as to maximize efficiency. In this jurisdiction, there is a unit of prosecutors specialised in domestic violence, fraud and other organized crimes, rape cases, child defilement cases, theft and related offence.\textsuperscript{30} This is not the case in the Zambian prosecution service. The Act further makes no mention of this and so there is a lacuna in our national legislation in this aspect. It is essential that prosecutors have some form of specialisation as this has a positive

\textsuperscript{28} Ambassador Ochieng Adula, the criminal justice system in Zambia; enhancing the delivery of security in Africa (April 2009),
\textsuperscript{29} Ambassador Ochieng Adula, the criminal justice system in Zambia; enhancing the delivery of security in Africa (April 2009),
\textsuperscript{30} The National Prosecutions Authority Act of South Africa has specialised departments.
bearing on their work, for instance, the quality of work will be far much better than one who has
to handle too many cases and if a prosecutor is trained well in the area of theft, that prosecutor is
best suited prosecuting in cases dealing with that.

3.5.4 POLITICAL INTERERENCE

One other major flaw in the prosecution system is political interference in high profile cases
especially such cases to do with the president or ministers in the ruling party. It has been seen
over the years that there is total disregard of the constitutional provision that the DPP is not
subject to control or directions from anyone\textsuperscript{31}. There is a growing public perception that the
office of the DPP lacks prosecutorial independence in criminal cases that involve high-ranking
public officials. The Anti-Corruption Commission has in the past criticised the DPP for
preventing some high-profile prosecutions.\textsuperscript{32} The case of Castro Chiluba is one such an example.
The law is clear that the DPP in the exercise of his powers is not subject to the direction or
control of any person or authority and it is the duty of the DPP to prosecute. However, the Late
Castro Chiluba was arrested only after the former Vice-President as he was then Levy
Mwanawasa held a press conference and directed the DPP to take appropriate action and arrest
Castro Chiluba.\textsuperscript{33} It has been discovered in this research that the reason as to why there is so much
political interference especially from the ruling party emanates from the way the DPP is
appointed. The Director of Public Prosecutions is appointed by the President and hence he/she is
at the mercy of the president. It is therefore argued that this manner of appointment in fact
constrains the operations of the DPP and creates the potential for interference with the discharge
of justice.

\textsuperscript{31} Article 56(7) of the constitution of Zambia
\textsuperscript{32} Ambassador Ochieng Adala, the criminal justice system in Zambia; enhancing the delivery of security in Africa (April 2009),
80.
\textsuperscript{33} Sunday times of Zambia Newspaper, Sunday 12\textsuperscript{th} June 1994
3.5.5 POOR WITNESS MANAGEMENT

A "witness is any person who is called to give evidence either by the court or at the instance of one of the parties regardless of whether or not he actually gives evidence."34 As such a witness is very important to the administration of justice as without the witnesses, the prosecutor cannot prove a charge against a suspect. Though, witnesses play such an important role, much has not been done to protect them and provide for their welfare. Often times, witnesses travel to court at their own expense35, leaving their work and often spending hours at court and are told to return another day due to some unexplained adjournment. Additionally, there is no witness protection therefore; witnesses normally suffer intimidation or harassment from the accused, friends and family members of the accused too. This leads to good witnesses suddenly becoming hostile36.

3.5.6 SHORTAGE OF EXPERIENCED PROSECUTORS

The lack of experienced prosecutors in the prosecution service is an essential factor of the insufficient performance of the prosecution service. The high workload of prosecutors can reduce the quality of their work and increase the risk of wrong decisions. The high workload is exacerbated by the fact that there are not enough qualified and experienced prosecutors in charge.37 One of the reasons for leaving the prosecution service was and is the relatively poor salary. One of the respondents interviewed complained of the poor remuneration that they get as police prosecutors compared to prosecutors found in these other departments such as DEC and NAPSA. Consequently, this has adverse effects in the way police prosecutors carry out their

35 Allowances to witnesses are provided for in section 31 of the High Court Act Chapter 27 and section 46 of the Subordinate Courts Act Chapter 28 but hardly ever given to witnesses for so many years now
36 Interview: Mr. Milimo 22/01/2012
37 Interview: Mr. Chendela Musonda 03/02/2012
work and many prosecutors are leaving the prosecution service.\textsuperscript{38} With the implementation of an Independent National Prosecution Act as it will bring all prosecutors under one body, hence the assumption is that the remuneration will be the same for all prosecutors.\textsuperscript{39}

Additionally, limited promotional opportunities and challenging career paths are identified as a further reason for prosecutors to resign, once a prosecutor reaches the rank of chief prosecutor, in most cases that is it.\textsuperscript{40} Further reason for prosecutors to leave the service, it is argued, is the workload. Apart from difficult caseloads, prosecutors are burdened with a wide range of duties as there is no specialisation as mentioned before.

3.5.7 LACK OF PROSECUTION POLICY

Another challenge that the prosecution is facing is the enactment of a prosecution policy by the DPP that will govern the functions of all prosecutors as well as guide the prosecutors in the way to carry out their duties in their respective offices. The DPP should be charged with the responsibility of determining a prosecution policy in consultation with the minister of justice and the Attorney General. What the DPP ought to seek in the policy guidelines is to promote the exercise of authority by prosecutors and contribute to the fair and even handed administration of criminal law by prosecutors.

It is in the public interest that there is uniform prosecution policy and standards and guidelines which apply throughout all the nine provinces. A central purpose of the prosecution policy is to ensure public confidence in the prosecution system as it is of paramount importance to have prosecution policy which can be applied consistently and uniformly. The policy should set out the way in which the prosecuting authority and individual prosecutors should exercise their

\textsuperscript{38} Interview: Mr. Dennis Manda 04/01/2012
\textsuperscript{39} Interview: Mr. Dennis Manda 04/01/2012
\textsuperscript{40} Interview: Mr. Milimo 22/01/2012
powers and carry out their duties in order to make the prosecution process fairer, transparent, consistent and predictable. This is important as prosecutors have the discretion to make decisions which affect the criminal justice process.

When compared to South Africa, there is a prosecution policy that guides the prosecutors. The National Director is obliged to determine a prosecution policy for the National Prosecuting Authority. The first prosecution policy was tabled in Parliament in 1999 and has been revised in 2005\(^{41}\). The prosecution policy is a product of consultations of prosecutors, criminal justice organisations, government departments, academic institutions and community organisations. It seeks to promote the exercise of authority by prosecutors, and to contribute to the ‘fair and even-handed administration’ of criminal law by prosecutors. The prosecution policy sets out ‘with due regard to the law, the way in which the Prosecuting Authority and individual prosecutors should exercise their discretion.'\(^{42}\) Moreover, the policy seeks to guide prosecutors in the way they perform their functions, exercise their powers and carry out their duties. The prosecution policy lists criteria to assist prosecutors in coming to a decision whether or not to prosecute.\(^{43}\) The policy emphasises the importance of this decision as it may have profound consequences on the victim, witness, the accused and their families. The prosecution policy advises prosecutors also on how to review a case with special regard to the stopping of proceedings and restarting of prosecutions.\(^{44}\)

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\(^{41}\) Stipulations have been included with regard to the prosecution of persons who were refused or failed to apply for amnesty in terms of the Truth and Reconciliation Commission process (National Prosecuting Authority of South Africa (note 118), pp.1-8).

\(^{42}\) National Prosecuting Authority Act of South Africa section 2

\(^{43}\) National Prosecuting Authority Act of South Africa section 2

\(^{44}\) National Prosecuting Authority Act of South Africa section 3
This prosecution policy is indeed very vital to the system and Zambia needs a well formulated policy if it is to enhance the performance of the prosecution service at large. The lack of such a prosecution authority policy has had adverse effects in that the way prosecutors carry out their work is not uniform and hence citizens have lost confidence in the system.\textsuperscript{45}

The National Prosecution Authority Act can be said to be a policy Guideline that regulates the functions of all prosecutions. However, until it is put into operation, the situation remains the same.

3.5.8 LACK OF PUBLIC AWARENESS/ COOPERATION

The average Zambian citizen knows little about the role and function of the Director of Public Prosecutors as well as prosecutors. Flowing from this the prosecution service faces a major problem which is the reluctance on the part of the public to come forward and assist in the work of law enforcement. Prosecutors as well as the police can function more efficiently with a large degree of public co-operation. The constitution of Zambia apart from guaranteeing fundamental rights also places an obligation on citizens to observe certain duties such as assisting in the enforcement of the law at all times and to carry out with discipline and honesty legal public functions.\textsuperscript{46} These duties should be explained to the general public so that when the people know and appreciate these duties, then they will be willing to work hand in hand with the prosecution without viewing it as a hurdle but rather feel proud, knowing that they are doing something positive for the nation.

\textsuperscript{45} Ambassador Ochieng Adala, the criminal justice system in Zambia; enhancing the delivery of security in Africa (April 2009)

\textsuperscript{46} Article 113 of the constitution of Zambia enumerates nine duties of a citizen
3.5.9 ORGANISATIONAL CAPACITY

There are five provinces in which the DPP’s office has no representation, namely Eastern, Western, Northern, Luapula and North-Western provinces. Even though there is an office in Central Province, no advocate is stationed there. This may partly explain the level of public ‘ignorance’ about this office.\(^47\)

3.5.10 DELAYS CAUSED BY WAITING FOR APPROVAL TO PROSECUTE FROM THE DPP

One of the problems found within the prosecution service is that prosecutors cannot go ahead with prosecuting an individual without a go ahead from the DPP. As a result there are delays in dealing with criminal cases.\(^48\)

3.6 CONCLUSION

With reference to the role of prosecutors, it has been noted in the discussion that the decision to prosecute is a serious step which entitles the prosecutors to be very objective in their decision to prosecute. This is so because effective and equitable prosecution is significant not only to the maintenance of law and order but also to nurture public confidence in the hearts and minds of the Zambian citizens.

The paper has also highlighted the problems faced by the prosecution service over the years. The rationale behind the enactment of this NPA Act was to deal with the problems mentioned above. It is from this background that the next chapter looks at how that National Prosecution Authority Act tries to resolve these issues raised.

\(^{47}\) Interview: Mr. Dennis Manda 04/01/2012

\(^{48}\) Interview: Mr. Milimo 22/01/2012
CHAPTER 4

A CRITICAL ANALYSIS OF THE NATIONAL PROSECUTION AUTHORITY ACT: WHAT IS ITS RELEVANCY?

4.0 INTRODUCTION

Before the enactment of the National Prosecution Authority Act No. 34 of 2010 and until it comes into full operation, the prosecution service continues to face a lot of challenges in carrying out their duties effectively. These problems have an impact in the quest to attain criminal justice in this country. When a case is reported and taken to court, the interest of society is to see to it that justice prevails.

Among the problems faced by the prosecution service as mentioned in chapter three are lack of transport to ferry remands to and from courts of law so that they can be tried within a reasonable time, lack of stationery and other documents such as warrants and summonses, lack of computers, many prosecutors are still using dilapidated type writers, lack of libraries for research, lack of independency in terms of decision making as to whether a case is good enough to continue or not without assent from the DPP, lack of prosecutors in certain cases for instance, human trafficking cases and so people would be detained until prosecutors are selected to handle those cases. Another is lack of further training in certain cases, for example human trafficking issues.

It is from this background that this Act of 2010 will be examined to see if it addresses the above mentioned problems and others not mentioned above but appear in chapter three.

4.1 DISCUSSION OF THE NATIONAL PROSECUTION AUTHORITY ACT
The preamble of the Act provides that, it is an Act that provides for the establishment of the National Prosecution Authority Board and provides for its powers and functions; provide a framework for the effective administration of criminal justice; establish the witness management fund and provide for matters connected with or incidental to the forgoing.

In order to understand why legislation decided to come up with this new piece of legislation known as the National Prosecutions Authority Act, one needs to understand the challenges that were and still are in issue in the prosecution service. Some time ago in 1992 in the month of July, the law association of Zambia (LAZ) initiated a special committee to study the problems of delays in the administration of justice and delivering of judgments in Zambia. The committee submitted a detailed report with progressive recommendations which if they had been implemented would have surely paved a way for improving the delivery of justice in Zambia. The problems that were highlighted then are still prevailing even now and these are;

1. Shortages of court rooms, this problem has a bearing on the work of the prosecutors as well as witnesses. As a result of court room shortages, 3 magistrates share a court room consequently witnesses have to wait long hours outside for their turn and sometimes have to return the following day.

2. Lack of transport leading to accused persons not being taken to court on time and judicial officers on time. This also inconveniences prosecutors and witnesses.

3. Lack of facilities and tools such as computers and books on law. This is especially true for offices outside Lusaka as they hardly receive the latest statutes and law reports and all that is required to run an effective legal system across the country.

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1 Mulaye, Jolezya, Jane- *Prosecution in Zambia: why the failures?* Submitted in partial fulfillment for the award of Bachelor of Laws Degree(2003)
The Act does not make mention of how it is to help resolve these issues raised above, however, it is the opinion of the respondent interviewed that because this Act establishes a prosecution system that is independent, the contention is that it will be funded directly by parliament and not through the government ministry which at the moment is the ministry of justice.\textsuperscript{2} Once it is able to get direct funding from parliament it is argued that it will promote realistic and effective financial planning which will encompass buying of equipment and providing the necessary basic resources required to run an efficient prosecution system. It is envisaged that financial autonomy would, in the long run, help to build a prosecution system that is essentially competent for the effective operation of the office of the Director of Public Prosecutions.

As regards the issue of having unqualified prosecutors, the Act in section 8 (1) (d) provides that “the DPP has the power to set the qualification for the appointment of prosecutors”. This means that the power to stop prosecutors that are not well educated/qualified from prosecuting lies in the hands of the DPP and hence when he so wishes, he can set a uniform standard upon which prosecutors are to be chosen.

Section 9 provides for the appointment of a Chief State Advocate, Deputy Chief State Advocates, State Advocates and other staff of the Authority. In subsection 2, it states that “A Deputy Chief State Advocate shall be responsible for supervising the operations of the Authority in a province.” Further, the Act provides that a “Deputy Chief State Advocate subject to the control and direction of the DPP shall exercise the functions referred to in section 5 of this Act in respect of an area of jurisdiction for which

\textsuperscript{2} Interview: Mr. Dennis Manda 04/01/2012
the Deputy Chief State Advocate is appointed.\textsuperscript{3} This provision deals with the problem of not having the office of DPP represented in numerous provinces and so occasioning among other things delays.

This provision of the Act states the function of the Deputy Chief State Advocate but it does not state the function/s of the Chief State Advocate or the State Advocates. As a civil officer, one needs to know where they draw their authority from, they are to function pursuant to some provision of the law, this is for purposes that once challenged, that individual knows where their authority stems from and hence able to defend their case, However, this Act does not outline the functions of either the Chief State Advocates and the State Advocates, it creates them but does not set their functions, the law should not be assumed, in this section there is an assumption that their duties are known but that should not be the case, the law should be express.

Concerning the problem of having too many prosecutors in different institutions, the National Prosecution Authority Act though not yet in implementation establishes an autonomous National Prosecution Authority which will give guidelines to all prosecutors, those operating under the Drug Enforcement (DEC), Anti- Corruption Commission (ACC), National Pensions Scheme Authority (NAPSA), Zambia Wildlife Authority (ZAWA) or any other authority as it will be under one body.

Section 21 (1) of the Act states the

\begin{quote}
minister may by statutory instrument after consultation with the Authority make regulations for giving effect to the purposes and provisions of this Act. The regulations made may make provision for the procedures to be followed in respect of the prosecution of criminal cases,\textsuperscript{4} a mechanism for monitoring and supervising prosecutors.\textsuperscript{5}
\end{quote}

What this means is that though there are many prosecutors prosecuting, the minister by statutory instrument may issue a regulation that will monitor the work of all prosecutors irrespective of whether

\textsuperscript{3} The National Prosecution Authority Act No. 34 of 2010 Section 9 (3) (a)
\textsuperscript{4} The National Prosecution Authority Act No. 34 of 2010 Section 21(2)(a)
\textsuperscript{5} Section 21(2)(b) Act No 34 of 2010
the prosecutor is from NAPSA or ZAWA. This promotes a well coordinated prosecution system, consequently enhancing the effective administration of justice.

Section 6 provides that the “Authority shall not in the performance of its functions, be subject to the direction or control of any person or authority, other than the DPP”. This section simply makes it clear that no one is to direct how this authority is to function apart from the DPP. This section tackles the problem raised of interference from people for instance busy bodies or political interference.

Section 15 establishes a fund for witnesses, the fund is to be used to ferry witness to and from court, for the counseling of witnesses before testifying in any matter before court and for any matter relating to witness management.

The issue of witness management in Zambia has been an issue for a long time. If anything Zambia has never had a witness protection programme. The National Prosecution Authority Act tackles the issue of witness management in terms of ferrying witnesses and counseling of witnesses but does not address the issue of witness protection. This part of the Act does not state how the fund will be used to protect witnesses who suffer from threats or intimidation from the relatives of the accused or the accused himself.

Furthermore, it does not address how this fund is to be utilised, there is still need for policy guidelines to be formulated on how this fund is to be utilised for example the Act is not clear if this fund will be used for both prosecution witnesses and the defence witnesses. There are times when an accused person wants to call witnesses but most of them are often in police custody and they cannot access their witnesses so there are instances where in most cases defence or accused persons never call

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6 Interview: Mr. Mukuka 17/02/2012

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witnesses. The state has an obligation to ensure that the accused person has a fair trial and must provide him/her opportunity to be heard and this includes doing everything possible to ensure that witnesses that are required to be there are present.

Lack of public awareness of the role of prosecutors is dealt with under section 14 of the NPA Act deals with code of conduct for prosecutors and State Advocates; it states that the Director of Public Prosecutions shall in consultation with the minister and after consultation with the Chief State Advocate and Deputy State Advocates, adopt a code of conduct which shall bind the Chief State Advocate, Deputy Chief State Advocate and the prosecutors.

In subsection 2, it states that the “code of conduct shall be published in the Gazette for general information”.

Further, the National Prosecution Authorities Act in section 20 provides for general offence, it imposes fines and penalties to individuals who obstruct the cause of justice. This will help in ensuring compliance with the Act.

With regards to having to wait for consent from the DPP, the Act provides in section 8(3) that

where, by any written law, the sanction, fiat or written consent of the DPP is necessary for the commencement or continuance of the prosecution of any offence, the DPP may by order, in writing, that all or any of the powers vested in the DPP to issue the sanction, fiat or written consent may be exercised by the Chief State Advocate or a Deputy Chief State Advocate,

This provision here makes it possible for Chief State Advocate or the Deputy to handle the issuance of a fiat or written consent, the responsibility does not just lie with the DPP anymore.

This provision was not there before as well as all the provisions being discussed. This provision helps in that prosecutors will not have to wait long to get the approval from the DPP, even the

7 Interview: Mr. Palo 17/02/2012
8 Interview: Mr. Palo 17/02/2012
Chief State Advocates or the Deputy under this Act are given the power handle the issuance of a fiat or written consent

With reference to the problem of not having enough experts or experienced prosecutors, the Act gives the DPP the power to “appoint such experts as are necessary to assist the DPP carry out his functions”.  

4.2 ANALYSIS OF THE RELEVANCY THE NATIONAL PROSECUTION AUTHORITY ACT.

Though the Act provides things such as the autonomy of the prosecution authority, it does not address other problems like further training of prosecutors to meet the current challenges, the problem of transport for remands, the provision of modern equipment such as computers, the interaction between the investigative wings as well as stake holders or the creation as well as implementation of a prosecution policy that will bind all prosecutors across the country.

However, from the discussion of the Act given above, it can be concluded that the National prosecution Authorities Act is a relevant piece of legislation. The Act provides for an independent body. Previous works done by different scholars had advocated for an independent National Prosecution Service that would be open and honest in its dealings with the public. The essence of this Independent National Prosecution Act was also to have the prosecution functions separated from the investigative functions and accordingly have the practice of appointing police prosecutors discontinued. The intention of the Act is to remove prosecutors from the police and be under the NPA Act. However, the NPA Act does not provide for this transition of lay prosecutors to be under the Board of Authority either does it mention how police prosecutors will taken care of or lay prosecutors. This is the Dichotomy faced by the prosecution service, currently the police prosecutors report to the Investigator General, they are not

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9 The National Prosecution Authority Act No. 34 of 2010 Section 8(2) (k)
supervised by the DPP, meanwhile the DPP is the custodian of criminal proceedings in the country, the Act does not mention anything on how the police prosecutors will be co-opted into the NPA Act or how the NPA Act will take care of the issue of lay prosecutors.

The relevancy of the Act can be seen with the many other provisions that it has brought in that did not exist before the enactment of this Act. For example, section 5 which provides for the functions of the Authority created, this section provides for so many functions that were not there before. Additionally, the functions of the DPP have been extended and made more elaborate, this Act gives him the mandate to do a lot more than the constitution did in terms of his functions. Section 10 puts in effect the guidelines outlined in the United Nations Guidelines for prosecutors. Prosecutors are now able to read section 10 (6) and know what is expected of them in carrying out their duties. The Act tries to address the issue of witness management in Part III, though more needs to be done in this area but this is a step nevertheless in the right direction. Further, the code of conduct for prosecutors and State Advocates is created in the Act and made available to the public as a way of promoting accountability and transparency. In addition the Act creates a board that is to oversee the activities of the prosecution service; it also provides for Deputy State Advocates who are to supervise the operations of the Authority in each and every province, this is to ensure that prosecutors all around adhere to the same guidelines. All these are steps in improving the delivery of criminal justice in Zambia and for this reason, it can be concluded that the National Prosecution Authority Act is a relevant piece of legislation.

4.3 CONCLUSION

The work of the prosecution system in Zambia over the years have been described as incoherent, insufficient and as a result there have been delays in disposal of criminal cases, congestion in remand prisons and high levels of acquittals have been cited as evidence of inefficiency in the prosecution
service as the research paper shows. Constitutional and legislative provisions supplemented by various policy papers have established a framework that in principle allows for an effective and efficient function of the prosecution service in the Zambian criminal justice system, the National Prosecution Authorities Act No. 34 of 2010. This Act is the first of its kind in Zambia. In order to increase the performance of the prosecution service and the service of the criminal justice system this research has explored the challenges facing the prosecution service (previous chapter) and what has been addressed instantaneously with the enactment by parliament of the National Prosecution Authority Act.

This chapter was about critically looking at the Act and seeing whether is adequate in dealing with the problems raised in chapter three that affect the performance of the prosecution and from there draw a conclusion as to whether this Act is a relevant piece of legislation or not. The conclusion at the end of the discussion is that the National Prosecution Authorities Act is a relevant piece of legislation to Zambia’s criminal justice system. As its preamble states, it does provide for mechanisms that will bring about for the effective administration of criminal justice.

The following chapter contains the conclusion and recommendations arising from this research that will promote the advancement of the idea towards creating a criminal justice system that ensures that justice is administered.
CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1 GENERAL CONCLUSION

In an attempt by the government to address the factors that affect the work of prosecutors in the prosecution service so as to improve the prosecution service, Parliament enacted the National Prosecution Authorities Act containing various innovative provisions that are intended to address prevailing problems affecting the prosecution service. One of the objectives of this research was to look into the historical machinery of justice in the prosecution service and see how it has operated. The research has shown how the law in the area of administrating criminal justice began. The paper briefly looked at how the law was administered by the natives during the time before the white settlers arrived. When the white settlers arrived, they brought with them a new way of administering criminal justice, they introduced the police force and disputes between natives were resolved in native courts presided over by native commissioners. As the law developed systems of imprisonment were introduced and as the awareness for the requirement of justice increased prosecutors were introduced and since then the law as recognised the importance of prosecutors.

The dissertation further on looked at what is expected of a prosecutor as it was the intention of this paper to bring to light the functions of the prosecutor in the administration of criminal justice, what his/her role is and how he or she is to carry out his/her duties effectively. Reference was made to the United Nations Guidelines on the role of prosecutors as well as the Standards of Professional Responsibility and Statement of Essential Duties and Rights of Prosecutors illustrating the duties and rights of prosecutors.

From then on the research looked that the problem affecting the prosecution service so as to establish the rationale behind the enactment of the Act and see how the Act addresses a wide range of these problems. The conclusion being that the National Prosecution Authorities Act is a relevant piece of legislation in
Zambia as it helps to bring about an effective administration of criminal justice through its various provisions in the Act. For instance section Part III provides for the Witness Management Fund, section 17 provides for how the fund is to be used to ferry witnesses to and from court, for counseling of witnesses and any other matter relating to witness management. Additionally, we have in this Act for the first time, parliament putting into national legislation the duties of a prosecutor so that it is clear to the prosecutors as well as the public what the duties of a prosecutor are. Furthermore, a code of conduct binding the prosecutors, State Advocates, Deputy Chief State Advocate and the Chief State Advocate shall be published in the Gazette for public information. The National Prosecution Authorities Act in section 20 provides for general offence, it imposes fines and penalties to individuals to obstruct the cause of justice. This will help in ensuring compliance with the Act.

The relevancy and effectiveness of the National Prosecution Authorities Act has been determined by the extent at which the Act responds to the problems raised that are affecting the prosecution service. The dissertation has shown that a number of sections in the Act try to address these problems as discussed in preceding chapter and the recommendation made are based on what has been discussed in the previous chapters.

5.2 RECOMMENDATIONS

i. APPOINTMENT OF THE DPP

Scholars have argued that the reason why the prosecution service is not functioning as it should be is that the way in which the DPP is currently appointed, places excessive power in the hands of the President and undermines the independence of the institution.1 It was recommended by these scholars that legislation governing the appointment of the DPP should be promulgated which guarantees the

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1 Ambassador Ochieng Adala, the criminal justice system in Zambia; enhancing the delivery of security in Africa (April 2009), 82.
independence of the DPP’s office. Legislation should be put in place on the appointment of the DPP in which a method is adopted that is more likely to guarantee the independence of the DPP’s office. Two recommended methods for appointment are: The Judicial Service Commission should recommend a person for the position of DPP, who is then appointed by the President. Suitable individuals should be invited to apply for the position and then be selected on merit after a process of selection that includes formal interviews. Alternatively, a tribunal of judges or a board of independent persons could recommend two or three candidates, in order of preference for appointment, to the position of DPP by the President. The tribunal or board should provide reasons for their selection and preference. Such a tribunal or board should be appointed through a constitutional mechanism.²

ii. SENSITISING THE PUBLIC

Government, in collaboration with the Law Association of Zambia and civil society organisations working in the areas of human security, human rights and the maintenance of good governance, should institute programmes aimed at sensitising the general public on the functions of key constitutional offices such as that of the Director of Public Prosecution.³

iii. REPRESENTATION ON THE BOARD OF AUTHORITY

The Act in section 7 provides for who shall consist of the Board of Authority, it is suggested that the Act in this section should include officers from investigative wings such as the police, the anti-corruption, drug enforcement, experts in the field of criminal law, from the judiciary or a representative from LAZ and so the recommendation is that this section of the Act should be amended

iv. SETTING OUT THE FUNCTIONS OF THE CHIEF STATE ADVOCATE

The Act in section 9 does not specify the functions of the Chief State Advocates as well as State Advocates. It is recommended the Act needs to outline the functions of the Chief State Advocate as well

² Ambassador Ochieng Adala, the criminal justice system in Zambia (April 2009), 82.
³ Interview: Mr. Milimo
as those of the State Advocates so that their duties are well defined. This allows the public to know exactly where they draw their power from in relation to their duties.

v. IMPROVING PART III OF THE ACT

Part III establishes the Witness Management Fund which does not specify how it is going to be used to protect witness that face threats or intimidation. It is of the essence that the Act should consider including a provision that will look into the issue of offering protection to witnesses and so it is recommendation that the Act should include a provision dealing with protection of witnesses.

The Act should also consider introducing departments in the area of prosecution so that specialisation is made possible. This will allow prosecutors that are well qualified and skilled in that particular field to occupy those departments. Therefore enhancing the quality of prosecutions being done in the country

5.3 CONCLUSION

In conclusion, this research paper submits that the National Prosecution Authorities Act has the capacity to achieve effective administration of criminal justice in Zambian. It further has the capacity to contribute to the promotion of good professional ethics amongst prosecutors in Zambia. However, in order to further improve the effectiveness of the NPA Act, it is recommended that the Act include provisions for witness protection programme. This will enhance the confidence and credibility of witnesses as they will know that they are protected. The Act should also focus on outlining the functions of the State Advocate and Chief State Advocates. Further, the Act should reconsider the members that make up the Board of Authority in order to make it more representative, the board needs to comprise of members that are conversant with the administration of criminal law. The general recommendations have to be considered in order to improve the prosecution service as a whole.
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