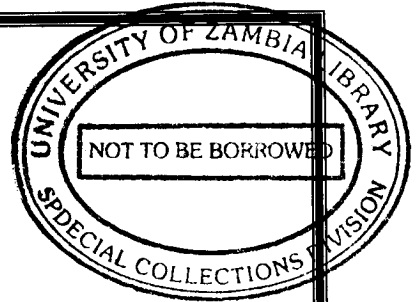


**THE ZAMBIA POLICE SERVICE AND ITS
ROLE IN UPHOLDING THE RIGHTS OF
CRIMINAL DEFENDANTS**

BY

HENRY SABOI AONGOLA



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**Being a Directed Research Paper Submitted to the School of
Law of the University of Zambia in partial fulfilment of the
requirements for the award of the Degree of Laws (LLB)**

23rd NOVEMBER, 2006.

UNZA

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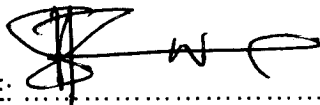
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DECLARATION OF AUTHORSHIP

I, Henry Saboi Aongola do hereby declare that the contents of this Directed Research Paper are entirely based on my own findings and that I have not in any respect used any person's work without acknowledging the same.

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

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Defendants",

be accepted for examination. I have checked it carefully and I am satisfied
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DATE: 23/11/2006.....

SIGNATURE:


Simon E. Kulúsika
SUPERVISOR

DEDICATION

This Directed Research Paper is dedicated to my parents Mr. Robinson Aongola Mutakatala and Mrs. Florence Likando Saboi Aongola for their constant love, comfort and encouragement.

This paper is also dedicated to my beloved daughter Faith Likando Aongola, may this paper be your source of inspiration in your education. Beloved daughter always remember the song – “Silent O be Silent God Knows What is best... God’s dear Child will Morn in silence to trust Jesus come What may.”

PREFACE

The purpose of this Directed Research Paper is to examine the Zambia Police Service's role in upholding the rights of criminal defendants. Police officers occupy a position of great importance in the preservation of the basic human rights guaranteed by the Constitution of Zambia and must therefore, be effective instruments through which the rule of law is upheld. In an ideal situation, they should ensure that any incident of human rights abuse is effectively prevented and not themselves to perpetuate these abuses. In addition police officers must always exercise care and caution in the performance of their functions.

The constitution of Zambia provides that any person charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty. The Constitution further stresses that a criminal defendant shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. Therefore, to all intent and purposes, treatment must reflect just this. Alias, this is sadly not the case in most cases.

This research paper comprises five chapters. Chapter one establishes an overview of the problems surrounding the Zambia Police Service and its role in upholding the rights of criminal defendants. Chapter two examines the Zambia Police's powers of arrest, detention, interrogation, search and seizures in the pre-trial procedure and during trial of the criminal defendant. The third chapter examines the Zambia Police's role in upholding the due process protections applicable to the trial stage of accused persons. Chapter

four discusses the role of the Police Public Complaints Authority, Human Rights Commission, Anti-Corruption Commission, Legal Resource Foundation and Commission for investigations in ensuring that the Police uphold human rights. Finally, Chapter five is the conclusion of the entire research paper followed by recommendations.

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First and foremost, thanks be to God the Creator of Heaven and Earth without whose silent guidance my study would have been in vain. As written in Psalms 126:3, "the Lord has done great things for us, whereof we are glad."

I am also highly indebted to my supervisor Simon E. Kulusika for taking time to supervise the writing of this Directed Research Paper. His guidance throughout the period of research and documentation of this paper will always be treasured.

I would like to express my gratitude to the Zambia Police Service for offering me the sponsorship to study the Bachelor of Laws at the University of Zambia.

My gratitude also extend to my family members for their constant encouragement and support; Mr. and Mrs. Liywalii, Mr. and Mrs. Silumbu, Mr. and Mrs. Lubasi, Mr. and Mrs. Munalula and the late Hastings Aongola.

Special thanks go to my friends who made my stay at UNZA enjoyable and fulfilling; Mr. and Mrs. Mabiya, Mr. and Mrs Mungeya, Mr. and Mrs. Chali, Captain Goma , Kasonde, Chipo, Chanda, Kasenge, Sombo, Kabukabu, Matilda and Anthony.

A million thanks to all my lecturers and tutors for the knowledge imparted in me.

MAY GOD RICHLY BLESS YOU ALL!

LUSAKA 2006

HENRY SABOI AONGOLA

ABSTRACT

This Directed Research Paper critically discusses the role of the Zambia Police Service in upholding the rights of criminal defendants. The police are a cornerstone in the administration of the criminal laws in Zambia. Therefore, they maintain a crucial position in enforcing law and order in society. The functions of the police have a direct impact on the quality of life of individuals as well as society as a whole. As such, there is a duty incumbent on the police in the performance of their functions to respect and protect human rights of criminal defendants.

The police has not performed up to the society's expectation. Hence the need for watchdog institutions like the Police Public complaints Authority, Human Rights Commission, Anti- Corruption Commission, Legal Resource Foundation and Commission for Investigations to operate in a way that encourages the police to improve their human rights record. These institutions will make the Police more open and accountable to the community and to the legal order governing their authority. Besides, government must have political will to evaluate police actions and take necessary measures that would enhance the rights of criminal defendants.

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- Zambia Police Act, No.13 of 1994 Cap.107 of the Laws of Zambia, pp 10 and 23
- Zambia Police (Amendment) Act No. 14 of 1999, p 36

TABLE OF ABBREVIATIONS

ACC.....	Anti-Corruption Commission
ACP.....	Assistant Commission of Police
BBC.....	British Broadcasting Corporation
CJ.....	Chief Justice
CPC.....	Criminal Procedure Code
CRC.....	Constitutional Review Commission
DEC.....	Drug Enforcement Commission
DCIO.....	Divisional Criminal Investigations Officer
DCP.....	Deputy Commissioner of Police
DPP.....	Director of Public Prosecutions
HRC.....	Human Rights Commission
IG.....	Inspector General of Police
LAZ.....	Law Association of Zambia
LRF.....	Legal Resource Foundation
PC.....	Penal Code
PHRC.....	Permanent Human rights Commission
PPCA.....	Police Public Complaints Authority
SHQ.....	Service Headquarters
USA.....	United States of America
UTH.....	University Teaching Hospital
UNZA.....	University of Zambia
V.....	Versus
ZNBC.....	Zambia National Broadcasting Corporation

CHAPTER ONE

OVERVIEW OF THE RESEARCH PROBLEM

1.1 INTRODUCTION

The essence of the criminal procedure is to protect criminal defendants against police misconduct and prosecution abuses. The law of criminal procedure strives to balance evenly antagonistic interests of society and criminal defendants. Societal interest demand that criminals be arrested tried and punished. Equally justice demands that an accused be given every opportunity to defend himself and vindicate his innocence and that he should not be deprived of his personal liberty until he has been found guilty by a court of competent jurisdiction. To meet this twofold requirement, all systems of criminal procedure have built certain procedural safeguards into the criminal process.¹ In Zambia the detailed provisions regarding the safeguards into the criminal process are to be found, inter alia, under Article 18 of the Constitution of Zambia,² Criminal Procedure Code,³ Penal Code,⁴ Zambia Police Act⁵ and International Human Rights Instruments such as the United Nations Charter⁶, Universal Declaration of Human Rights,⁷ International Covenant on Civil and Political Rights,⁸ Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment⁹ and the African Charter on Human and

¹ Carlson Anyangwe (1998) "Finality and Miscarriage of Justice in Criminal Law: Post-Colonial Remedies in Common and Civil Jurisdiction." *Zambia Law Journal*, Vol. 30 p 51.

² Chapter 1 of the Laws of Zambia.

³ Chapter 88 of the Laws of Zambia.

⁴ Chapter 87 of the Laws of Zambia

⁵ Chapter 107 Of the Laws of Zambia

⁶ 1945

⁷ 1948

⁸ 1966

⁹ 1984

Peoples' Rights¹⁰. These are the primary legislation which the Zambia Police must rely on when instituting criminal proceedings in Zambia.

The role of the Zambia Police service in upholding the rights of criminal defendants can not be overemphasized. The police must be instruments through which the rule of law is upheld throughout the country and they occupy a position of great importance in the preservation of the basic human rights guaranteed by the Constitution of Zambia. However, in practice, the rights of criminal defendants are overlooked in most cases especially when important interests of society are under attack. This is very true considering the numerous complaints against the Zambia Police Service related to violation of the rights of criminal defendants which have an adverse effect on the whole society.

The problem of the police brutality and trampling on the rights of criminal defendants is so widespread in Zambia that most of the human rights abuses are not reported. However, the media in Zambia has played an increasingly important role in exposing the abuses.

To illustrate how cruel the police can sometimes be, on 11th April, 2003 Constable Sikota Sikota of Jokomene Police Post in Lusaka West arrested Martin Kalembelembe a farm labourer for failing to pay back his debt.

This police officer did not only unlawfully detain the victim but also severely disfigured his buttocks by whipping him with a metal rod¹¹. A personal visit at some of the most notorious urban police stations of Lusaka such as Lusaka Central, Emmasdale, Matero and Kanyama revealed that unlawful and prolonged detentions, torture, unlawful searches and seizures, involuntary confessions, unlawful use of firearms and abusive language are

¹⁰ 1981

¹¹ The Post newspaper of Sunday 18th May, 2003.

but a few of the abuses taking place there. To indicate that the problem of police brutality and disregard of human rights of criminal defendants is widespread in Zambia, the chart below shows information on national statistics obtained on 24th July, 2006 from the Records Department at the Zambia Police Headquarters in Lusaka. Some of the types of offences repeatedly committed by police officers against accused persons in the years shown include; Murder, Assault, Rape and Corrupt practices¹².

YEAR	NUMBER OF POLICE OFFICERS ARRESTED	NUMBER OF POLICE OFFICERS DISMISSED	NUMBER OF COMPLAINTS FORMALLY REPORTED TO THE POLICE
2004	56	38	102
2005	41	26	169
FIRST HALF OF 2006	11	15	110
SUB-TOTAL	108	79	371

These human rights violations by the police impact negatively on the whole process of criminal proceedings from the time criminal defendants are investigated and arrested until the final verdict is passed. Nowadays, it is not uncommon to see police officers assaulting suspects in public even when such suspects are not resisting arrests. Besides, it is also quite common to see police officers shooting at fleeing suspects. This occurs where the suspect is accused of committing a minor offence.

1.2 ZAMBIA POLICE SERVICE

The Zambia Police Service is a creation of Article 103 of the Constitution of Zambia. The Constitution provides that, “the police shall be nationalistic, patriotic, professional,

¹² Interdictions and Dismissals register – R210 of 2006, Records Departments, SHQs.

disciplined, competent and productive, and its members shall be citizens of Zambia and of good character.” Furthermore, Article 104 of the Constitution provides for the functions of the Zambia Police as; “to protect life and property, preserve law and order, detect and prevent crime, co-operate with the civilian authority and other security organs established under the Constitution and with the population generally.” Before assuming their training, police officers are required to take an oath of allegiance to the President of the Republic of Zambia which binds them to carry out the Constitutional functions assigned to them¹³. In practice, police officers have lamentably failed to perform their functions up to society’s expectation.

Although most literature on the functions of the police is very negative, the author will dig deeper to find out why police officers fail to effectively uphold the rights of criminal defendants.

Firstly police officers also have human rights which should be respected by providing them with an enabling work environment. However, in reality, police officers work under deplorable conditions of service. Not only are the police officers among the lowest paid public servants but also reside in dilapidated houses.

In a story entitled, “**Handcuffs, Transport Shortages hamper police work in Livingstone**” by a post newspaper staffer Ruth Banda, the then Secretary to the Cabinet Leslie Mbula was asked how government expected civil servants and public workers to work effectively and diligently without needed logistics as well as guard themselves against corruption when their conditions of service are poor.?¹⁴

¹³ Stage one of the Zambia Police Training Manual, Lilayi Police College Publication of 1998.

¹⁴ The post newspaper of Friday 9th April, 2004

However, the question to the Secretary to the Cabinet fall on deaf ears as nothing in terms of conditions of service improved. Even the most required working materials such as police uniform, stationery and transport are not readily available. What is worse is that there is little or no scientific materials and manpower with a technical know-how to carryout scientific investigations such as speed traps, medical examinations, finger prints, ballistics, postmortem and others.

It is not uncommon to hear these days that police officers have run out of teargas canisters during riots because their armory is inadequately stocked. It was sad to listen to UNZA Radio ¹⁵ that police officers who ran out of teargas canisters during the riot/demonstration at UNZA resorted to using stones. This is one of the few effective means police resort to in order to perform their functions.

It is very common these days for police officers to ask complainants to supply stationery or transport to carryout investigations. This situation puts police officers in a compromised position in relation to the accused person's rights. This is so because after the complainant supplies the police with working materials, he/she expects not less than harsh treatment of the accused.

The critical question is how can society expect police officers whose working rights are violated and abused to be trusted to uphold the rights of criminal defendants? A demotivated police service can be a danger to the respect and protection of fundamental human rights of the criminal defendants.

In order to make ends meet police officers resort to all sorts of things hence the many complaints leveled against them. Not only do police officers engage in corrupt practices but also steal the very basic needs of life such as food from the Police Stores Department.

¹⁵ UNZA Radio Main news of 19th June, 2006

Thus in a story in the Post entitled, “**Police arrest four cops for stealing food**”, Sheikh Chifuwe quotes the then Inspector General of Police Zunga Siakalima saying that, “the government has uncovered a syndicate in which police officers have stolen food stuffs from government stores worth forty (40) million kwacha.”¹⁶ This is a manifestation of the poor conditions of service which the police officers are subjected to.

Although police officers receive mealie meal once in a while, they have no right to claim the mealie meal because it is given at the discretion of the government. Furthermore, the internal rule governing the distribution of bags of mealie meal is such that married police officers receive two bags while a single officer receives one bag. What is disheartening is to note that a police officer married to a fellow officer still receives two bags. The logic behind the policy is that if the police officers married to fellow officers received two bags each, they will have four bags at the end of the day.¹⁷ As such government finds it practicable to discriminate some police officers on the basis of marital status and thereby infringing the Constitution on the protection from discrimination on the ground stated.¹⁸

Secondly, there is political interference in the work of the police, which in a number of cases result in the police taking action in order to please the political leaders in government. In extreme cases, police officers are presented with a choice whether to take action or lose their employment. To support the above statement a Times of Zambia newspaper staffer Chishimba Chishimba quoted President Levy Mwanawasa in a story entitled, “**mess with CRC sittings at own peril**,” giving orders to the police to arrest anyone planning to disrupt the CRC sittings. President Levy Mwanawasa said, “It is treasonable to disrupt the CRC. This is a timely warning. Treason is not bailable and

¹⁶ The Post newspaper of Sunday 30th May, 2006

¹⁷ Internal Memorandum from Police Service Headquarters Signals department of January, 2004

¹⁸ Article 23 of the constitution of Zambia, chapter 1 of the Laws of Zambia

those planning the act will be thrown into jail where they will stay for a long time.... this is a directive. All those planning to disrupt the proceedings should be locked up.”¹⁹

This kind of talk by the Head of State is uncalled for because the President should perform with dignity and leadership all acts necessary or expedient for or reasonably incidental to, the discharge of the executive functions of government subject to the overriding terms of the Constitution and the Laws of Zambia which he is constitutionally obliged to protect, administer and execute.²⁰ However, the pronouncement by the President quoted earlier only goes on to show that there is no political will to ensure that the police uphold the rights of accused persons.

Although most senior police officers fail to admit that they work under political influence, in practice this fact is crystal clear from the way they perform their functions.

For instance, the post newspaper reporter Biven Saluseki in a story entitled, “**Cops chain bus conductor over Mama Mokola’s death**,”²¹ exposed the human rights abuses committed by Ndola police officers on a criminal defendant Humphrey Mumba²² the conductor of the fateful minibus in which Mama Mokola died simply to please President Mwanawasa.²³ However, it is not all acts of the police officers leading to abuse and violation of human rights that are instigated by the state. What is disheartening is to discover that police officers that have been accused of committing human rights abuses and violations have received protection from the state in that, instead of prescribing charges against them, the state opts either to retire them from service or transfer them, or

¹⁹ Times of Zambia, Tuesday 29th July, 2003

²⁰ Article 44(1) of the constitution of Zambia, chapter 1 of the Laws of Zambia

²¹ Mama Mokola is President Mwanawasa’s late mother.

²² Humphrey Mumba was admitted to Ndola General Hospital after he sustained serious burns from the accident. However, the police officers handcuffed him to his hospital bed.

²³ The Post newspaper of Thursday 13th May, 2004.

promote and appoint them to other government departments. This action has served a number of police officers from facing prosecutions for crimes allegedly committed against criminal defendants. Police brutality was adequately exposed by the establishment of the Commission of Inquiry into the Allegations of Torture, Abuse or Violation of Human Rights on the persons suspected of involvement in the attempted Coup d 'e'tat of 28th October 1997. The commission headed by Justice Japhet Banda made several findings on the nature and pattern of torture. The commission found that police and security officers were involved in the acts of torture during interrogations of persons suspected to be involved.²⁴

The commission further found that nearly all the suspects were subjected to severe beatings which was the most common form of torture. The beatings were carried out using a number of instruments such as wire cables, horse pipes fitted with metal, steel rods, planks, metal objects, short buttons and butts of AK 47 assault rifles. Besides, the accused were subjected to slaps, blows or punches, sjamboks, karate chops and kicks resulting in infliction of injuries.²⁵ In another development it was unfortunate that despite the Permanent Human Rights Commission (PHRC) finding that the coup suspects were tortured, it went ahead and 'defended' the police officers instead of the coup suspects in its recommendations on the report of the alleged torture.²⁶

²⁴ A Report of the Commission of Inquiry into the allegations of torture, abuse or violation of Human Rights, 1998.p43

²⁵ Ibid p.43

²⁶ Human Rights Watch World Report 2001: Zambia Human Rights Developments, New York U.S.A.

The PHRC recommended that police officers accused of torture, thus inter alia Emmanuel Lukonde and Nonde be retired in public interest. However, it was saddening for the PHRC to have advised against instituting criminal proceedings.²⁷

In reacting to the PHRC recommendations, the government in 1998 promoted the then Assistant Commissioner of Police (ACP) Nonde from Lusaka Division (Provincial) Headquarters where he held the post of Division (Provincial) Criminal Investigation officer (D.C.I.O) to the post of Deputy Commissioner and transferred him to the Drug Enforcement Commission (DEC). The government furthermore promoted the then Deputy Commissioner of Police (DCP) Emmanuel Lukonde who was the Director of Criminal Investigations at Police Service Headquarters to the post of Commissioner of Police. This was a clear act of government's lack of political will to bring erring police officers to justice.

1.3 CONCLUSION

This chapter has established an overview of the problems surrounding the Zambia Police Service and its role in upholding the rights of criminal defendants. Despite the many violations and abuses of rights mentioned, there is hope that the rights of criminal defendants will one day be fully respected and protected due to the various checks and balances on police abuse being put in place. Besides, the police should let the Constitution of Zambia and other human rights legislations have a direct impact in the manner in which they perform their functions.

The next chapter will examine the Zambia Police powers in the pre-trial procedure of the criminal defendant. The chapter will thoroughly discuss the impact of police powers of arrest, detention, interrogation, search and seizer on the rights of criminal defendants.

²⁷ Ibid

CHAPTER TWO

THE ZAMBIA POLICE SERVICE'S POWERS IN THE PRE-TRIAL PROCEDURE OF A CRIMINAL DEFENDANT

2.1 INTRODUCTION

The Zambia Police Service is vested with wide powers in pre-trial stages of a criminal defendant. Police officers have such powers as; to collect and communicate intelligence information affecting the public peace, to prevent the commission of offences and public nuisance, to detect and bring offenders to justice and to apprehend all persons whom they are legally authorized to apprehend and for whose apprehension sufficient grounds exist.²⁸ Moreover, the police though owing their allegiance to the government of the day are expected for all intent and purposes to be impartial and try to respect and protect human dignity as well as uphold the rights of all criminal defendants. Therefore, the author will in this chapter concentrate on examining the exercise of Police powers of arrest, detention, interrogation, search and seizure which have an impact on the rights of criminal defendants in the pre-trial stage.

2.2 ARREST

An arrest has been defined as, “the deprivation of an individual’s liberty by some lawful authority, for the purpose of compelling his appearance to answer a criminal charge, or as a method of execution.”²⁹ It is important to note that an arrest can also be made by private persons³⁰ and Magistrates³¹. However, most arrests are made by Police Officers because

²⁸ Section 14 (3) of the Laws of Zambia Police Act, Cap 107 of the Laws of Zambia

²⁹ Blackstone’s Law dictionary. P.42

³⁰ Section 31 of Criminal Procedures Code, Cp. 88 of the Laws of Zambia.

³¹ Section 35 and 36 of Criminal Procedures Code, Cap. 88 of the Laws of Zambia.

they are charged with the responsibility of enforcing the Law as already established above. Before making an arrest, the Police Officer must have some proof that a crime has been committed by someone and a prima facie case against the individual exists sufficiently to justify bringing him before a court to answer a criminal charge. Criminal proceedings may be instituted either by the making of a complainant or by bringing before a magistrate a person who has been arrested without warrant.³² All offences fall into one of the two categories, cognizable offences and non-cognizable offences. A cognizable offence is one which a police officer has a power to arrest without a warrant³³ and this power is expressly stated in the criminal procedure code.³⁴ Penal offences are listed in the First Schedule to the Criminal Procedure Code and the power of arrest in respect of each offence is set out.

2.2 (i) ARREST UNDER WARRANT

A Warrant to arrest is required in all cases where the offence of which it is desired to apprehend the accused is not one of which the power of arrest without warrant exists. The person executing such a warrant must ensure that the name of the person to be arrested corresponds with the one written in the warrant and where there is a clear discrepancy the warrant should not be executed but a new warrant obtained.³⁵

With regard to the arrest under warrant, it is worth to note that the Police have been failing to uphold the rights of criminal defendants as early as 1952. Moreover the courts have been quick to hold that Police action was irregular because they did not comply with the procedure for instituting Criminal Proceedings.

³² Swarbrick, E. J. (1991) Magistrate's Handbook. 6th ed. P. 56.

³³ Ibid p56-57.

³⁴ Section 56, 27, 29 and 37 of the Criminal Procedure Code.

³⁵ Ibid p. 56 - 57

This was in the case of **R.v. Ali Chembe³⁶**, where the accused was charged with driving the motor vehicle under the influence of alcohol. The Police warned him that he should appear in court the following day. The Court held that this was a wrong way of instituting criminal proceedings. The court further stated that the Police should have first sworn a complaint before the court. The warning of the accused to appear before the court the following day was irregular and therefore wrong.

2.2 (ii) ARREST WITHOUT A WARRANT

If there is no express power of arrest without warrant then the offence is non-cognizable and there is no inherent power of arrest without warrant. However, such a power may arise due to the circumstances of a particular case or the behaviour of the criminal defendant³⁷. In such cases, where a police officer has arrested without warrant, the Magistrate should satisfy himself that the arrest was lawful by having been effected under one of the provisions relating to such arrest in section 26, 27, 29 and 37 of the Criminal Procedure Code.

For an arrest to be lawful, it must be done in accordance with the law and anything falling short of the requirements of the law will be unlawful arrest and hence a clear infringement of the rights of a criminal defendant. With regard to a lawful arrest it has been observed by Raymond and Dahl that, "it is important that the decision to arrest be effected cautiously and only when it is necessary. To this effect, the Police should when making an arrest act in accordance with the law and should not use discretionary power vested in them arbitrary to the detriment of an individual."³⁸ Where a Police Officer makes an arrest without warrant, it is incumbent upon him to inform the person so

³⁶ (1952) 5 NR.612

³⁷ Ibid p. 57

³⁸ Raymond and Dahl (1961) Procedure and the Law of Arrest, Search and Sisure. P. 26

arrested in a language that he understands of reasons why he is being arrested, unless the criminal defendant produces a situation which makes it practically impossible to inform him.³⁹ Failure to inform the arrested person as soon as it is reasonably practicable to do so of the true reason of his arrest will, in a proper case constitute false imprisonment. However, in practice, the Zambia Police arbitrary deprives criminal defendants of their liberty in most cases without informing them of the reasons for their arrest. The abuses of rights by the police in most cases are worsened by the fact that some criminal defendants are very ignorant of their rights.

We read in the case of **Kabika v. The people**⁴⁰ that **Kabika, a huge Lozi man was arrested by Police without being told the reason why he was arrested. Consequently, Kabika resisted the arrest and a scuffle ensued. In the process, Kabika directed a velocious blow at a Police Officer that the Police Officer rolled to the ground. Upon arrival of the other Police officers to render assistance, Kabika was subdued and arrested. The court held and appeal that Kabika was justified in hitting the Police officer because he did not know the reason why he was arrested.** Basically, the reason for requiring the criminal defendant to be informed of the reason of arrest is to afford him an opportunity to defend himself. It is not enough, where a Police officer makes an arrest without warrant, that the police officer has reasons for effecting the arrest without warrant, if such reasons are kept to himself, or if the reasons given are not true. In either situation, such police officers may be held liable of false imprisonment.⁴¹

Once a person is arrested without a warrant he must be brought before an appropriate court within twenty-four hours or as soon as reasonably practicable. If he is not tried

³⁹ Supra p. 57

⁴⁰ (1973) ZR.352

⁴¹ Attorney –General V. Mumba (1984) ZR 14 (SC).

before a reasonable time he must be released either unconditionally, or upon reasonable conditions.⁴² In practice however, suspects are held in custody for long periods without being charged and being brought before the Magistrate. This is often attributed to lack of transport to take suspects to court and the fact that magistrates courts especially in rural areas, may be too far away from the police station.⁴³

2.2 (iii) USE OF FORCE IN MAKING ARREST

When a police officer is attempting to arrest a person and such person resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means reasonably necessary to effect the arrest.⁴⁴ What is reasonable will depend on the circumstances of each individual case. If unreasonable force is used this will constitute a criminal assault on the part of the person applying such force; similarly, an unlawful arrest will also constitute a criminal offence on the part of the person purporting to effect the arrest.⁴⁵ Any criminal defendant who is unlawfully arrested or detained by any police officer shall be entitled to compensation from government.⁴⁶ In practice it is not uncommon to see police officers assaulting suspects in public even when such suspects are not resisting arrest. It is also quite common to see police shooting at fleeing suspects. This occurs even where the suspect is accused of committing a minor offence. Although Article 12(3) (b) of the Constitution provides that the police may kill in order to effect lawful arrest or prevent the escape of a person lawfully detained, this does not give the police carte blanche to kill suspects at will. A police officer must use firearms on suspects only when his life or that of the innocent

⁴² Section 33 of Criminal Procedures Code, Cap 88 of the Laws of Zambia.

⁴³ Prof. Chanda, A. W's notes on <http://www.zamlil.ac.zm>

⁴⁴ Section 18 (2) of Criminal Procedure Code, Cap. 88 of the Laws of Zambia

⁴⁵ Swarbrick, E. J (1991) Magistrate Handbook. 6th ed p. 55

⁴⁶ Article 13(4) of Constitution of Zambia, Cap 1 of the Laws of Zambia.

person is in serious danger and there is no other alternative. The use of force must be reasonably justifiable in the circumstances⁴⁷. To illustrate how police officers use excessive force on criminal defendants, we read a story by Terry Munthali in the Daily Mail entitled, '**Police gun down four suspected car thieves**' in the early hours of Monday the 3rd of February, 2006 in Kanyama compound. Moreover, the Police Spokesman Mr. Bonny Kapeso confirmed the shooting and identified two of the deceased suspects as Brian and Tembo who were suspected to have stolen a Toyota Corolla registration number ABC 3444, an AK 47 rifle bearing serial number 19723569 was also recovered in the process.⁴⁸ Despite the four suspects being deprived of their right to life,⁴⁹ there was less condemnation of the arbitrary use of force by the police in the pretext of making an arrest. Consequently, the police seem to believe that shooting at suspects is justified especially where there is an exchange of fire involved. No sooner had a month elapsed than the police gunned down four more suspects, thus in a story entitled, '**Police officer gun down four bandits**', a Times of Zambia staffer Dean Mwanga quoted the then Lusaka Division Police Commanding Officer Musonda Chendela confirming that the police gunned down four bandits at Arcades shopping Complex. Mr. Musonda further accused the deceased suspects of having stolen two hundred million kwacha from Trade Kings as well as being involved in a number of robberies in Lusaka including the theft of sixty-six million kwacha from Finance Bank, University Teaching Hospital (U.T.H.) Branch. He further revealed that the police started exchanging fire with the suspects from Long-acres where they wanted to rob a Lusaka businessman who was coming from a

⁴⁷ Prof. Chanda, A. W's notes on <http://www.zamlii.ac.zm>.

⁴⁸ Daily mail of 2nd February, 2006.

⁴⁹ Article 12 of the Constitution of Zambia, Cap 1 of the Laws of Zambia.

bank until they reached Arcades where the four suspects met their fate.⁵⁰ However, the Law Association of Zambia (LAZ) has always voiced out on these acts of arbitrary killing of suspects by the police as they observed that, ‘many instances have been reported in the press or the media in which the police officers in Zambia have brutalized and even killed suspects in a bid to apprehend them.’⁵¹

2.3 DETENTION

It is important to note from the outset that in liberal sense a detention can be effected by virtually any person exercising some form of control over another in an inferior position. However, detention as used in this paper shall refer to detention effected by the Police. As it was stated earlier with arrest, a detention to be lawful must be done in conformity with the law and should be based on valid grounds.⁵² Failure to observe the requirements of the Law will make any detention unlawful one and therefore false imprisonment. False imprisonment is the unlawful and total restraint of the personal liberty of another, whether by constraining him or compelling him to go to a particular place or confining him in a prison or police station or private place or by detaining him against his will in a public place.⁵³ The principal of law above was laid down by the court in the case of **Chipango v. Attorney General**⁵⁴ as follows, **“a person physically in Zambia or under Zambian territorial jurisdiction may be deprived of his liberty only if that deprivation of a person’s liberty whether legislative or under common law is lawful. It must be emphatically noted that the issue of existence or non-existence of grounds**

⁵⁰ Zambia Police Headquarters Achieves Department, a collection of Times of Zambia News papers for 2006.

⁵¹ The Lawyer Newsletter, A publication of the Law Association of Zambia January-June 1998, Volume 1. Number 2. p. 14.

⁵² Article 13 of the Constitution of Zambia, Cap 1 of the laws of Zambia.

⁵³ Swarbbriek, E. J. (1991) Magistrate Handbook. 6th ed. P2 of Appendix

⁵⁴ (1976) ZR.224

of detention is crucial, for a detention which is prima facie lawful can be subsequently become unlawful and vice versa due to non-availability or availability of the said grounds.⁵⁵ We should however, be alive to the fact that in Zambia, it is slowly becoming a trite practice for the police to detain innocent persons on the pretext of assisting the police with their investigations. Moreover a human rights scholar Andrews ably observed that, “the police do detain persons for questioning a practice euphemistically referred to as ‘assisting the police with their inquiries’ such detention can last for several days.”⁵⁶

It should be clearly pointed out that the police have no power to detain a person for questioning unless he be arrested in respect of a criminal charge and informed of the reason for the arrest. Unfortunately, it is not uncommon these days to hear that the police have taken someone into custody for questioning, a practice which exists on a wide scale in Zambia. However, the courts have left no stone unturned in condemning this practice by the police, as they held in the case of **Mbandangoma v The People**,⁵⁷ **“That the police are empowered by the law to arrest offenders, but have no power to arrest any-one to carryout inquiries or investigations leading to his arrest.”** Criminal defendants are always kept in detention for several days or weeks before being set free without even a single charge. In fact such accused persons are never even formally arrested as procedurally required. What is even frightening and of fundamental concern to us now is a complete lack of basis for such detention besides the length of time such

⁵⁵ *Donavan Gray v Attorney-General* HP/146/99 Unreported. Justice Chitengi had little difficulty in compelling counsel from the Director of Public Prosecutions Chamber to concede that the police had held the appellant illegally for four days before being discharged on the 5th day when upon his detention became justified in law.

⁵⁶ Andrew, J.A. (1982) *Human Rights in Criminal Procedure: A Comparative Study*, P34

⁵⁷ (1979) ZR. 45

detainees have to undergo. To illustrate the point, in the case of **Gertrude Linyonsu and Attorney-General v. Catherine Ngalabeka**⁵⁸, a Luanshya woman was picked by police to assist them locate her son who was on the run. The named woman was subsequently detained and subjected to mental and physical torture as well as inhuman and degrading treatment. However, the woman was not formally arrested by the police. At the end of the two week detention, the woman was set free without any charge. The situation is even worrying when those detained are illiterate and are unaware of their rights.

From the foregoing, it is clear that an arrest normally precedes a detention. Moreover, what is supposed to happen when the police arrest someone is that they should take and register his particulars at a convenient place, usually at a police station. In emphasizing the point, in the case of **Mwangala v. Attorney-General**⁵⁹, the appellant, a dealer in trophies paid for a permit to do his business but he exceeded the number of trophies the permit allowed him to deal in. Consequently, he was arrested by police who did not ask him for his particulars because the same were already known to them. However, the court held on appeal that this was a technical fault in the charge because of the possibility of mistake of identity. On this basis the appeal was allowed in favour of the appellant.

Having been arrested and detained, a criminal defendant must be brought before an appropriate competent court within twenty four hours. However, it need not be emphasized that the police officers are also authorized by law to release an accused on bond provided sureties are available and an offence charged is one which, but for a lack

⁵⁸ SCZ Judgment Number 23 of 1999.

⁵⁹ (1974) ZR.94

of a competent court at hand, would have entitled an accused to bail⁶⁰, However in practice police bonds are rarely given on merit. Not only do police officers ask defendants to pay high amounts of money for the bond but also have to be influenced in some way, for instance someone with influence of authority and/or money has to go around the arresting officer. In the absence of such money and or influence, the police are geared and determined to stretch the law beyond its limit. To emphasize the point, in the unreported case of **Warren Misteard v Attorney-General**⁶¹, **the police had held the applicant for about five days over a civil case and refused to grant him police bond or charge him, which would have entitled him by appearance before the courts of law to bail. Only when habeas corpus application was made did the police charge and release the applicant on day six.**

2.4 INTERROGATION

The Zambia Police Service are entitled to question any person, including persons who may become suspects, in order to determine whether there is reasonable ground to suspect any person or persons of complicity. But the persons questioned are under no duty to answer, still less attend at the police station.⁶² The police are not allowed to use force to extract statements from a suspect or defendant. Thus, Article 15 of the Constitution provides that, “no person shall be subjected to torture, or inhuman or degrading treatment or other like treatment. This is the only right in the Constitution that has no exceptions. Therefore, torture of suspects is not allowed under any circumstances. Moreover, the person who is tortured can sue the state for compensation. The law on the subject of torture is clear and elaborate. The High Court judgment in the case of **John**

⁶⁰ Section 33 (1) of Criminal Procedure Code, Cap 88 of the Laws of Zambia.

⁶¹ 1999 HP/189

⁶² Prof. Chanda, A.W's notes on <http://www.zamlii.ac.zm>

Banda v The people⁶³ is a land mark decision on corporal punishment. Judge Chulu held that, **“Section 24 (c) and 27 of the Penal Code were unconstitutional. He further stated that upon, consideration of the law, the Republican Constitution which is the written constitution of Zambia, is the Supreme law of the land, and consequently, all other laws derive their force of law from it, and therefore subordinate to it. This being the legal position, it cannot therefore be doubted that unless the Constitution is specifically amended, any provision of the Act of Parliament that contravenes provisions of the Constitution is null and void.”** To assist police officers in determining the conditions under which the courts will be likely to admit statements made by persons suspected or accused of criminal offences, the Judges rules were issued. These rules give practical guidance for the conduct of criminal investigations but they are rules of practice, not rules of law.⁶⁴ The Supreme Court in three cases⁶⁵ stated as follows concerning Judges’ Rules the precise position of the Judges’ Rules is important. Their breach does not render evidence, and in particular a confession, automatically inadmissible; they are rules of practice indicating what conduct on the part of the police officers the courts will regard as unfair or improper.... It should be said that the principles of fair conduct underlying the judges’ Rule are principles in their own right independently of those rules, and that unfair or improper conduct on the part of the people other than the police officers can equally lead to the exclusion of evidence in the discretion of the court.”

Breach of the Judges’ Rules is technical and easy to identify for it involves a breach of one of the nine Judges’ Rules. In these cases the conduct under consideration should be

⁶³ 1998 /HPA/6

⁶⁴ Swarbrick, E. J (1991) Magistrate’s Handbook. 6th ed. P628

⁶⁵ Chinyama (1977) ZR. 426 (SC), Shamwana (1982) ZR. 122 (SC). Shamwana (1985) ZR. 41 (SC)

related to specific rules in question and shown to be a breach of those rules. Not all objectionable conduct on the part of the police constitutes a breach of the Judges' Rules. Beating, torture, long periods of interrogation and refusal of food and other facilities are not breaches of those rules; failing to caution a suspect or cross-examining a prisoner when he is giving voluntary statement are⁶⁶. To illustrate how the police in practice conduct interrogations, we read in the case of **Nyandoro v Attorney-General**⁶⁷, **that the plaintiff took his car for repairs. Later he went to collect his car from the garage but was surprised to see police officers waiting for him. Some of these police officers were armed with firearms while others carried long batons. The police asked the plaintiff to take off his clothes including the underpants, then one police officer with a gun hit Nyandoro with the bat of the gun forcing him to fall down and was also whipped with a horse pipe. He was then bundled and put in the boot of his car and then driven to the police station, where he was made to walk from the car to the inquiries office stark naked. It was held that this was a case of malicious prosecution and unlawful arrest as well as false imprisonment by the Zambia Police.**

It has been stressed further that interrogations enable police officers to question anyone whether suspected or not, from whom it is believed that useful information can be obtained. However, apart from certain statutory provisions, a person can not be compelled to answer such questions, although his failure to do so may result in him becoming a suspected person. When a person is being questioned, whether at a police station or elsewhere and a point is reached when the police officer will not allow that person to depart until further inquiry has been made and any suspicion cleared up, a

⁶⁶ Ibid, p 630

⁶⁷ (1979) ZR 278

caution should be administered before any questions are asked as once a person's freedom is taken away he is then technically in custody.⁶⁸ However, it must be noted that the fact that the person in custody is not warned before interrogations does not render a subsequent warn and caution statement involuntary or inadmissible. To do so the questioning must amount to importunity of the accused to answer.⁶⁹

2.5 SEARCH AND SEIZURES

The Constitution of Zambia⁷⁰ provides that except with his own consent, no person shall be subjected to the search of his person or property or the entry by others on his premises. This is meant to protect the sanctity of the home, as the right to privacy is fundamental to any country. However, as with every right there are exceptions to the right under Article 17(2) of the Constitution. Moreover, whenever a person is arrested, the police officer who arrests him may search him and take articles found on him except his cloths, for safekeeping.⁷¹ Further, the police are empowered to stop, search and detain any vessel, vehicle or aircraft upon which any thing suspected of having in his possession or conveying anything stolen or unlawfully obtained and may seize the article.⁷²

Apart from the Criminal Procedure Code, the Zambia Police Act also empowers the police to carryout any search for the purposes of investigating a crime as long as the police officer is of or above the rank of sub-inspector. The owner or occupant of the premises being searched has the right to be present during the search. However, the police officer must have reasonable grounds of conducting the search otherwise the search will be illegal. The police should obtain a search warrant from the magistrate

⁶⁸ Ibid. p2 of Appendix on Judges' Rules

⁶⁹ Chigowe v The people (1997 ZR.21 (SC)

⁷⁰ Article 17 (1) of the Constitution of Zambia, Cap 1 of the laws of Zambia

⁷¹ Section 22 of the Criminal Procedure Code, Cap 88 of the Laws of Zambia

⁷² Section 23 of Criminal Procedure Code, Cap 107 of the laws of Zambia

before proceeding with the search. The warrant is only issued when the police officer swears on oath that he has reasonable grounds for suspecting that whatever he might be looking for might be in the named place, building, vessel or carriage.⁷³ On the face of it, the law on searches and seizures has provided safeguards to prevent arbitrary use of power by the police by requiring that there should be reasonable grounds for conducting a search. However, in practice, criminal defendants are subjected to all kinds of searches and seizures especially at police stations before being detained. Usually very few of such abuses are reported because they are done within the police premises and away from the public eye. What is worrying is to learn that the courts have in some instances failed to hold such actions by the police as unconstitutional. For instance, in the case of **Patel v. Attorney-General**,⁷⁴ **the petitioner's property was searched without warrant and seized by the police however; the court upheld police action on the grounds that the impugned regulations and actions were adequately covered by the derogation clauses in the Constitution of Zambia Article 16(2).**

However, it suffices to note that in appropriate cases the court has strongly condemned police actions. For instance in the case of **Gertrude Linyonsu and Attorney-General v Catherine Ngalabeka**⁷⁵, **the respondent had her house searched by the appellant, a woman Constable at Luanshya Police Station. The search was to look for items purportedly stolen by the respondent's son. However, the search yielded nothing and that prompted the first appellant to order the respondent to direct the police to the whereabouts of her son. When the respondent failed to fulfill the order, the first appellant detained the respondent in police cells without any charge until 1700**

⁷³ Section 15 of Zambia Police Act, Cap 107 of the Laws of Zambia.

⁷⁴ (1969) ZR.69

⁷⁵ SCZ Judgement Number 23 of 1999 Unreported.

hours the following day when she was released. The Attorney-General appealed against the High Court judgment in favour of the respondent that the circumstances surrounding the respondent's detention were undoubtedly very grave, dubious and revealed a gross violation of the respondent's rights by an over-zealous woman constable. The first appellant was found guilty of subjecting the respondent to cruel and inhuman treatment of the worst kind. The court, therefore ordered compensatory damages of fifteen million kwacha. The Attorney-General did not only appeal against the conviction but also the award of damages.

However, the Supreme Court in dismissing the appeal held that, **"in our view, this is the worst case of imprisonment and unlawful detention involving a woman plaintiff by a woman constable who should have been more humane ... indeed, the respondent was not duty bound to look for her son at whatever cost, it was the duty of the police"**. Professor Chanda Alfred has observed in a question that begs an answer that supposing as a result of an illegal search or inadmissible confession other evidence is discovered which bears on the guilty of the accused, should such evidence be admissible.⁷⁶ For instance, if he reveals where the stolen goods or weapons are hidden and thereby incriminate himself in a crime of which he is accused. Professor Chanda further states that in this situation there is a conflict between the desire to protect the criminal defendant against unfair investigation and the interest of society in the conviction of those in which there is reliable evidence of guilt. In Zambia this conflict is resolved in favour of the society.⁷⁷ Thus in the case of **Liswaniso v the people**⁷⁸, the **Supreme Court held that illegally obtained evidence was admissible as long as it was**

⁷⁶ Professor Chanda A. W.'s notes on <http://www.zamlilii.ac.zm>

⁷⁷ Ibid

⁷⁸ SCZ judgment Number 58 of 1976

held relevant to the issues before the court. This has given the police an incentive to continue torturing the suspects because they know that even if the court will throw out an involuntary confession, any evidence obtained as a result of the said confession will be admissible.

2.6 CONCLUSION

This chapter has thoroughly examined the Zambia Police Service's powers of arrest, detention, interrogation, search and seizures, which impact on the rights of the criminal defendants in the pre-trial procedure. It has also been lucidly shown that despite all the mentioned provisions of the law protecting the rights of the criminal defendants, the Zambia Police still has failed in a number of cases and situations cited to adequately uphold the rights of criminal defendants. In the next chapter, the author will examine the Zambia Police's role in upholding the due process protections applicable to the trial stage of a criminal defendant.

CHAPTER THREE

THE ZAMBIA POLICE'S ROLE IN UPHOLDING THE DUE PROCESS PROTECTIONS APPLICABLE TO THE TRIAL STAGE OF A CRIMINAL DEFENDANT

3.1 INTRODUCTION

Article 18(1) and (2) of the Constitution of Zambia provides *inter alia* that: if any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. The Constitution further states that every person who is charged with a criminal offence; shall be presumed to be innocent until he is proved or has pleaded guilty, shall be given adequate time and facilities for the preparation of the defence, shall unless legal aid is granted to him in accordance with the law enacted by the Parliament for such purpose be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice; shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and obtain the attendance and carryout the examination of the witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution and shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial charge.

In addition, Section 86 of the Criminal Procedure Code states that the Director of Public Prosecutions (DPP) may appoint generally, or in any case, or for any specified class of cases, in any district , one or more officers to be called public prosecutors. Furthermore, the DPP may appoint any person employed in the public service to be a public

prosecutor. For the purpose of any proceeding instituted on behalf of the people. Every public prosecutor shall be subject to the express directions of the DPP. Through the above provision of the law, the Zambia Police officers were appointed as public prosecutors in all districts for all offences triable by the magistrate courts.

3.2 PRESUMPTION OF INNOCENCE

The mere fact that a person has been charged with a criminal offence does not mean that he or she is guilty of the crime charged. The various rights guaranteed to the accused are aimed at ensuring that an innocent person is not imprisoned. On account of this presumption the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt.⁷⁹ However in practice the Police Officers in Zambia have disregarded the presumption in a number of situations. In extreme cases the police officers have tended to embrace a shoot on sight approach before courts can have an opportunity to decide on the guilty of the criminal defendant. For example, on 6th November, 1998 the former Minister of Finance Mr. Ronald Penza was shot dead at his house in Ibex Hill when six criminal defendants raided his house. In confirming the shooting on BBC news, the then Police spokesperson Binwell Chimfwembe gave false information that police had killed Penza's killers⁸⁰. One wonders what formula he used to conclude that the criminal defendants killed by the police at a different place other than the scene of crime were the very killers of Penza. This situation was a clear breach of the presumption of innocence of the criminal defendants concerned. In the wake of Penza's death a total of eight suspects were killed by the police most of them in mysterious circumstances. What

⁷⁹ Prof. Chanda, A. W (2001) "The Role of Lower Courts in the Domestic Implementation of Human Rights. Zambian Law Journal. Vol 133 p. 7

⁸⁰ British Broadcasting Corporation (BBC) News of 6th November 1998

was even more surprising was that the number of people who raided Penza's home on the fateful day were six but the number of criminal defendants killed by the police reached eight, and still others were arrested and detained.

In defending the Zambia Police, the then Minister of Home Affairs. Dr. Peter Machungwa stated that police officers were human beings as well and needed to protect their lives if confronted by dangerous criminals.⁸¹ In another development, Dr. Machungwa's predecessor at Home Affairs ministry, Dr. Katele Kalumba is on record as having said that, "the crime situation in the country warranted use of force by police officers as criminals were armed to the teeth not with toy guns but automatic military weapons."⁸² The comments by the two Ministers leave much to be desired and are only an encouragement to trigger happy police officers to commit acts which amount to extra judicial execution.

Thus, in a recent development, the Zambia Police in Lusaka shot two suspects to death, namely Musonda and Edward Mwaluputa following a heavy exchange of fire in Chazanga compound. Confirming the incident to the media, Lusaka Police Divisional (Provincial) Commanding Officer Ng'uni Wasakaza stated that the police in the process recovered an AK 47 rifle and two motor vehicles. Mr. Wasakaza further said that he has declared war against criminals and warned members of the public to be on alert for any suspicious looking persons.⁸³ On the other hand it is persuasive to commend the police for the hard work they are doing to rid society of dangerous criminals, on the other hand the police must be condemned in the strongest terms for failing to adhere to the presumption of innocence as enshrined in Article 18(2) (a) of the Constitution. The

⁸¹ Afronet Zambia Human Rights Report, March 1999 Lusaka at p. 13

⁸² The Legal Resource Foundation News, 13th November, 1999 at p. 7

⁸³ ZNBC 19 00hrs Main News and Radio Phonex 13 00hrs news on the 18th of August, 2006.

situation is even very worrying to note that the police are using a yardstick of “suspicious looking person”. One wonders how many people will be shot dead considering that the current levels of poverty and hunger have made the majority of people to look very suspicious.

As the accused is presumed innocent until proven guilty, it follows, therefore that he or she must not, except in rare cases, be placed in remand. Accused persons should be released on bail unless they have no fixed abode and are likely to escape or are likely to interfere with witnesses or are a danger to the public. The magistrate has to balance the value of presuming an accused innocent and the value of protecting the victims and public at large by recognizing the danger to the public in allowing a violent criminal remain free to threaten witnesses and other citizens.⁸⁴

Professor Alfred Chanda further stated that a proper bail system is a prime element in the protection of criminal defendants. From the Constitutional rule that the criminal defendant is presumed to be innocent until he is proven to be guilty, flows the proposition that the defendant shall not be subject to unnecessary deprivation of his freedom before and during trial.⁸⁵ Section 123 of the Criminal Procedure Code provides that when any person is arrested or detained or appears before a subordinate court, the High Court or Supreme Court he may, at any time while he is in custody, or at any stage of the proceedings before such court, be admitted to bail upon providing a surety or sureties sufficient, in the opinion of the police officer concerned or court, to secure his appearance, or release upon his own recognizance if such officer or court thinks fit.

⁸⁴ Prof. Chanda, A. W (2001) “The Role of Lower Courts in the Domestic Implementation of Human Rights” Zambia Law Journal, Vol 33 p. 8

⁸⁵ Prof. Chanda A. W’s notes on <http://www.zamlil.ac.zm.ac.zm>

Section 126 of the Criminal Procedure Code stipulates that the amount of bail shall not be excessive.

However, bail cannot be granted to any person charged with; murder, treason or any other offence carrying a possible or mandatory capital penalty, misprision of treason or treason - felony, or aggravated robbery. Furthermore, no person charged with an offence under the State Security Act can be granted bail, either pending trial or appeal, if the Director of Public Prosecutions certifies that it is likely that the safety of or interest of the nation would thereby be prejudiced. Professor Alfred Chanda observed that in practice many criminal defendants are denied bail through the court fixing bail at a figure that is beyond the resources available to the criminal defendant; or on the pretext that it is not in society's interest to release the criminal defendant on bond.⁸⁶

3.3 RIGHT TO A SPEEDY AND PUBLIC TRIAL

The criminal justice system operates on the premise that justice delayed is justice denied. The following passage is often quoted in order to persuade or justify a court taking a particular course of action: "it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done"⁸⁷. This dictum was considered in a later case⁸⁸ where the court stated that, "while endorsing and fully maintaining the integrity of the principle reasserted by Lord Hewart CJ, this Court feels that the continued citation of it in cases to which it is not applicable may lead to the erroneous impression that it is more important that justice should appear to be done than that it should in fact be done." In this context it is also relevant to remember the dictum

⁸⁶ Ibid

⁸⁷ *Mc Carthya (2)* (1924) 1 KB.256

⁸⁸ *Pearce* (1954) 2 ALL ER.850 at p. 855

of Lord Goddard, CJ in the case of *GrondKowsji*⁸⁹ that, “it is too often nowadays thought, or seems to be thought that the interest of justice means only the interest of the prisoners.” The duty of the courts is to see that justice is done and is seen to be done; and in deciding what in, any particular case, justice requires, the interest of all parties must be taken into consideration.⁹⁰

Article 13 (3) of the Constitution requires that a court without undue delay should try any person arrested or charged with an offence. Unfortunately, few criminal defendants get a speedy trial in Zambia. This is because in many cases there are long delays between the time that an accused is first brought to court and the final adjournment. According to a recent study conducted by Annie Gutierrez of the United States of America (USA) the longest delays are caused by the repeated requests for adjournment by the Zambia Police prosecutors with the criminal defendants present, on the ground that they had not yet received the Director of Public Prosecutions (DPP)'s certificate of instruction (fiat) for the summary trial in the High Court. In 50 per cent of the cases, the certificate was filed within four months but in the other 50 per cent cases were adjourned time after time. It was not unusual to find 20 -30 adjournments. In 8 per cent of the cases, the certificate was not filed for close to two years. In most cases magistrates do not hold preliminary inquiries, but simply adjourn until the certificate was received. The delays in the trials of the criminal defendants undermine the rule of law.⁹¹

The law requires the prosecution to prove their case without recourse to the criminal defendants who may not be obliged to answer questions. This privilege against self-incrimination encompasses the right to refuse to answer questions put by the police. To

⁸⁹ (1946) 1 ALL ER 559 at p. 561

⁹⁰ Swarbrick, E. J. (2001) *Magistrate's Handbook*. 6th ed p. 14

⁹¹ Prof. Chanda, A. W's notes on <http://www.zamlii.ac.zm>

illustrate the point in the case of *Sikota v. The people*,⁹² **the magistrate said that the accused could not give proper reasons why the prosecution witnesses lied. There is no onus whatsoever upon an accused to give or advance any reasons for the manner in which prosecution witnesses testified. Thus, the conviction was over turned because of the subsequent words of the magistrate on the direction of the burden of the proof.**

3.4 RIGHT TO INFORMATION

Information is power and every one wants to be informed. The criminal defendants are not exempted from information. However it is sad to note that most of the criminal defendants are usually held in police stations or remand prisons kept secret from relatives especially in urban areas where there are many such places. Consequently, some criminal defendants are not afforded adequate facilities to enable them communicate with ‘outside world’. Criminal defendants’ relatives have to take the trouble of looking for them from one place of detention to another. This situation of moving up and down looking for criminal defendants is not only inconveniencing to the relatives but also time wasting and expensive considering money spent on transport. Moreover, criminal defendants are hindered in their attempt to even inform their lawyers of the circumstances of the offences charged and the places where they are held. To emphasize the point, the first Republican President Dr. Kenneth Kaunda was moved to Mukobeko Maximum Prison in Kabwe after spending a night at Kamwala Remand Prison in Lusaka without his lawyers and/or relatives being informed. Apart from Dr. Kaunda, late Dean Mung’omba and some soldiers implicated in the 1997 attempted coup d’e’tat could not practically

⁹² (1968) ZR. 42 AT 44

communicate to their lawyers and family members as to their whereabouts until they appeared in court for their respective habeas corpus applications⁹³.

During the trial of a criminal defendant, the magistrate should never permit anyone, police public prosecutors inclusive, to discuss a case with him except in the presence of the criminal defendant or his legal representative. Normally any discussion regarding a case should take place in court and occasionally may occur in chambers. In no case may a magistrate allow a public prosecutor to interview him in chambers unaccompanied by the criminal defendant or his legal representative. When any discussion of the case takes place in the presence of the criminal defendant it must, when necessary, be interpreted so that the criminal defendant understands everything that is said. Furthermore, a note of what has taken place should be entered into the case record.⁹⁴ This rule is strictly enforced and any breach will usually result in any conviction being quashed.⁹⁵ However, from the author's eight years working experience at Lusaka Division (Provincial) Prosecutions Department, police public prosecutors do not strictly adhere to the rule. It is not uncommon to see police public prosecutors exchanging notes with magistrates in chambers before and after court sessions in the absence of criminal defendants or their legal representatives and this in a long run disadvantages criminal defendants.

3.5 RIGHT TO SEEK MEDICAL ATTENTION

Criminal defendants are entitled to have medical attention whenever not feeling well. Since the criminal defendants are usually held in police cells or remand prisons it is the duty of police officers to accord them an opportunity to have medical attention. Consequently, failure to ensure that criminal defendants access medical attention will be

⁹³ Human Rights Watch, Zambia: "No model for Democracy." Vol. 10 number 2 (a) of May 1998 p. 29.

⁹⁴ Swarbrick, E. J. (2001) Magistrate Handbook. 6th ed p.6

⁹⁵ Bwalya (1979) ZR.1 (SC) and Shamwana (1985) ZR.41 (SC)

an infringement on their rights.⁹⁶ However, in practice the Zambia Police officers fail to uphold rights of criminal defendants in as far as medical attention is concerned. For example Princess Nakatindi Wina suffered from anxiety attacks and high blood pressure after her arrest and detention following the 1997 attempted coup d'e'tat. She also had complications from a hip operation yet she faced problems in accessing medical treatment. At one time while admitted to Maina Soko Military Hospital and still in a tricky condition, authorities ordered that she be returned to Mukobeko Maximum Prison where she was held, which was done, but due to the deteriorating health, she was later admitted to Kabwe Mine Hospital.⁹⁷

It was also sad to note that Major Musonda Kangwa was seriously ill and in poor health but efforts to get him treated at University Teaching Hospital (UTH) were blocked. To this end, Major Kangwa stated in an application for a writ of Habeas corpus that, "from 2nd to 15th November, 1997, I was not allowed to receive visitors, food, medical treatment and access to my legal counsel in violation of my rights as a detained person."⁹⁸

Criminal defendants who are denied access to medical attention by the police during trial cannot be said to have been afforded a fair hearing as envisaged by Article 18(1) of the Constitution of Zambia. What the Constitution of Zambia demands is that the criminal defendant must have a trial in which the relevant law is correctly explained and applied and the rules of procedure and evidence are strictly followed. Besides, the criminal defendant must have access to not only medical attention but also be provided with

⁹⁶ Article 15 of the Constitution of Zambia and Article 7 of the International Covenant on Civil and Political Rights, 1966.

⁹⁷ Post Newspaper of 21st March, 1998 in a story entitled, "Chiluba Orders return of the Princes to Mukobeko."

⁹⁸ High Court of Zambia, matter of Major Musonda Kangwa, as application for a writ of Habeas Corpus Act Subjiciendom, sworn before Commissioner of Oaths, Lusaka on 21st November, 1997.

adequate opportunities and facilities to vindicate his innocence. If there is any failure in any of these respects, and the criminal defendant may thereby lose a chance which was fairly open to him of being acquitted, there is in the eye of the law, a miscarriage of justice. Justice has been miscarried in such a case because the criminal defendant has not had what the law says he should have and justice is justice according to law⁹⁹.

3.6 CONCLUSION

This chapter has thoroughly discussed the role of the Zambia Police Service in upholding the due process protections applicable to the trial stage of a criminal defendant. The chapter has established that a criminal defendant is in the course of trial safeguarded by due processes such as:-

- (i) Presumption of innocence;
- (ii) Right to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (iii) Right to a speedy and public trial; and
- (iv) Right to medical attention

The next chapter will discuss the role of institutions like the Police Public Complaints Authority (PPCA), the Human Rights Commission (HRC), the Anti-Corruption Commission (ACC), the Legal Resource Foundation (LRF) and the Commission for Investigations (Zambia's Ombudsman) in ensuring that the Zambia Police Service upholds the rights of criminal defendants. The chapter will also discuss the weaknesses of the said institutions in their roles as 'watch dogs' for police human rights abuses.

⁹⁹ According to Fullagar, J in the case of *Marz v The Queen* (1954 – 1956) 93 Commonwealth Law Reports 498, 514.

CHAPTER FOUR

THE ROLE OF THE INSTITUTIONS LIKE THE POLICE PUBLIC COMPLAINTS AUTHORITY (PPCA), HUMAN RIGHTS COMMISSION (HRC), ANTI-CORRUPTION COMMISSION (ACC), LEGAL RESOURCE FOUNDATION (LRF) AND THE COMMISSION FOR INVESTIGATIONS IN ENSURING THAT THE ZAMBIA POLICE SERVICE UPHOLD THE RIGHTS OF CRIMINAL DEFENDANTS.

4.1 INTRODUCTION

It is evident from the preceding chapters that there has been violations of human rights by the police. Consequently, institutions like the PPCA, HRC, ACC, LRF and Commission for investigations (Zambia's Ombudsman) have played a major role in ensuring that the Zambia Police Service improves their human rights record in so far as the treatment of criminal defendants is concerned. Therefore, this chapter will discuss how far the named institutions have gone in ensuring that the police uphold the rights of the criminal defendants.

4.2 THE POLICE PUBLIC COMPLAINTS AUTHORITY (PPCA)

In response to complaints from criminal defendants about human rights abuses coupled with pressure from the civil society, the government created the PPCA.¹⁰⁰ Under the Act, the functions of the Authority are as follows:-

- (i) to receive complaints against police action
- (ii) to investigate the complaints against police actions, which result in serious injury or death of the person.¹⁰¹

¹⁰⁰ Created under the Zambia Police (Amendment) Act No. 14 of 1999

- (iii) To submit findings, recommendations and directions to:-
- (a) the Director of Public Prosecutions (DPP) for consideration of possible criminal prosecution.
 - (b) the Inspector General of Police (IG) for disciplinary action or other administrative action; or
 - (c) the anti-corruption Commission or any other relevant action or other relevant Body or Authority.

The provision requiring the Inspector General of Police to take disciplinary or administrative action is very inadequate in that it does not specify what action the Inspector General will take. Consequently, the provision has led to friction between the Inspector General who insists that he has discretion to exercise on what disciplinary or administrative action to take and the Chairman of the PPCA who equally insists that the Inspector General has no option but to take action as recommended to him. This friction was manifested in the incident involving Sub-Inspector Mulomboyi, Constable Phiri and Woman Constable Pumulo, all of Emmasdale Police Station¹⁰². The Chairman of PPCA, Mr. Christopher Mundia complained that the Inspector General has been slow in reacting to his recommendations. He said, "... we have a problem with the current Inspector General (Francis Musonda) because he feels that he cannot be directed by us."¹⁰³

¹⁰¹ Section 57A of the Act defines 'serious injury' as, "a fracture, damage to an internal organ, impairment of bodily function, a deep cut, a deep laceration or unlawful carnal knowledge". Notably this definition has seriously limited the jurisdiction of the PPCA in so far as investigating complaints against police action is concerned. The question which begs an answer is why then did government name the Authority as 'Police Public Complaints'?

¹⁰² The three police officers were investigated and found wanting by the PPCA for "having violated the rights of the criminal defendant at Northmead Police Post. The Chairman of PPCA then recommended their dismissal to the Inspector General in 2004. However, the Inspector General fined each officer fifty thousand kwacha which was deducted from their salaries and retained them in service.

¹⁰³ The Post Newspaper of Friday 14th May, 2004 in a story entitled 'we won't work well with PPCA'

Even though the PPCA has a wide locus standi to investigate complaints received from; an aggrieved person directly affected by police action; an association acting in the interest of its members and a person acting on behalf of an aggrieved person, body or organization.¹⁰⁴ It is sad to observe that very few people know about its existence. Moreover, the authority has only one office situated in Lusaka that caters for the whole country. According to a random survey conducted by ZNBC television among Lusaka residents, it turned out that very few residents know the location or existence of the Authority.¹⁰⁵ . The other devastating problem of the authority is that it is inadequately funded. The Chairman of PPCA admitted that the Authority had only managed to conclude 22 cases out of the total backlog of 477 cases from 2003. He bemoaned the poor funding and support from the government. He further said that because of under funding, the Authority could not sit to hear cases on time and was unable to pay electricity, water and television bills, and sitting allowance and refunds to its members.¹⁰⁶

4.3 THE HUMAN RIGHTS COMMISSION (HRC)

The Human Rights Commission is a creature of the Constitution of Zambia.¹⁰⁷ The Constitution under Article 126 provides that the functions, powers, composition, funding and administrative procedures, including the employment of staff, of the Human Rights Commission shall be prescribed by or under an Act of Parliament.¹⁰⁸ The functions of the Commission are inter alia; to investigate human rights violation, investigate maladministration of justice, propose effective measures to prevent human rights abuse, visit prisons and places of detention or related facilities with a view to assessing and

¹⁰⁴ Ibid Zambia Police (Amendment) Act no. 14 of 1999

¹⁰⁵ ZNBC Television evening main news of 26th June, 2004.

¹⁰⁶ The Post Newspaper of Friday 14th May, 2004 in a story entitled “We won’t work well with PPCA”.

¹⁰⁷ Article 125(1) of the Constitution of Zambia, Cap. 1 of the Laws of Zambia

¹⁰⁸ Human Rights Commission Act, Cap. 48 of the Laws of Zambia.

inspecting conditions of persons held in such places and make recommendations to redress existing problems.¹⁰⁹ However, the author will concentrate on the role of the HRC in ensuring that the police uphold the rights of criminal defendants.

In a message ¹¹⁰ obtained from the Human Rights Statistics Office on the 24th August, 2006, the Director of Human Rights is reported to have cited police brutality as a clear manifestation of Zambia's failure to observe and respect human rights. He further said the Commission has continued to receive complaints of torture and mistreatment by the police. Police officers are ready to use firearms anyhow. They also have a long way to go in handling public demonstrations. They need to know that demonstrating is a human right. People should be allowed to demonstrate, and when the crowd becomes unruly police are allowed to use reasonable force and not excessive force, as is the case today. During the second quarter of 2005, the Commission received 125 complaints of which 98 were from males, 22 from females and 5 from institutions or in representative capacity. Therefore, the chart below gives a breakdown of the nature of complaints specifically relating to criminal defendants.¹¹¹

NATURE OF COMPLAINTS	NUMBER OF COMPLAINTS FROM FEMALES	NUMBER OF COMPLAINTS FROM MALES	OTHERS	TOTAL NUMBER OF COMPLAINTS
Delayed justice	-	10	-	10
Unlawful detention	-	6	-	6
Torture	-	4	1	5
Victimization	3	9	-	12
TOTAL	3	29	1	33

¹⁰⁹ Section 9 of Human Rights Act, Cap. 48 of the Laws of Zambia.

¹¹⁰ Message from the Director Human Rights Commission – 2006 Obtained at Statistics Office at the Human Rights House.

¹¹¹ Information obtained from Statistics Office at Human Rights Commission

In ensuring that the police uphold the rights of criminal defendants, the commission is of the view of that all law enforcement agencies need sensitization in human rights. HRC want, resources permitting, a sustainable programme to continually sensitize the police in issues of human rights because their role is to protect human rights and not to violate them. The commission appreciates the problems police go through when dealing with suspects, but that should not be used as an excuse for violating human rights. As an institution mandated with the responsibility of promoting and protecting human rights, the Human Rights Commission has not done enough to ensure that the police uphold the rights of criminal defendants because inter alia the Human Rights Act limits its powers and inadequate funding.

According to Section 13(1) and 10(4) of the Human Rights Act, the Commission lacks enforcement powers because under the Act, it only has the power to make recommendations. Consequently the then Human Rights Commission Chairperson Lombe Chibesakunda noted that, “the only power we were given in the Act is that of making recommendations. Our response is that this makes it very difficult for us to operate...”¹¹² The government ignored the Mwanakatwe Commission Recommendations that the Commission should have power to bring proceedings in a court of competent jurisdiction on behalf of a person whose human rights have been infringed seeking an appropriate remedy for the infringement.¹¹³ On the issue of funding, the then Chairperson Chibesakunda observed that the HRC has not been able to implement its full programme of work due to financial constraints. Recruitment of staff, purchase of support services,

¹¹² AFRONET Zambia Human Rights Report, 1999 at p.70

¹¹³ The Government White Paper Number 1 of 1995 rejected Article 67 (2) (b) of Mwanakatwe Constitution Review Commission Draft Constitution.

furniture and transport are all dependent on funding.¹¹⁴ It is sad to note that government also rejected the Mwanakatwe Commission's recommendation that the Human Rights Commission should be self-accounting.¹¹⁵

4.4 THE ANTI-CORRUPTION COMMISSION (ACC)

The Anti-corruption Commission is formed under an Act of Parliament.¹¹⁶ The Act spells out the functions of the ACC as inter alia; receive and investigate complaints of alleged or suspected corrupt practices and, subject to the directions of the Director of Public Prosecutions, prosecute offences under the Act; and such other offences under any written laws as may have come to the notice of Commission during the investigation of an offence under the Act.¹¹⁷ The Anti-corruption commission also has an important role to play as a watch dog institution of police abuses and human rights violations.

Since its formation, the ACC has not only prosecuted police affairs for corrupt practices but also other persons belonging to various public and private institutions. For instance, early this year between January and March 2006 the ACC received 422 reports of which 223 were cases of corruption and were authorized for investigation, while 199 were not cases of corruption. The investigations Department recorded 6 arrests, while the Prosecutions Department has had 6 convictions and 4 acquittals. The chart below shows complaints received by the ACC involving the Zambia Police infringing on the rights of criminal defendants.¹¹⁸

¹¹⁴ Supra p. 69

¹¹⁵ The Government White Paper Number 1 of 1995 rejected Article 72 of the Mwanakatwe CRC Draft Constitution.

¹¹⁶ Chapter 91 of the Laws of Zambia

¹¹⁷ Section 9 (1) (b) of the Anti Corruption Act. 91 of the Laws of Zambia.

¹¹⁸ Statistics obtained from the ACC Public Relations Officer Mr. Timothy Moono, 2006. Details about the complaints could not be disclosed because some latest cases were still in court while others concluded were not yet tabled before Parliament in annual reports.

YEAR	NUMBER OF COMPLAINTS RECEIVED BY ACC AGAINST THE ZAMBIA POLICE
2001	80
2002	109
2003	86
2004	130
2005	198
Jan – Aug 2006	121
Total	724

To highlight one of the cases dealt by the ACC involving police officers, there is the case of Kelvin Munyinda a police officer based at Kalingalinga, who committed the offences of corrupt practices by public officer contrary to Section 29(7) of the Anti Corruption Act Number 42 of 1996. He corruptly solicited for K600 000 cash gratification and did in fact receive K600 000 in order to release a complainant's goods which were in the custody of the police. He was convicted and sentenced to 24 months imprisonment with hard labour with effect from 28th February, 2006 suspended for 30 months. The matter was before magistrate Njapau in Lusaka.¹¹⁹

However, the ACC has not adequately helped to provide checks and balances to the Zambia Police in so far as the rights of criminal defendants are concerned because the government has not been allocating adequate funds to the Commission. Consequently, lack of adequate funding has negatively influenced the ACC's capacity to fight corruption effectively. Moreover, the ACC has a high rate of staff turnover due to unattractive conditions of service. In fact some ACC officers are reported to have been arrested for corruption as they attempted to make ends meet.¹²⁰ The point to note with the

¹¹⁹ ACC News, January – March 2006 Vol.1 Issue number 3 at p. 7

¹²⁰ AFRONET Zambia Human Rights Report, 1999 at p 52.

watch dog institutions for police abuse of human rights is that the issue of lack of adequate funding transcends them all and cripples their operations.

4.5 THE LEGAL RESOURCE FOUNDATION (LRF)

The Legal Resources Foundation of Zambia is a non profit foundation, providing legal aid, promoting human rights and litigating in the public interest. It functions in areas which directly affect the disadvantaged sectors of society in relation to violation of their fundamental rights and the enhancement of justice.¹²¹ The LRF has also played a role in ensuring that the Zambia Police uphold the rights of criminal defendants. The LRF publicizes the incidents of police abuses and violation of human rights in its periodic news letter. By so doing, the Zambia Police is exposed to public condemnation and scrutiny. The more criticism brought to bear on the police; the better for criminal defendants because of the chilling effect such criticism has on police human rights record.

Where the Zambia police has lamentably failed to respect and protect the rights of criminal defendants, the LRF has with the consent of the victims instituted litigation against the human rights violator, be it the police or any other institution. To illustrate the point, that chart below shows matters dealt by the foundation specifically concerning violation of rights of criminal defendants by the police.¹²² However, just like other institutions discussed earlier, the LRF has also not been spared by the problem of inadequate finances in its operations.

¹²¹ Information obtained from LRF Statistics Office, Woodgate House, 2nd Floor, Cairo Road, Lusaka.

¹²² Information obtained from LRF Statistics Office, Woodgate House, 2nd Floor, Cairo Road, Lusaka.

TYPES OF CASES	2004	2005
Unlawful arrest/wrongful detention	404	287
Police brutality	169	147
TOAL	523	434

4.6 COMMISSION FOR INVESTIGATION (ZAMBIA'S OMBUDSMAN)

This is an organ of the state established by the Constitution of Zambia¹²³ as read with Chapter 39 of the Laws of Zambia. Globally, it is known as the office of the Ombudsman or some other designation. The Investigator-General has authority to inquire in the conduct of government officials in exercise of their authority or in abuse thereof. Any person holding office in Central or Local Government, statutory bodies and any other organs of government can be investigated.¹²⁴ A complaint can be brought by any person who feels that he/she has been unfairly or unjustly treated by a public body. A complainant does not pay for the services of the Investigator-General. Furthermore, when the complainant writes a letter of complaint to the Investigator General, a file/case is then opened after screening the complaint. If it is felt that there is substance in the allegation or complaint, an investigation commences there and then.¹²⁵

The Investigator-General's office also plays a crucial role in ensuring that the police respect and protect the rights of criminal defendants through the submission of reports to the President containing its findings and recommendations. The President then takes a decision and communicates it to the commission for implementation.¹²⁶ Every investigation is conducted in camera and this principle of anonymity extends to its annual

¹²³ Article 90 of the Constitution of Zambia, Cap 1 of the Laws of Zambia

¹²⁴ Section 8 of the Commission s for Investigations Act, Cap 39

¹²⁵ Section 9 of the Act

¹²⁶ Section 20 of the Act. However, Chanda, A. W. (2002) Transparency International Zambia, National Integrity Systems County Study Report Zambia reports that few cases are in fact reported to the President. Instead, the Commission uses quiet diplomacy to persuade erring officers to mend their ways. Most officers co-operate

reports. The identities of the parties to the cases are concealed. Justifiably, this principle encourages those that are meek to also come forward with complaints and protect the administrators concerned. However, the commission would be more effective if it had the power to expose the identity of erring officers. In the long run the practice of exposing erring officers would be a warning to other administrators to desist from similar actions.

The Commission for Investigations has not adequately assisted in ensuring that the police respect and protect human rights. Firstly, the commission faces serious shortage of manpower. The establishment is small and has never been fully constituted, particularly in the lower ranks of administrative sector.¹²⁷ As already been discussed with other institutions of government, the commission for investigations also face financial constraints. This inadequacy of funds cripples the operations of the commission to the extent that, they cannot effectively carryout investigations, tour other provinces due to shortage of transport, nor employ more staff. Moreover, delays in completing investigations discourage the criminal defendants from bringing forward grievances suffered at the hands of police officers. It is sad to note that the government rejected the Mwanakatwe Commission recommendation that the office of parliamentary Ombudsman would be independent and impartial and would in the performance of its duties not be subjected to control or direction of any person or authority. Furthermore, the office would be self-accounting.¹²⁸

¹²⁷ Mumba, S. K.C. (1984) Ombudsmanship in Zambia: The First Decade A Seminar paper presented on 2nd February to the school of Law at UNZA.

¹²⁸ The Government White Paper Number 1 of 1995 rejected Articles 166 (1) and (2) of Mwanakatwe CRC Draft Constitution.

4.7 CONCLUSION

This chapter has thoroughly discussed the role of institutions like the Police Public Complaints Authority, Human Rights Commission, Anti-Corruption Commission, legal Resource Foundation and the Commission for Investigations in ensuring that the Zambia Police Service upholds the rights of criminal defendants. The chapter has further established the constraints encountered by the named institutions in their operations. It shall remain the conclusion of this chapter that the named institutions have helped in a way to make the Zambia police improve their human rights record. The next chapter will be the conclusion for the entire research paper followed by some recommendations.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 CONCLUSION

Having critically discussed the role of the Zambia Police Service in upholding the rights of criminal defendants, it shall remain the conclusion of this Directed Research paper that human rights are rights that everyone has as a result of being human. No other qualifications are required for anyone to be entitled to human rights. As established in this paper, human rights provisions that protect criminal defendants can be found in the Constitution of Zambia, statutes and other international human rights instruments. However, it is important to note that although these human rights provision exist, how well rights of criminal defendants are respected and protected in Zambia is dependant, in the first instance, on the exercise of police functions. As demonstrated in this paper, the Zambia Police must be instruments through which the rule of law is upheld throughout the country.

In the second instance, upholding of the rights of criminal defendants is dependant on how effective the watchdog institutions like the Police Public Complaints Authority, Human Rights Commission, Anti-Corruption Commission, Legal Resource Foundation and Commission for investigations; operate in order to ensure that the Police improve their human rights record. In the third instance, the police officers must be adequately sensitised in human rights and lastly, the government must have political will not only to allocate adequate funding to the named watchdog institutions to strengthen their

operations but also to the Zambia Police Service. As observed in this paper, a demotivated police service is a danger to the respect and protection of human rights.

Chapter one of this research paper gave an overview of the problems surrounding the Zambia Police Service and its role in upholding the rights of criminal defendants. The chapter further established that the police have failed to uphold human rights of suspects in criminal proceedings. Through the many incidences cited in the chapter, it is clear that the conduct of police officers has continuously contributed to the gross abuse of the rights of accused persons. The chapter also pointed out how political leaders in government interfere with the work of the police.

Chapter two addressed the powers vested in the Zambia police service in the pre-trial stages of a criminal defendant. The chapter clearly established that the police routinely use excessive force when making arrests, detentions, interrogations, searches and seizures. From the many decided cases cited in the chapter, the author has demonstrated that the judiciary play a crucial role in enforcing the rights of criminal defendants. The chapter illustrated that even the most wonderful guarantees of human rights will be of little effect in the absence of an independent and competent judiciary willing to enforce them. Chapter three discussed the Zambia Police's role in upholding the due process protections applicable to the trial stage of a criminal defendant. The chapter outlined the due process safeguards as the; presumption of innocence, right to be informed promptly and in a language which accused understands, of the nature and cause of the charge against him, right to a speedy and public trial and the right to medical treatment.

Finally, Chapter four critically explained how the watchdog institutions named earlier exercise effective checks and balances on the Zambia Police in so far as respecting and

protecting human rights is concerned. However, the Chapter sadly revealed that these institutions have not performed up to expectation because of government's lack of political will to fund them among other operational constraints.

5.2 RECOMMENDATIONS

(i) Human Rights Education and Information

This is very important in protecting and promoting human rights since the police officers and criminal defendants will be aware and be able to claim and respect other people's rights. Criminal defendants will know that infringing on other people's rights is bad while the police officers will understand that criminal defendants do not lose all their rights upon commission of an offence. Furthermore, the government should formulate a National Plan for human rights education to be implemented by educational and training institutions and civil society organisations in both formal and informal sector.

(ii) There is an urgent need to establish a Constitutional Court in Zambia

From a theoretical point of view such a court is necessary in order to encourage specialisation. Besides, a Constitutional Court might improve on the delivery system as judges groomed from the magisterial ranks are not well equipped to grapple with the complexities of human rights issues. The current court system is inadequate to address the increasing number of cases of human rights. We must take advantage of the current Constitutional Review Process to make provision for a Constitutional Court in the next constitution of Zambia. This matter should be put to a constituent assembly because government in its white paper number 1 of 1995 demonstrated lack of political will to set a constitutional court when it rejected such a recommendation in the Mwanakatwe CRC Draft Constitution.

(iii) The government must strengthen the capacity of the watchdog institutions for police violations of human rights by providing adequate funds to enhance their operations.

The discussion canvassed under chapter four has revealed that the Police Public Complaints Authority, Human Rights Commission, Anti-Corruption Commission, Legal Resources Foundation and the Commission for investigation, all suffer from the lack of adequate funding syndrome. Despite that these institutions have gone out of their way to ensure that the police improves its human rights record, the government has failed them by not allocating adequate funds. The provision of adequate funds should also be extended to the Zambia Police Service itself because as observed in chapter one, the Police these days ask complainants to supply stationary and provide transport to enable them carry out investigations. The government should therefore improve the work environment and capacity building of all institutions that promote the human rights agenda.

(iv) The conditions of service for police officers must be looked into as a matter of urgency

This is a cry of every police officer in Zambia. The government has for a long time ignored the cries of police officers for a living wage and enabling work environment. As established in this paper, a demotivated police service is a danger to the protection of human rights. Although in Zambia, the Constitution is silent on economic, social and cultural rights, in practice, it will be suicidal to turn a deaf ear to such rights especially in so far as the Zambia Police Service is concerned. With the current poor working

conditions of service for police officers, the fight against corruption is reduced to mere lip service

(v) The government should have political will to respect and protect human rights

In this paper, it has been evidently pointed out that the government is the principal violator of human rights. It is very disheartening to note that government has not yet enshrined economic, social and cultural rights in the Constitution forty years after independence. The government must look into the issue of rehabilitating dilapidated police cells and remand prisons to make sure that these places are habitable. Furthermore, the government should allow the Zambia Police Service to operate independently without political interference.

It is the author's view that once the above recommendations are carried out the Zambia Police will have gone a milestone in respecting and protecting the rights of criminal defendants.

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