

# **THE EFFICACY OF THE JUDICIAL COMPLAINTS AUTHORITY**

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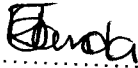
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Being a Directed Research essay submitted to the University of Zambia Law Faculty in  
Partial fulfilment of the requirements for the Award of the Bachelor of Laws (LLB) Degree.

## DECLARATION

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## ABSTRACT

An independent and impartial judiciary has been long recognised as a mechanism to enhance public confidence in the judiciary. In Zambia, the Judicial Complaints Authority was charged with this. The main objective of the research was to evaluate the effectiveness of the Judicial Complaints Authority in dealing with complaints and allegations of misconduct by judicial officers. Of particular importance was the role that the Authority plays in the investigating of cases by judicial officers. The research found that the Authority receives a number of complaints every year of which it has discharged over eighty percent of them. However, the Authority has not been so successful in terms of submitting its findings and recommendations to the appropriate authority. The lack of this core function has led to the Authority is not discharging its mandate and has thus impeded the effective dealing of complaints of judicial misconduct. A number of factors have been attributed to this failure namely that the Authority lacks autonomy, has no office building, lacks funding, its geographic location, has no information management system. Further, the Authority has no real power to impose sanctions on judicial officers which would go a long way in enhancing its effectiveness. Thus it has been proposed that the Authority needs to be revamped so as to make it more effective. Therefore, it has been suggested that the enabling Act should be amended and strengthened so as to accord the Authority autonomy and the power to impose sanctions on erring judicial officers. It is hoped that this will encourage reports of complaints of judicial misconduct and enhance public confidence in the judiciary and as such enable the Authority perform its vital function and mandate effectively.

## ACKNOWLEDGEMENTS

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I am eternally grateful to my uncle Goodwin E. Banda who has been a father to me and has seen me through school. I thank him for a job well done and for all the sacrifices he has made for me and for according me the opportunity to be the best that I can be. It has not been easy but still you have come through for me time and time again. I will be forever grateful.

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My gratitude goes to all those that in one way or another rendered their help to me. I thank you. I also thank all those that I have not expressly thanked by name, your help was invaluable. It is just that space could not allow me to thank all of you by name. May God continue blessing you.

Finally, I thank God Almighty for blessing me and guiding me throughout this long and difficult journey. I have seen the hand of God in my life and I pray that He will finish the good work He started in me. To God be all the glory and praise.

## DEDICATION

This is dedicated to my late mum Margaret Banda, my mother, my friend and my greatest cheerleader in the journey of life. I will forever be grateful to her for all the love and support she gave to me.

## **TABLE OF STATUTES**

The Constitution, Chapter 1 of the Laws of Zambia

Bangalore Principles on Judicial Conduct 2000

Judicial (Code of Conduct ) Act No. 13 of 1999

Judicial (Code of Conduct ) (Amendment) Act No. 13 of 2006

Judicial Conduct Commissioner and Judicial Conduct Panel Act of 2004 of New Zealand.

Judicial Discipline (Prescribed Procedures) Regulations 2006 of United Kingdom

Judicial Service Commission Act 9 of 1994 of South Africa

## TABLE OF CONTENTS

<b>Contents</b>	<b>Page</b>
Title page.....	i
Declaration.....	ii
Supervisor’s Approval.....	iii
Abstract.....	iv
Acknowledgements.....	v
Dedication.....	vi
Table of Statutes.....	vii

### CHAPTER 1

1.1 Introduction.....	1
1.2 Statement of the Problem.....	2
1.3 General Objective.....	3
1.4 Significance of the Study.....	4
1.5 Methodology.....	4
1.6 Outline of Chapters.....	4
1.7 Conclusion.....	6

### CHAPTER 2

#### LEGAL FRAMEWORK, ESTABLISHMENT, FUNCTIONS AND MANDATE OF THE JUDICIAL COMPLAINTS AUTHORITY

2.1 Introduction.....	7
2.2 Legal Framework of the Authority.....	9
2.3 Organizational Structure and Composition of the Authority.....	10
2.4 Functions and Mandate of the Authority.....	11

2.4.1 Proceedings of the Authority.....	12
2.4.2 Complaints Procedure.....	13
2.5 Conclusion.....	14

## **CHAPTER 3**

### **EFFECTIVENESS OF THE JUDICIAL COMPLAINTS AUTHORITY**

3.1 Introduction.....	16
3.2 Analysis of the Performance of the Authority.....	18
3.3 Factors Affecting the Effectiveness of the Authority.....	18
3.3.1 Introduction.....	18
3.3.2 Lack of Autonomy.....	19
3.3.3 Geographic Location.....	19
3.3.4 Financial Constraints.....	20
3.3.5 Lack of Publicity.....	20
3.3.6 Lack of Information Management System.....	21
3.3.7 Inadequate Personnel.....	21
3.3.8 Lack of Office Building.....	22
3.3.9 Overview of the Factors.....	22
3.4 Effect of the Amendment Act of 2006.....	23
3.5 Conclusion.....	23

5.2.4 Installation of an Information Management System.....40

5.2.5 Adequate Staff.....40

5.3 Long Term Recommendations.....40

5.3.1 Decentralisation of Operations.....40

5.3.2 Legislative Reform.....41

5.4 Conclusion.....44

Bibliography.....4.

## **CHAPTER 4**

### **THE AUTHORITY VIS-À-VIS JUDICIAL COMPLAINTS COMMISSIONS IN OTHER JURISDICTIONS**

4.1 Introduction.....	25
4.2 Office of the Judicial Conduct Commissioner in New Zealand.....	25
4.2.1 Composition.....	25
4.2.2 Complaints Process.....	26
4.3 Office for Judicial Complaints of United Kingdom.....	29
4.3.1 Composition.....	29
4.3.2 Complaints Process.....	30
4.4 Judicial Complaints Committee of Zambia.....	32
4.4.1 Composition.....	32
4.4.2 Complaints Process.....	32
4.5 Analysis.....	35
4.6 Conclusion.....	37

## **CHAPTER 5**

### **CONCLUSION AND RECOMMENDATIONS**

5.0 General Conclusion.....	38
5.1 Recommendations.....	39
5.2.1 Short Term Recommendations.....	39
5.2.2 Increase Public Awareness.....	39
5.2.3 Increase Funding.....	40

## CHAPTER 1

### 1.1 INTRODUCTION

The Judicial Complaints Authority which was originally called the Judicial Complaints Committee was established under the Judicial (Code of Conduct) Act<sup>1</sup>. It was renamed the Judicial Complaints Authority under the Judicial (Code of Conduct) (Amendment) Act<sup>2</sup>. This Code (the Judicial Code of Conduct) is meant to regulate the behaviour of adjudicators. The Act requires that a judicial officer shall not, in the performance of adjudicative duties, be influenced by partisan interests, public clamour or fear of criticism, or by family, personal, social, political or other interests. Furthermore, it stipulates that judicial officers shall not use the office or their position to advance any private interests of themselves or their immediate family.<sup>3</sup>

All judicial officers must adhere to this code of conduct when carrying out their duties in the court process. Judicial officers refers to the chief justice, the deputy chief justice, a judge, a chairman, deputy chairman, registrar, magistrate, justice of a court, or other person having power to hold or exercise the judicial powers of a court.<sup>4</sup> A court for this purpose means the Supreme Court, the High Court, the Industrial Relations Court, the Subordinate Court and the Local Court.<sup>5</sup> The Code requires judicial officers to uphold integrity, independence and impartiality in their adjudicative responsibilities.

The Judicial Complaints Authority (JCA) was formulated to ensure that the code of conduct is complied with. The JCA is a committee of five persons who are appointed by the President subject to ratification by Parliament to receive and investigate any allegation of misconduct.<sup>6</sup> It oversees the conduct of adjudicating personnel and regulates the ethical conduct of officers of the judiciary. Therefore, it is mandated to objectively and thoroughly investigate allegations of misconduct against judicial officers in order to enhance and sustain the public's confidence in the

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<sup>1</sup> No 13 of 1999

<sup>2</sup> Amendment Act No 13 of 2006

<sup>3</sup> Section 5 Judicial (Code of Conduct) Act No. 13 of 1999

<sup>4</sup> Section 5 Judicial (Code of Conduct) Act No. 13 of 1999

<sup>5</sup> Section 2 Judicial (Code of Conduct) Act No. 13 of 1999

<sup>6</sup> Section 2 Judicial (Code of Conduct) Act No. 13 of 1999

Judiciary.<sup>7</sup> It is a forum for relief to members of the public who allege that judicial officers have breached the judicial code of conduct in the judicial process.

The Authority enforces the Code and gives substance to the right to ‘a fair and public hearing by competent, independent and impartial’ courts and tribunals. This is done by according the public the right to lodge a complaint with the Authority if a judicial officer does not conduct themselves professionally and ethically on the bench. The JCA performs this function by handing over its findings regarding the particular complaint to the appropriate authority. The appropriate authority in such instances is the President, Chief Justice, the Chief Administrator, the Registrar and Director of Local Courts.<sup>8</sup> This is dependent on which appropriate officer the judicial officer is answerable to. For instance if the complaint concerns the Chief Justice, the appropriate authority to submit findings to will be the President.

Accordingly, this research has investigated the role and the effectiveness of the Judicial Complaints Authority in enforcing the code of conduct and protecting litigants in the court process. This is mainly because the judiciary is vital in the maintenance of the rule of law through dispensation of justice. The research has in this regard focused on the Judicial Complaints Authority because it is the mechanism that holds members of the judiciary accountable for their actions. The research thus highlights the factors that led to its establishment, evaluates the work of the Judicial Complaints Authority and outlines its strengths and weaknesses. The research also evaluates the performance of the Authority to ascertain whether it has fulfilled its intended purpose.

## **1.2 STATEMENT OF THE PROBLEM**

The Judiciary in Zambia has immense powers. It plays an important role in the rule of law and is vital in the separation of powers as it provides checks and balances on the Executive and Legislature in the form of judicial review. For this reason, it must act independently and impartially exercise its functions as this is the hallmark of good governance and democracy. Resultantly, it is widely advanced that the judicial system should also be held accountable so as to maintain a minimum standard of competence and ethics.

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<sup>7</sup>Zambia's Response to the List of Issues from the Human Rights Committee Issues Relating to the Periodic Report on the ICCPR (2008) 20-21

<sup>8</sup> Section 20 Judicial (Code of Conduct) Act No. 13 of 1999

Thus the Judicial Complaints Authority came into being in 2003 and was mandated to ensure this minimum standard of competence. However, even after its establishment there continues to be reports of misconduct within the judicature. A report on the functioning of the Authority in the period between 2003 and 2007 shows that the Authority received 104 complaints. Out of these 52 were properly lodged with only five vindicated. The Authority received feedback on the implementation of only one of the recommendations.<sup>9</sup> The Authority has now been in existence for seven years and there is need to inquire into its efficacy. Hence the question that arises is whether the JCA is effectively carrying out its mandate as a mechanism to address all reports of misconduct by members of the general public. Particularly important is the rate at which complaints are dealt with and the implementation of the recommendations.

### **1.3 GENERAL OBJECTIVE**

The main objective of this paper is to inquire into the functioning of the Judicial Complaints Authority in dealing with allegations of misconduct by judicial officers from the public.

#### **SPECIFIC OBJECTIVES**

- i. To examine the role which the Judicial Complaints Authority plays in investigating cases of misconduct by judicial officers.
- ii. To examine the rational and intended purpose behind the establishment of the Judicial Complaints Authority.
- iii. To find out whether the Judicial Complaints Authority has fulfilled its mandate with regards to complaints of misconduct by judicial officers from members of the Public.
- iv. To give a comparative study of the Judicial Complaints Authority with Judicial Complaints Commissions from other countries.

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<sup>9</sup> Zambia's Response to the List of Issues from the Human Rights Committee Issues Relating to the Periodic Report on the ICCPR (2008) 21

## **1.4 SIGNIFICANCE OF THE STUDY**

This study endeavors to explore the efficacy of the JCA in dealing with complaints against judicial officers. The strength of the institution is that it is created to watch against judicial officers who are supposed to uphold the law and give effect to it. It is therefore the aim of this study to investigate and evaluate the reason for the establishment of the Authority. Moreover, a number of studies have indicated that the Zambian people are increasingly losing faith in the judiciary. Most of them are opting to settle their disputes outside court.<sup>10</sup> It is therefore important to analyze how well the JCA has worked and if it is an adequate forum for the public to air their grievances in relation to incidents of misconduct by judicial officers. It is hoped that the study will contribute to a better understanding of the working and functioning of the JCA as a forum for judicial complaints.

## **SPECIFIC RESEARCH QUESTIONS**

- i. What has the Authority achieved since its establishment?
- ii. How effective has the Authority been in fulfilling its mandate?
- iii. What effect has the Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006 had on the effectiveness of the Authority?
- iv. What are the major problems hampering the effective functioning of the Authority?

## **1.5 METHODOLOGY**

This research is qualitative in nature. It comprises both fieldwork and deskwork. The primary source of information includes interviews with personnel at the Judicial Complaints Authority. Other sources of information include statutes, articles, reports and the internet.

## **1.6 OUTLINE OF THE CHAPTERS**

### **CHAPTER ONE**

This chapter gives a general introduction of the research paper and a synopsis to the research. It comprises the statement of the problem, significance of the study, methodology and the chapter layout.

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<sup>10</sup> [www.U4.no](http://www.U4.no) accessed on 20<sup>th</sup> September 2010

## **CHAPTER TWO: LEGAL FRAMEWORK, ESTABLISHMENT, FUNCTIONS AND MANDATE OF THE AUTHORITY**

This chapter discusses the legal framework of the Judicial Complaints Authority. In this regard, it discusses the rationale behind the establishment of the Authority. It further discusses the enabling Act that is the Judicial (Code of Conduct) Amendment Act No. 13 of 2006. It also deals with organizational structure, mandate and composition of the Authority. Finally, it outlines the complaints procedure.

## **CHAPTER THREE: EFFECTIVENESS OF THE AUTHORITY**

This chapter discusses the effectiveness of the Judicial Complaints Authority since its establishment in 2003. This chapter gives an evaluation of the performance of the Authority in dealing with cases of misconduct by judicial officers. The failures and successes have been highlighted. Further, the chapter discusses the impact of the Judicial (Code of Conduct) Amendment Act No. 13 of 2006 on the effectiveness of the Authority.

## **CHAPTER FOUR: THE AUTHORITY VIS-A-VIS JUDICIAL COMPLAINTS COMMISSIONS IN OTHER JURISDICTIONS**

This chapter carries out a comparative study of the Judicial Complaints Authority with Judicial Complaints Commissions from other jurisdictions in New Zealand, South Africa and United Kingdom.

## **CHAPTER FIVE: RECOMMENDATIONS AND CONCLUSIONS**

This chapter comprises general conclusions, recommendations and possible areas of reform in the administration, mandate and functions of the Authority.

## **1.7 CONCLUSION**

This chapter has discussed the JCA and its role in regulating behavior of judicial officers through the enforcement of the code of conduct. It ensures that these officers are compliant with this code in the discharge of their duties. As such members of the public can take their grievances to the Authority when they are victims of judicial misconduct. This chapter has also highlighted that even though this Authority has been in existence for a number of years, there has not really been an attempt to ascertain its efficacy in dealing with complaints of judicial misconduct. This is important in light of reports that the *Zambian* public are increasingly losing trust in the judiciary as a whole. It is advanced that the inquiry into the efficacy of the JCA can assist in retaining at least some measure of trust in the judiciary. The next chapter has considered the legal framework within which the JCA operates , its composition and procedure for lodging a complaint.

## CHAPTER 2

# LEGAL FRAMEWORK, ESTABLISHMENT, FUNCTIONS AND MANDATE OF THE JUDICIAL COMPLAINTS AUTHORITY

### 2.1 INTRODUCTION

The previous chapter discussed the general objective of the study which is to ascertain the effectiveness of the JCA. In this chapter we consider the legal basis for the establishment of the Authority. This has included reviewing the law governing judicial officers specifically the law creating the Authority, that is the Judicial Code of Conduct Act No.13 of 1999 as amended by the Judicial (Code of Conduct) (Amendment) Act No.13 of 2006. An attempt has been made to evaluate the composition, structure, powers, proceedings of the Authority and procedure for complaints.

It has been said that judicial independence and accountability are key to a sound judicial branch.<sup>11</sup> Judicial independence refers to the independence of the judge as well as the independence of the judiciary as an institution. Individual independence means that the judge is free to decide a case according to law and may not be interfered with by anybody without process.<sup>12</sup> Judicial independence is not an end in itself and it is for this reason that there is need for the judicial officers to be held accountable. Accountability raises questions of quality of judgments, accumulated arrears and consequent delay in judicial proceedings, inequalities and inequities in accessing justice, balance of power and good governance, uncertainty in law arising out of conflicting opinions and the ineffectiveness of mechanisms to deal with judicial misconduct.

Therefore, judicial accountability is important as it firstly promotes the rule of law by deterring conduct that might compromise judicial independence, integrity, and impartiality. Accountability achieves this by diminishing a judge's freedom to make themselves dependant on inappropriate internal or external influences that might interfere with their capacity to follow the

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<sup>11</sup> Science Daily. [Judges on Trial: How to Promote Judicial Accountability](#). 19 January 2010

<sup>12</sup> Science Daily. [Judges on Trial: How to Promote Judicial Accountability](#). 19 January 2010

rule of law.<sup>13</sup> By deterring bribery, favoritism, bias and so on, accountability promotes the kind of independence needed for judges to adhere to the rule of law.

Secondly, judicial accountability promotes public confidence in judges and the judiciary. Regardless of whether independent judges follow the law, if the public's perception is otherwise, it will lead to an eroding of its confidence in the judiciary. Hence, a system of judicial accountability that reassures a sometimes skeptical public that judges are doing their jobs properly and yet respects the judiciary's independence may forestall resort to more counterproductive forms of court control.<sup>14</sup> The difficulty lies in striking a balance between judicial independence and accountability. Thirdly, judicial accountability promotes institutional responsibility by rendering the judiciary responsive to the needs of the public it serves as a separate branch of government. The public is entitled to courts that administer justice effectively, efficiently, and expeditiously.<sup>15</sup>

In light of this, it is imperative to understand the vital role that judicial officers play in the judicial process. The efficacy of the JCA cannot be examined in isolation, as such the functioning of the judiciary in Zambia must be considered. In Zambia, the constitution creates the Judicature which comprises the Supreme Court being the highest court in the country, the High Court, Subordinate Courts, Industrial Relations Court and Local Court.<sup>16</sup> The judiciary plays an integral role in the maintenance of peace and order and promotion of the rule of law. It further administers justice through resolving disputes between individuals and between the state and individuals. Other roles include interpreting the constitution and the laws of Zambia; safeguarding the constitution and upholding democratic principles; and protecting human rights.<sup>17</sup> Most importantly, the judiciary plays an administrative role of judicial review. The courts are empowered to look into the acts of the executive and legislature to ensure that they conduct themselves in accordance with the law of the land. This ensures that there is rule of law and the separation of power which is vital in a pluralist society like Zambia.

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<sup>13</sup> M. Kesharwani . Judges and Judicial Accountability in India with Reference to the Judges Inquiry Bill 2005. June 17 2010

<sup>14</sup> M. Kesharwani . Judges and Judicial Accountability in India with Reference to the Judges Inquiry Bill 2005. June 17 2010

<sup>15</sup> M. Kesharwani . Judges and Judicial Accountability in India with Reference to the Judges Inquiry Bill 2005. June 17 2010

<sup>16</sup> Article 91 (1) of Chapter 1 of the Laws of Zambia

<sup>17</sup> Chief Administrator. The Judiciary: An Introduction to the Zambian Judiciary. @www.judiciary.gov.zm

The importance of a competent, independent and impartial judiciary is emphasized because of the fact that the implementation of justice depends on the proper administration of justice.<sup>18</sup> Thus the judiciary needs to be independent of outside influence. It must be free from interference from the government of the day. This does not mean that members of the judiciary can act as it pleases; it has to be accountable to the law in the sense that their decisions should be made in accordance with the law and should not be arbitrary.<sup>19</sup> Fostering a culture of independence, impartiality and accountability among judges is a vital step towards ensuring the overall integrity of the judiciary.<sup>20</sup>

## 2.2 LEGAL FRAMEWORK OF THE AUTHORITY

The legal framework creating the JCA consists of the constitution and the Judicial (Code of Conduct) Act 1999 as amended by the Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006. The rationale behind the enactment of the Judicial Code of Conduct Act was to provide for the code of conduct of officers of the judicature. The Constitution of Zambia is the supreme law of the land which is binding on all persons as well as the members of the Legislature, Executive and the Judiciary.

The Judicial Code of Conduct adheres to the constitution as it relates to the functions of the judiciary. It is promulgated by parliament in accordance with the constitution. The constitution provides that

“The Judges, members, Magistrates and the courts mentioned shall be independent, impartial and subject only to the constitution and the law and shall conduct themselves in accordance with a code of conduct as promulgated by Parliament<sup>21</sup>.”

The code of conduct incorporates the Bangalore Principles of Judicial Conduct which is the international document on judicial conduct. In its preamble, the Bangalore Principles recognises the importance of a competent, independent and impartial judiciary to the protection of human rights because implementation of all the other rights ultimately depends upon the

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<sup>18</sup> United Nations Office on Drugs and Crime. Commentary on Bangalore Principles of Judicial Conduct. September 2007 Page 10

<sup>19</sup> [www.transparency.org](http://www.transparency.org) accessed on 18<sup>th</sup> December 2010

<sup>20</sup> S.B Burbank and B. Friedman. Judicial Independence At the Crossroads. London; Hartman Publishers (2002) Page 11-14

<sup>21</sup> Article 91 (2) of Chapter 1 of the Laws of Zambia

proper administration of justice.<sup>22</sup> Further, it emphasises that an independent judiciary is likewise essential if the courts are to fulfil their roles as guardians of the rule of law and thereby to assure good governance. For this reason, it advances the real source of judicial power is public acceptance of the moral authority and integrity of the judiciary. Thus the Bangalore principles uphold the values of propriety, independence, integrity, impartiality equality, Competence, diligence and accountability.

The code of conduct as such covers four specific aspects of a judicial officer's conduct. Firstly, it covers the adjudicative responsibilities which include the professional conduct expected in dispensation of adjudicative duties by a judicial officer. Secondly, it forbids activities outside office, which tend to cast doubt on judicial officer's capacity to act impartially or which create a conflict with their judicial responsibility.<sup>23</sup> Thirdly, the code forbids a judicial officer from engaging in financial or business dealings likely to compromise the officer's professional integrity, independence or competence. Lastly, it regulates the officer's conduct in relation to political activity and appointment to office other than an office in the judicature.

### **2.3 ORGANIZATIONAL STRUCTURE AND COMPOSITION OF THE AUTHORITY**

The JCA is composed of five members who have held or are qualified to hold high judicial office in Zambia. These members are appointed by the President of the Republic. Their appointment is subject to ratification by the National Assembly. A member holds office for a period of four years which can be renewed for a further period of the same duration. A chairperson is elected from the members<sup>24</sup> and the members have immunity against civil and criminal proceedings in the things done in the lawful exercise of the functions under the Act.<sup>25</sup>

However, the members have to adhere to a strict code of conduct. This is so because the President may remove a member who is absent without reasonable cause for three consecutive meetings for which they had notice. The President also, may remove a member found guilty of an offence involving dishonesty or fails to perform the duties of the office. Further, the President has the discretion to appoint another person to be a member of the Authority when the office

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<sup>22</sup> Preamble of the Bangalore Principles on Judicial Conduct 2000

<sup>23</sup> Section 11 (1) of Judicial (Code of Conduct) Act No. 1999

<sup>24</sup> Section 20 (4) Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006

<sup>25</sup> Section 22 Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006

falls vacant before expiry of that member's term of office. This member's term of office runs only for the unexpired part of the term of office.<sup>26</sup>

The Authority also has a full-time Secretary. This Secretary is appointed by the President and serves for a term of five years which may be renewed. The Secretary is charged with the responsibility for the management and administration of the authority as well as implementation of its decisions. Surprisingly, the Act is silent on the qualifications of the Secretary. Surely, this is an important institution for which qualification must be set and a qualified person appointed for it to deliver and meet its mandate effectively. The Secretary also keeps a register of complaints which state the name and address of the person making the complaint, its nature, time and date. This register is open to the public for inspection upon payment of a prescribed fee.<sup>27</sup> Aside from the five members and the Secretary, the Authority can appoint other staff that it considers necessary for the performance of its functions. The terms and conditions of service of these members of staff are determined by the Authority with approval of the Minister of Justice.

#### **2.4. FUNCTIONS AND MANDATE OF THE AUTHORITY**

The functions of the JCA are clearly spelt out in the Act. The first is to receive any complaint or allegation of misconduct and to investigate any such complaint or allegation made against a judicial officer.<sup>28</sup> A complaint is an allegation of misconduct against a judicial officer which is a breach of the code of conduct in terms of the adjudicative duties, financial dealings, political dealings or behavior likely to cause doubt.

The code of conduct specifically stipulates instances which may amount to misconduct on the part of a judicial officer. The first instance is where a judicial officer improperly uses or benefits from information which is obtained in the course of his duty. This information is not generally available to the public. Another instance is where the officer discloses information to unauthorized persons or exerts improper influence in the appointment or removal of another judicial officer or a member of staff.

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<sup>26</sup> Section 20 (7) Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006

<sup>27</sup> Section 31 (2) Judicial (Code of Conduct) Act No. 13 of 1999

<sup>28</sup> Section 24 (1) (a) Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006

Other such instances include receiving economic benefit, conversion of government property for personal use or maliciously injuring the professional reputation and prospects of another judicial officer.<sup>29</sup>The Authority is empowered to dismiss a complaint or allegation of misconduct without investigating it when it is of the opinion that the complaint does not disclose a *prima facie* case of judicial misconduct. This provision is not clear in that it does not stipulate the specific grounds on which the complaint can be dismissed. It accords the Authority too much power.

The other function of the authority is to submit its findings and recommendations to the appropriate authority or the Director of Public Prosecutions for possible criminal prosecution.<sup>30</sup> These findings are based on the investigations carried out when a member of the public takes a complaint about the conduct of a particular judicial officer. In addition to this, the Act gives locus standi to such persons as are either directly or otherwise affected by the judicial officer's action to move the Authority which in turn would investigate the alleged misconduct. This is clear from the provisions of the Act which provide that the

“Authority shall have powers to investigate all complaints referred to it under this Act by an aggrieved person directly affected by the judicial officer's action; association acting in the interests of its members; and a person, acting on behalf of an aggrieved person, body or organization.”<sup>31</sup>

Additionally, the Authority also has the power to issue such orders or summons as are necessary in order to carry out thorough investigation by compelling individuals to give evidence, answer questions relevant to the investigations and to produce such documents as will do justice.<sup>32</sup> However, the Authority does not act as an appeal court hence a complainant cannot institute an appeal with it when they are not satisfied with the outcome of their case. Further, it does not award damages to complainants because its objective is only to promote professional conduct, integrity and competence among judicial officers in the conduct of their adjudicative duties.<sup>33</sup>

#### **2.4.1 PROCEEDINGS OF THE AUTHORITY**

The manner in which proceedings are carried on by the Authority is left to the discretion of the Authority itself. The Authority determines its own procedure subject of course to other

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<sup>29</sup> Section 33 Judicial (Code of Conduct) Act No. 13 of 1999

<sup>30</sup> Section 24 (1) (b) Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006

<sup>31</sup> Section 27 (1) Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006

<sup>32</sup> Section 27(2) ) Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006

<sup>33</sup> Judicial Complaints Authority Brochure

### **2.4.1 PROCEEDINGS OF THE AUTHORITY**

The manner in which proceedings are carried on by the Authority is left to the discretion of the Authority itself. The Authority determines its own procedure subject of course to other provisions of the Judicial Code of Conduct Act. This provision is very vague as it really does not give a definite procedure which must be adhered to. This entails that, if there is a change of members, new members are not obliged to follow the procedure of the previous members. The members of the JCA meet as determined by the Chairperson who presides over the meetings. Three of these members form a quorum at any of the meetings. In instances where the Chairperson is absent, the members present elect a Chairperson to preside over the meeting.

The authority comes to a decision by a majority vote of the members who are present at the meeting. A person who is not a member may be allowed to attend the meeting if the Authority is of the view that, the person should do so especially if they have information relevant to the particular complaint.<sup>34</sup> This person however, cannot vote and if they have an interest in the matter, it should be disclosed as soon it is practicable. Failure to do so will result in either imprisonment for a period not exceeding one year or to a fine not exceeding five thousand penalty units, or both.

Once the Authority has arrived at a decision, it prepares a report on its findings. It also includes some recommendations as to the next course of action. This report is handed over to the appropriate authority or the DPP which then notifies the judicial officer concerned seven days after it receives the report. Thereafter, the JCA is notified of the action taken if any on its recommendation.<sup>35</sup> In practice, the appropriate authority is not obliged to act upon the recommendations of the Authority and it rarely reports to the Authority on the action taken if any. With regard to the DPP, the act is silent on what occurs when a judicial officer commits a criminal offence.

### **2.4.2 COMPLAINTS PROCEDURE**

The procedure for lodging complaints is fairly simple. This is provided for under the Act which entitles a member of the public who has a complaint against a judicial officer, or who alleges or

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<sup>34</sup> Section 28 (7) Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006

<sup>35</sup> 24 (3) Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006

has reasonable ground to believe that a judicial officer has contravened the code, shall inform the Authority.<sup>36</sup> Simply, any person who has a complaint can report it to the Authority. Hence it allows a judicial officer who has reasonable ground to believe that any other judicial officer has breached the Act to inform the Authority.<sup>37</sup>

When a person has a complaint against any judicial officer, they can lodge the complaint in writing to the Secretary or to a Clerk of Court or District Commissioner in the area where the incident or circumstances giving rise to a complaint or allegation occurred. In such circumstances, the person who receives the complaints must submit it to the Secretary within fourteen days of receiving it. The Secretary will then within twenty-one days present it to the Authority and send a copy of acknowledgement of receipt to the person who made the complaint. A complaint can also be made orally and in this situation the recipient of the complaint shall reduce it into writing.<sup>38</sup>

All complaints have a format with which they must comply. The complaint must firstly include the name, physical address and postal address of the person making a complaint. The age of the complainant must also be included.<sup>39</sup> Further, the complaint must also have a detailed statement including the facts of the incident or the circumstances giving rise to the complaint. It should also bear the signature or the thumb print of the person making the complaint. Finally, the complainant must state the name of the judicial officer complained against. A complaint which fulfils these requirements is handed over for investigation to the Authority. The complaint or allegation lodged against a judicial officer and any investigation carried out by the Authority is treated as confidential. It is not open to the public for inspection, except by the judicial officer concerned and the complainant.

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<sup>36</sup> Section 25 (1) Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006

<sup>37</sup> Section 25 (2) ) Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006

<sup>38</sup> Section 25 (6) Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006

<sup>39</sup> Section 25 (7) Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006

## **2.5 CONCLUSION**

This chapter has highlighted the establishment and functions of the Authority which are provided for in the Amendment Act of 2006. These include the investigating of all complaints of misconduct and submitting recommendations to the supervisory officers. The chapter has discussed the legal framework of the mandate of the Authority and the type of misconduct by the judicial officers it deals with. Further, the chapter has illuminated the procedure for lodging a complaint by a complainant and the particulars required to be in that complaint for it to be rendered valid. The following chapter evaluates the effectiveness of the Authority in discharging its mandated and highlights its successes and failures

## CHAPTER 3

### THE EFFECTIVENESS OF THE JUDICIAL COMPLAINTS AUTHORITY

#### 3.1 INTRODUCTION

The previous chapter discussed the legal framework of the Judicial Complaints Authority which included the enabling Act that is the Judicial (Code of Conduct) (Amendment) Act of 2006. It further dealt with the functions, mandate, organisational structure of the Authority and the procedure for making complaints. This chapter gives an evaluation of the performance of the Authority in discharging its mandate since its establishment by highlighting its successes and failures. It has particularly focused on the performance of the Authority in the period between 2003 and 2009 and gauge its effectiveness. The chapter has also highlighted the factors that have been impeding the performance of the Authority.

While judicial independence requires that judges have some limited measure of immunity and that they should be protected from trivial or vexatious complaints, mechanisms must be in place to ensure that misconduct by judges or court personnel is detected, investigated and properly sanctioned.<sup>40</sup> As such, the JCA was established as an appropriate mechanism to deal with such instances in the judiciary. It has now been in operation for a number of years and has received numerous complaints from the public with regard to behavior of judicial officers.

#### 3.2 ANALYSIS OF THE PERFORMANCE OF THE AUTHORITY

In the period of 2003-2005 immediately after its establishment, the JCA received a total of forty-eight complaints.<sup>41</sup> The complaints covered a wide range of matters stipulated in the code of conduct. This included twelve complaints over delayed proceedings especially delays in delivering judgment and loss of case records, five complaints for abuse of office, ten for corrupt court practices, nine for dissatisfaction with judgment and eleven involving irregularities in

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<sup>40</sup> Available at [www.transparency.org](http://www.transparency.org) accessed on 18<sup>th</sup> December 2010

<sup>41</sup> Judicial Complaints Authority. Summary of Complaints Received by the Judicial Complaints Authority. 2010  
Page 1

proceedings.<sup>42</sup> One of the complaints filled was not within the Authority's jurisdiction hence it was referred to the institution within whose jurisdiction it fell. Out of these eleven were investigated. The rate at which these complaints were investigated was fairly slow as the Authority had only twenty-four scheduled meetings and five investigative meetings annually. In this entire period, only five complaints received recommendations.

In 2006, the total number of complaints was forty-four. These included twelve complaints for delayed proceedings, three for abuse of office, one for corrupt practices, thirteen for dissatisfaction with judgment, six for irregularities in proceedings and nine were not within the Authority's jurisdiction in proceedings.<sup>43</sup> The number of complaints increased tremendously in 2007 with the total number of complaints rising to one hundred and fifteen. Complaints concerning delayed proceeding at thirty-nine, twenty-five for irregularities in proceedings, six for abuse of office, seven for corrupt practices, thirty-one for dissatisfaction with judgment and sixteen were outside the Authority's jurisdiction.<sup>44</sup>

This trend continued in 2008 with the annual total at a hundred complaints. Complaints that were filled with the Authority included twenty-eight with allegations of delayed court proceedings, six for abuse of office, thirty-one for dissatisfaction with judgment, twenty-five for irregularities in proceedings and sixteen which were not within the Authority's jurisdiction. The Authority in the same year also exercised its power and summoned eleven people to appear before it to disclose relevant information about the complaint dealing with delayed proceedings. Only three judicial officers were summoned to appear before the Authority. The Legal officer observed that this was due to financial constraints and also weakness in the legislation which does not stipulate the time frame within which a judicial officer must respond to the complaint after notification of its existence.<sup>45</sup>

In the 2009, the total number of complaints was one hundred and eighteen with complaints of irregularities being the highest at thirty-five. Other complaints included twenty-seven for delayed proceedings, six for abuse of office, nine for corrupt practices, fifteen for dissatisfaction with judgment, and five outside the Authority's jurisdiction. Out of these complaints, a total of a

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<sup>42</sup>Judicial Complaints Authority Page 1

<sup>43</sup> Judicial Complaints Authority Page 1

<sup>44</sup> Judicial Complaints Authority Page 2

<sup>45</sup> Interview with the Legal Officer at Judicial Complaints Authority. 02/02/2011

hundred and ten were investigated. In this same period it was observed that number of persons summoned by the Authority was sixteen whilst that of judicial officers was four.

From the above, the total number of complaints from its establishment in 2003 to 2009 is four hundred and twenty-five. The number of complaints investigated and disposed of was three hundred and forty with eighty-five complaints still pending. This represents that eighty per cent (80%) of the complaints have been investigated and highlights the success of the Authority in this respect. Despite this tremendous rate of complaints investigated, only ten recommendations have been submitted to the appropriate Authority in this period. The Authority is not only empowered to investigate and submit its finding, it must also give recommendations to the appropriate authority when the complaint has been justified. The number of recommendations is too low.

More significantly, the rate at which these recommendations are made is very slow as the Authority must carry out investigations and also there is no specified time within which the judicial officer or the person summoned for further information on the complaint has to respond and make representations on the complaint. In addition, these recommendations are rarely implemented by the appropriate authority. This has been attributed to a weak legislative framework and enforcement mechanism. The enabling Act does not provide for mechanisms to enforce the Authority's findings and recommendations. The appropriate authority is at liberty to either implement or not the findings of the Authority. They cannot be compelled by law to do so. This has been a major contributor to the few number of recommendations.

### **3.3 FACTORS AFFECTING THE EFFECTIVENESS OF THE AUTHORITY**

#### **3.3.1 INTRODUCTION**

With the above evaluation of the performance of the Authority, the main focus of this part is to discuss the factors that affect the effective functioning of the Authority. It discusses the problems that the JCA is experiencing that are hampering the performance of its vital role. During the course of the research carried out at the JCA, it came to the writer's attention that there are a number of factors that affect the effective performance and functioning of the JCA especially in the investigating and submitting of recommendations to the appropriate authority.

### **3.3.2 LACK OF AUTONOMY**

One of the major factors affecting the effectiveness of the Authority is its lack of autonomy. The strength of any watchdog institution lies in its autonomy. It must be seen to be independent from the influence of the government and the very institution it is mandated to watch over. Even though the Amendment Act of 2006 has specifically elevated the status of the Authority from that of a committee, it operates as an appendage of the Ministry of Justice. This in itself dictates that the Authority has limited autonomy because most of the activities it carries out are subject to approval by the Minister in charge of the Ministry of Justice. For instance, the terms and conditions of service for the members of staff are determined by the Ministry of Justice which is a branch of the government. Thus it is difficult for the Authority to carry out its mandate effectively.

Besides as was observed by the Legal Officer of the Authority, the perception that JCA is an appendage of the Ministry of Justice does not encourage lodging of complaints as members of the public believe that there is nothing to be gained and the complaint is submitted to the very people they are complaining about.<sup>46</sup> Moreover, the current legal framework is inadequate to enforce adherence to the Judicial Code of Conduct and ensure that its recommendations are acted upon. It also does not allow the publication of its findings and recommendations due to the confidentiality clause in the Act.<sup>47</sup>

### **3.3.3 GEOGRAPHICAL LOCATION**

Another factor affecting the effectiveness of the institution is its geographical location. The JCA is only located in Lusaka. This makes it accessible for people that are resident within Lusaka but it limits access for people living in the other provinces. Service delivery does not extend to other provinces and this results in a centralized and inadequate structure.<sup>48</sup> Although complaints can be made in writing to the Secretary, Clerk of Court or the District Commissioner via correspondence, the complainant may have to travel so that they attend to their complaints in person. Due to this centralization, complainants are bound to visit the Authority in person and it

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<sup>46</sup> Interview with the Legal Officer at Judicial Complaints Authority. 02/02/2011

<sup>47</sup> Section 25 of Judicial (Code of Conduct) Act No. 13 of 1999 provides that “ a complaint or allegation lodged against a officer and any investigation carried out into the Complaint by the Authority shall be treated as confidential.....”

<sup>48</sup> Judicial Complaints Authority Strategic Planning Paper 2010. Page 15

has proved too costly for complainants who are based in other parts of the country as the cost of transport is very high. Also, the Authority may have to send its members to investigate the complaint in that particular province which is costly and time consuming as funds have to be sourced. Consequently, it has resulted in unnecessary delays in proceedings and most would-be complainants are deterred from filing their complaints.<sup>49</sup>

### **3.3.4 FINANCIAL CONSTRAINTS**

This is another factor impeding the performance of the Authority. In order for the JCA to carry out its operations, it needs adequate funding. It receives funding for its costs and expenses from Parliament through the Ministry of Justice. Unfortunately, the funds provided are inadequate for implementation of the wide range of services and activities that are rendered by the JCA. It was observed by Mr. Lubinda, a Member of Parliament for Kabwata Constituency that in 2007, the Authority was allocated K1.8 billion only for its operation for the entire year.<sup>50</sup> Many areas of operation have been severely hampered by this lack of funding. One such area is that of hearings of complaints, as they are limited and the Authority cannot have many of its scheduled meetings.<sup>51</sup> This in turn has led to delay in investigative proceedings and submission of recommendations. Publicity of the Authority is also hampered by the lack of finances because it is unable to carry out intensive massive sensitisation activities. Compounding this position is that most of the grant is spent on the payment of rentals for the building that houses the offices of the Authority and allowances for members of the Authority.

### **3.3.5 LACK OF PUBLICITY**

The JCA has not been able to ensure adequate publicity of its operation and services to the public due to inadequate funds and the majority of the public are not aware of it and the procedure for submitting complaints. Mr. Sikota, Member of Parliament for Livingstone attested to this and stated

“ Being somebody who is in the legal practice, I am aware that quite a number of people are not aware of the existence of this commission ... ”<sup>52</sup>

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<sup>49</sup>Judicial Complaints Authority Strategic Planning Paper 2010. Page 15

<sup>50</sup> National Assembly Debates 12<sup>th</sup> July 2007 available @ [www.parliament.gov.zm/](http://www.parliament.gov.zm/) accessed on 19/12/2010

<sup>51</sup> Summary of Complaints Received by the Judicial Complaints Authority. Page 1

<sup>52</sup> National Assembly Debates 12<sup>th</sup> July 2007. Available @ [www.parliament.gov.zm/](http://www.parliament.gov.zm/) accessed on 19/12/2010

The effect is that many complaints and allegations are not reported. The Authority therefore is not adequately being used as a forum for dealing with judicial misconduct. The Legal officer attested that this is one of the major problems that the institution is facing and there is need to improve its visibility so that members of the public are aware of its existence and can lodge their complaints about the conduct of judicial officers.<sup>53</sup>

### **3.3.6 LACK OF INFORMATION MANAGEMENT SYSTEM**

The JCA does not have an Information Management System (IMS). An IMS is database and transaction management system of data collected and stored in a hierarchy. It can be accessed freely within a particular organisation. The IMS is not developed and operational to facilitate efficient storage, accessibility and dissemination of information and has adversely affected the management of information sharing for decision making in the Authority.<sup>54</sup> Reports on the workings of the Authority are not properly tabulated and stored. Information within the Authority itself is not stored properly neither is it easily accessible nor disseminated. During the research it was discovered surprisingly that the Authority did not even have annual reports since its establishment. The only information that is available is the Register that is open to the public upon payment of a fee which has not been set at the moment. This has led to the Authority not having a performance management system to objectively appraise institutional and individual performance.<sup>55</sup> Further compounding the situation is that even though the Authority has a website, the site is not operational because there is no information technology system to regularly update and keep it functional.

### **3.3.7 INADEQUATE PERSONNEL**

Also affecting the effectiveness of the Authority is the shortage of staff. Although the institution generally has qualified and experienced human resource, the staff available is inadequate. Although the Act empowers the Authority to appoint such other staff as it deems necessary for the performance of its function<sup>56</sup>, it has an approved organisational structure of thirteen. Not all the thirteen positions are filled however. At the time of the research, there were only two receptionist employed as support staff. Presently, apart from the Secretary who is a lawyer, there

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<sup>53</sup> Interview with the Legal Officer at Judicial Complaints Authority. 02/02/2011

<sup>54</sup> Judicial Complaints Authority Strategic Planning Paper 2010. Page 10

<sup>55</sup> Judicial Complaints Authority Strategic Planning Paper 2010. Page 10

<sup>56</sup> Section 21(5) Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006

is only one Legal officer who performs investigative functions in addition to substantive legal duties because the structure does not provide for investigation officers. This state of affairs has led to an increased work load on the legal officer. The remaining officers provide administrative support.

Additionally, the Authority has no Registry Clerk to oversee the register and also no Stenographer. The problem is compounded by the fact that the Authority is not adequately funded and salaries are meagre. Closely linked to inadequate staff, the busy schedules of the members of the JCA also compounds this. The Legal officer noted that since most of the five members of the Authority are qualified holders of judicial office, they are fairly busy and at times it is impossible for them to form a quorum required for the decision making process. There is therefore in his view need for the number of members of the Authority to be increased so that a quorum is assured.<sup>57</sup>

### **3.3.8 LACK OF OFFICE BUILDING**

This is also a major factor hampering the effective functioning of the Authority. The Authority's offices are situated in Long Acres along Los Angeles Boulevard. This building does not belong to the Authority as it is rented. This has adversely affected the effectiveness of the Authority in that rentals are extremely high resulting in an increase in operational expenses. Thus most of the grant is diverted to rentals rather than on its core business.<sup>58</sup> Other services suffer in the long run because of this.

### **3.3.9 OVERVIEW OF THE FACTORS**

The effectiveness of any institution is measured by the ability to adequately implement its objectives. Therefore for any institution to achieve its objectives, it needs to have the capability to do that which it was established for.<sup>59</sup> The JCA was established to deal with complaints of judicial misconduct and for it to achieve this, all the fundamental elements required should be put in place. These include autonomy, adequate financial resources, satisfactory workforce, accessibility of all members of the public, information management system and appropriate

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<sup>57</sup> Interview with the Legal Officer at Judicial Complaints Authority. 02/02/2011

<sup>58</sup> Interview with the Legal Officer at Judicial Complaints Authority. 02/02/2011

<sup>59</sup> S.M. Zimba. Control of Administrative Actions. An Investigation into the Efficacy office of the Obudsman. 2009. Page 35

office building. The level at which these factors are available determines the efficacy of any institution. In its current state, the JCA is not very effective and plays a mere conduit in the disciplinary of erring judicial officers. Much needs to be done in order to improve its effectiveness.

### **3.4 EFFECT OF THE AMENDMENT ACT OF 2006**

In May 2006, the Judicial Code of Conduct Act was amended to strengthen the Judicial Complaints Committee. The Judicial Complaints Committee was renamed the Judicial Complaints Authority to strengthen and encourage the public to seek remedial redress in cases of alleged misconduct by judicial officers.<sup>60</sup> It was hoped that the elevation of the committee into an Authority which in literal sense connotes power to compel obedience, would result in an increase in reports of complaints by the public. According to statistics gathered after the amendment, there was an overall increase as complaints submitted rose from forty-four in 2006 to hundred and fifteen in 2007. This was largely attributed to the perception that the Authority now had more power as it was no longer just a committee which was viewed as an extension of the Ministry of Justice but an authority in itself. The legal officer however admitted that even though the number of complaints had increased significantly, the amendment did not in reality render the Authority more effective.<sup>61</sup> It continues to be hampered by so many problems that prevent it from working to its optimum potential in discharging its mandate of dealing with complaints of judicial misconduct.

### **3.5 CONCLUSION**

This chapter has evaluated the performance of the Authority since its establishment in 2003. The numbers of complaints filled have been rising steadily since its establishment with the total reaching four hundred and twenty-five in the year ending 2009 of which three hundred and forty were disposed of. The Authority only made ten recommendations in this entire period. Further, the chapter highlighted the factors that impede the effectiveness of the Authority. These included the lack of autonomy, geographic location, poor information management system, inadequate personnel, lack of publicity, financial constraints and lack of office building. The chapter also

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<sup>60</sup> Transparency International. Overview of Corruption in Zambia. 2008 Page 6

<sup>61</sup> Interview with the Legal Officer at Judicial Complaints Authority. 02/02/2011

discussed the effect of the Amendment Act on the effectiveness of the Authority that was merely seen as surface as it did not increase the effectiveness of the Authority. The next chapter carried out a comparative study with particular emphasis on complaints commissions from United Kingdom, New Zealand and South Africa. The comparative study was aimed at finding ways in which the effectiveness of the JCA can be improved by examining the workings of the named complaints bodies.

## CHAPTER 4

### THE JUDICIAL COMPLAINTS AUTHORITY VIS-À-VIS JUDICIAL COMPLAINTS COMMISSIONS IN OTHER JURISDICTIONS

#### 4.1 INTRODUCTION

The preceding chapter discussed the effectiveness of the Judicial Complaints Authority by highlighting both its successes and failures. This chapter discusses the JCA in relation to similar watchdog institutions. The chapter in this vein discussed the functioning and workings of Judicial Complaints Commissions from jurisdictions such as the New Zealand, United Kingdom and South Africa.

#### 4.2 OFFICE OF THE JUDICIAL CONDUCT COMMISSIONER IN NEW ZEALAND

New Zealand like Zambia has a body that guards against judicial misconduct. This is the office of the Judicial Conduct Commissioner (JCC) which is established under the Judicial Conduct Commissioner and Judicial Conduct Panel Act<sup>62</sup>. The Act was enacted to establish an office for the receipt and assessment of complaints about the conduct of Judges, providing a fair process that recognises and protects the requirements of judicial independence and natural justice.<sup>63</sup>

##### 4.2.1 COMPOSITION

The Office of the Judicial Conduct Commissioner comprises the Commissioner and other relevant support staff. The Commissioner is appointed by the Governor-General on the recommendation of the House of Representatives. The functions of the Commissioner are to receive complaints about judges, conduct preliminary examinations of complaints and to recommend in appropriate cases that a Judicial Conduct Panel is appointed to inquire into any matter concerning a judge's conduct. An office of Deputy Commissioner is also constituted to act as Commissioner in cases where the Commissioner has a conflict of interest, is absent, incapacitated or there is a vacancy. The Commissioner and Deputy Commissioner must act

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<sup>62</sup> Section 7 Judicial Conduct Commissioner and Judicial Conduct Panel Act of 2004, provides that "An office called the Judicial Conduct Commissioner is established."

<sup>63</sup> Judicial Conduct Commissioner. Complaints About Judicial Conduct. July 2005. Page 2  
@<http://www.jcc.govt/PDF/JCC-booklet.pdf> accessed on 06/02/2011

independently.<sup>64</sup> The office of the commissioner also has other staff that are required for it to carry out its functions.

#### **4.2.2 COMPLAINT PROCESS**

Under the Act, any person has locus -standi to make a complaint about the conduct of the judge. The Attorney-General is also empowered to refer any matter concerning the conduct of the judge. In some instances, the Commissioner may on their own initiative treat any matter concerning a judge's conduct as a complaint. A complaint must be made in writing, identify the Judge who is the subject of the complaint, identify the complainant and state the subject matter of the complaint.<sup>65</sup> Because of the serious nature of the complaint, a complainant has to complete a statutory declaration failure to which the complaint will be dismissed. In filling in the complaint the Commissioner is mandated to give reasonable assistance to the complainant. The Commissioner is empowered to receive any kind of complaint and must deal with it regardless of its subject matter whether it arises in exercise of judge's judicial powers or otherwise, or it constitutes a criminal offence.

The commissioner after receipt of the complaint must notify the judge concerned of the complaint and seek any comment which the judge may wish to make. Then the Commissioner institutes a preliminary investigation into the matter. In carrying out this investigation, the Commissioner can obtain any court documents, including transcripts of hearings, and can listen to any sound recording and make other such appropriate inquiries.<sup>66</sup> Principles of natural justice must be adhered to in the course of these preliminary investigations.

Upon completion of the preliminary examination of the complaint, the Commissioner must select and apply one of four courses of action set down in the Act. The first course of action the Commissioner may apply is to take no further action in respect of the complaints if he is satisfied that further consideration of complaint would be unjustified.<sup>67</sup> This power has to be exercised however within the confines of the law as prescribed by the Act and not arbitrary. The circumstances under which the commissioner can take no further action re provide for. These

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<sup>64</sup> Section 9 Judicial Conduct Commissioner and Judicial Conduct Panel Act of 2004

<sup>65</sup> Section 13 Judicial Conduct Commissioner and Judicial Conduct Panel Act of 2004

<sup>66</sup> Office of the Judicial Conduct Commissioner. Annual Report for 2009/2010. Page 3

<sup>67</sup> Office of the Judicial Conduct Commissioner. Annual Report for 2009/2010. Page 4

include firstly that the complaint has been resolved to the complainant's satisfaction following an explanation from the Judge who is the subject of the complaint.

Secondly, that the complaint is genuine and made in good faith, but is based on a misunderstanding. Lastly, the complaint is one in respect of which the Commissioner, having started the preliminary examination concludes that there is no reasonable prospect of there being available to him or her information that would enable him or her to form an opinion.<sup>68</sup> The Commissioner must inform the complainant and judge concerned in writing. In so doing, he must state he exercised that power and the grounds upon which further consideration would be unjustified.

The other course of action available to the Commissioner is to dismiss the complaints if it does not meet the required standards for it to be justified as a complaint. These requirements are stipulated in the Act which provides the following; “

- (a) the complaint is not within the Commissioner's jurisdiction;
- (b) the complaint has no bearing on judicial functions or duties;
- (c) Subject matter of the complaint is trivial;
- (d) Complaint is frivolous or vexatious or not in good faith;
- (e) About a judicial decision or other judicial function, that is or was subject to a right of appeal or right to appeal for judicial review;
- (f) The person who is subject of the complaint is no longer a judge;
- (g) The subject of the complaint was considered before the commencement of this section by the Head of Bench or the Judicial Complaints Lay Observer;
- (h) The Commissioner had previously considered the complaint and there are no grounds to justify referring the complaint to a Head of Bench, or recommending that the Attorney-General establish a Judicial Conduct Panel.”<sup>69</sup>

Another course of action the commissioner may take is to refer the complaint to the Head of Bench, that is, to the Head of the particular Court on which the Judge who is the subject of the complaint sits. The Commissioner will advise both the complainant and judge when this is done. This is so because the Judiciary in New Zealand established an internal complaints process and this process continues to apply with conduct that does not warrant removal from office.<sup>70</sup> For complaints of substance the Head of Bench will determine how to appropriately deal with the

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<sup>68</sup> Section 15A Judicial Conduct Commissioner and Judicial Conduct Panel Act of 2004

<sup>69</sup> Section 16 Judicial Conduct Commissioner and Judicial Conduct Panel Act of 2004

<sup>70</sup> Judicial Conduct Commissioner. Complaints About Judicial Conduct. July 2005. Page 5  
@<http://www.jcc.govt/PDF/JCC-booklet.pdf> accessed on 06/02/2011

matter either by requiring the judge in question to apologize to the complainant or offer appropriate assistance to avoid the inappropriate conduct occurring. If the complainant is not satisfied with the outcome of the complaint, they lodge a complaint with the Judicial Complaints Lay Observer who is an entirely separate office from the JCC. The Judicial Complaints Lay Observer is empowered to review the complaint, the manner in which it was processed, any response from the judge and may recommend that the Head of Bench reconsider the complaint.<sup>71</sup>

The final course of action the Commissioner may take is to recommend that the Attorney-General appoints a Judicial Conduct Panel to inquire further into any matters concerning a judge. Such a recommendation is made only in instances where the Commissioner is of the view that the judge's conduct warrants consideration for removal from office. The Panel is appointed by the Attorney-General subject to consultation with the Chief Justice. This Panel comprises three members who must include at least one judge or retired judge and a lay person.

The functions of the Panel are to inquire into and report on the matters referred to it by the Attorney-General on the recommendation of the Commissioner.<sup>72</sup> It also has to conduct a hearing into these matters which will be held in public although part or all of the hearing may be held in private to protect the complainant and judge's privacy or public interest. The Panel may also restrict publication of any documents that are part of the hearing or any information about the hearing.

The Attorney-General will appoint a special counsel to present the case against the judge.<sup>73</sup> The judge being complained about may appear at the hearing and be represented by a lawyer. Once the hearing is over, the Panel reports to the Attorney-General on its findings of fact, opinion as to whether conduct justifies consideration of removal and reasons for its conclusion. If Panel recommends the removal of the judge the Attorney-General can either agree or disagree and has absolute discretion to do so. Where the Attorney-General agrees he will in the case of Associate Judges and other judges advise the Governor-General who will then formally remove the judge from office. On the other hand, for Judges of the Supreme Court, Court of Appeal and

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<sup>71</sup> Office of the Judicial Conduct Commissioner. Annual Report for 2009/2010. Page 5

<sup>72</sup> Office of the Judicial Conduct Commissioner. Annual Report for 2008/2009. Page 6

<sup>73</sup> Office of the Judicial Conduct Commissioner. Annual Report for 2008/2009. Page 6

Employment Court, the Attorney-General must address Parliament to propose that it recommends to the Governor-General that the judge be removed.

### **4.3 OFFICE FOR JUDICIAL COMPLAINTS OF UNITED KINGDOM**

The United Kingdom like Zambia also has an institution that watches over the judiciary as they conduct their duties. Further, the duties that the judiciary carries out are similar in that they interpret the law and give effect to it. The institution that plays this function is the Office for Judicial Complaints (OJC). Following the implementation of the Constitutional Reform Act 2005, the OJC became the sole regulatory body responsible for matters of conduct and behavior of judicial officers. Prior to its establishment, members of the public would write to the Judicial Correspondence Unit but there was no established process for dealing with misconduct complaints.<sup>74</sup> It is an associated office of the Ministry of Justice for England and Wales.

#### **4.3.1 COMPOSITION**

It comprises officials designated by the Lord Chancellor and Lord Chief Justice. The OJC aims to provide a professional and independent service that is able to support the Lord Chancellor and Lord Chief Justice in their joint responsibility to maintain public confidence in the judiciary and ensure that any judicial discipline matters are handled impartially, consistently and promptly.<sup>75</sup> The OJC deals with complaints about the personal conduct or behaviour of judicial office holders, in accordance with the Judicial Discipline (Prescribed Procedures) Regulations 2006. Examples of possible personal misconduct might be the use of insulting, racist or sexist language in court, or inappropriate behavior outside the court such as a judge using their judicial title for personal advantage or preferential treatment.

#### **4.3.2 COMPLAINT PROCESS**

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<sup>74</sup> Office for Judicial Complaints. Annual Report. (2009-10). Page 8

<sup>75</sup> Office for Judicial Complaints. Annual Report. Page 8

Any person can lodge a complaint about misconduct with the OJC. Although there is no stipulated form, every complaint must be in writing.<sup>76</sup> The complaint may be made by post or email. It must contain complainant's name, address, phone number, the name of the Judicial Office Holder, court case number and date of hearing, specific details about judicial misconduct and where possible specific instances or evidence to support the complaint. Complaints must be made as soon as possible as there is a time limit of twelve months. The complainant can withdraw the complaint at any time.

After the OJC receives the complaint, it must acknowledge it within two working days and a case worker is allocated to the case who writes to the complainant within fifteen working days. If the complaint requires further investigation, OJC will request for further information from the complainant and inform the judge of the complaint to enable him to make his representations or comments about the complaint. The OJC may also listen to audio recordings of the hearing.<sup>77</sup>

The OJC may dismiss a complaint, or part of the complaint if it does not meet the criteria stipulated in the Judicial Discipline Regulations. Firstly, the complaint will be dismissed if it does not adequately particularize the matter complained of. Secondly if the complaint is about a judicial decision or judicial case management, and raises no question of misconduct. Thirdly, if the action complained of was not done or caused to be done by a judicial office holder and it is vexatious. Fourthly if the complaint is without substance or, even if substantiated, would not require any disciplinary action to be taken.

Fifthly, if it is untrue, mistaken or misconceived or it raises a matter which has already been dealt with, whether under the regulations or otherwise, and does not present any material new evidence. Sixthly, it is about a person who no longer holds any judicial office or about the private life of a judicial office holder and could not reasonably be considered to affect his suitability to hold judicial office. Lastly, it is about the professional conduct in a non-judicial capacity of a judicial office holder. Such conduct could not reasonably be considered to affect his suitability to hold judicial office or for any other reason it does not relate to misconduct by a judicial office holder.<sup>78</sup>

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<sup>76</sup> Regulation 11 Judicial Discipline (Prescribed Procedure) Regulations 2006

<sup>77</sup> Office for Judicial Complaints. Annual Report (2009-10). Page 10

<sup>78</sup> Regulation 14 Judicial Discipline (Prescribed Procedures) Regulations 2006

Where the OJC dismisses the complaint, the case worker informs both the complainant and the judge concerned. The Lord Chancellor and Lord Chief Justice however can order that a complaint dismissed by the OJC under the stipulated grounds must be further investigated. This is in usually where the complaint concerns misconduct and is sufficiently serious to warrant further consideration.

If the OJC does not dismiss the complaint, it refers the case to a Nominated Judge who is a judicial office holder appointed by the Lord Chief Justice in consultation with the Lord Chancellor. The role of the Nominated Judge is to advise the Lord Chief Justice and Lord Chancellor on the merits of the complaint, that is whether it should be dismissed without further action. Further, the Nominated Judge must ascertain whether a judicial investigation is required, the mode of the investigation and the matters that should be under consideration.

Furthermore, the Nominated Judge must decide whether disciplinary action must be taken without investigation, its form and whether a request for a review body is totally without merit. If it is found that the case is serious or complex to require judicial investigation, an Investigating Judge will be appointed. The Investigating Judge must be a rank higher than the judge who is the subject of the complaint. This judge will carry out investigations and advise the Lord Chancellor and Lord Chief Justice as to the facts of the case and whether the case is substantiated or not.

If the Lord Chancellor and the Lord Chief Justice uphold a complaint, they will consider what disciplinary action, if any, is appropriate. The Lord Chancellor and the Lord Chief Justice have the power to warn, reprimand, advise or remove a judge from judicial office for misconduct. In certain instances the Lord Chief Justice may decide that a formal disciplinary sanction is not required, and issue informal advice or require further training to be undertaken by the judge in question.<sup>79</sup>

Where the Lord Chancellor and the Lord Chief Justice decide to take formal disciplinary action, the judicial office holder has a right to request that his or her case be referred to a 'Review Body'. Each Review Body consists of four members, two judicial office holders and two non-judicial members (lay people) chosen from a panel appointed for this purpose. The Lord

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<sup>79</sup> Office of the Judicial Conduct Commissioner. Annual Report for 2009/2010. Page 11

Chancellor and the Lord Chief Justice are bound to accept any findings of fact made by the Review Body. They cannot impose a disciplinary sanction on a judicial office holder that is more severe than that recommended by the Review Body.<sup>80</sup>

#### **4.4 JUDICIAL COMPLAINTS COMMITTEE OF SOUTH AFRICA**

In South Africa there has been established under the Judicial Service Commission Amendment Act of 2008 the Judicial Complaints Committee (JCC) to deal with complaints of judicial misconduct. Previously there was no formal mechanism for dealing with complaints of misconduct as the Judicial Service Commission (JSC) developed practices which were not well known to the public at large. Therefore, the JCC was established to rectify this. The functions of the JCC are to receive, consider and deal with complaints.<sup>81</sup>

##### **4.4.1 COMPOSITION**

The JCC is composed of six members namely the Chief Justice who is also the Chairperson, Deputy Chief Justice and four other judges. Among these, two must be women so that gender parity is achieved. These judges can be in active practice and their role on the JCC does not affect their roles as judges. The judges can also be re-appointed once for a period not exceeding two years but may not serve for more than four years. The Chairperson can delegate their powers and functions as Chairperson to the Deputy Chief Justice. When the members are considering a complaint that involves one of their members, the Committee sits without that member.

##### **4.4.2 COMPLAINTS PROCESS**

Any person can lodge a complaint to the Chairperson of the Judicial Conduct Committee of South Africa. The complaint must be lodged by affidavit and based on one or more of the following five grounds incapacity, gross incompetence or gross misconduct; willful or negligent breach of the Code of Judicial Conduct or failure to comply with the provisions relating to the Financial Register accepting; holding or performing any profit of office; willful or grossly negligent failure to comply with a remedial steps and other willful or grossly negligent conduct

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<sup>80</sup> Office of the Judicial Conduct Commissioner. Annual Report for 2009/2010. Page 11

<sup>81</sup> Section 10 Judicial Service Commission Act 9 of 1994

that is incompatible with or unbecoming of a judge, including any conduct that is prejudicial to the independence, impartiality, dignity, effectiveness, accessibility, efficiency or effectiveness of the courts.<sup>82</sup>

When a complaint is received, the Chairperson of the Committee may deal with it in one of three ways, firstly it may determine that the complaint does not fall within the listed grounds. Some of these grounds include a finding that the complaint is frivolous, lacking in substance or hypothetical. The complaint may for this reason be summarily dismissed. However, the complainant can within one month appeal to Judicial Complaint Committee against the decision to dismiss the complaint. The Committee must consider the appeal at a meeting determined by the Chairperson. The Chairperson must inform the complainant and the respondent in writing of the time and place of the meeting.<sup>83</sup>

This meeting must be attended by at least three members of the Committee to be presided over by the Chairperson. Unfortunately, no member who made any decision or finding, that is the subject of the appeal, may participate in the consideration of the appeal. After consideration of the appeal, the Committee must either confirm the dismissal or set aside the dismissal and find that the complaint has been established. In this case, it may come to a finding that the respondent has behaved in a manner which is unbecoming of a judge and impose any of the remedial steps. Finally, the Committee may set aside the dismissal and recommend to the Commission that the complaint should be investigated by a Tribunal.

Secondly, the Chairperson can determine that the complaint is serious but cannot lead to impeachment. In this case, the Chairperson or designated member of the Committee must investigate the complaint in an inquisitorial manner, and may hold a formal hearing if necessary. The Chairperson in this regard can render the judge guilty of breaching the code of conduct and impose remedial sanctions upon that judge. These sanctions include a reprimand, apology, written warning, compensation, appropriate counseling, specific training or any appropriate corrective measure. A judge on whom one of these remedial sanctions are imposed also has right to appeal against the finding. In such an appeal, the Committee can set aside the decision

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<sup>82</sup> Section 14 (4) Judicial Service Commission Act 9 of 1994

<sup>83</sup> Section 18 (4) (a) Judicial Service Commission Act 9 of 1994

written warning, compensation, appropriate counseling, specific training or any appropriate corrective measure. A judge on whom one of these remedial sanctions are imposed also has the right to appeal against the finding. In such an appeal, the Committee can set aside the decision concerned and substitute it with an appropriate decision, with or without any amendment of the remedial steps imposed; or it may confirm the decision.<sup>84</sup>

Lastly the Chairperson will determine that the complaint can lead to a finding of incapacity, gross misconduct or gross incompetence. The matter is referred to the JSC with the recommendation that it consider the appointment of a Judicial Conduct Tribunal to investigate the matter formally and report to the JSC on its investigation.<sup>85</sup> Where this is done, the JSC must also advise the President as to the desirability of suspending the relevant judge. Each Tribunal is composed of three people that includes two judges and one other non-judicial person. A Tribunal conducts its inquiry in an inquisitorial manner and there is no onus on any person to prove or to disprove any fact before a Tribunal. When considering the merits of any allegations against a judge, the Tribunal must make its determination on a balance of probabilities. The Tribunal must inquire into allegations of incapacity, gross misconduct or gross incompetence by collecting evidence and conducting a formal hearing and make findings of fact and merit on the allegation.

During the proceedings, the respondent is entitled to attend the hearing and to be assisted by a legal representative. The Tribunal may begin or continue a hearing, in whole or in part, in the absence of the respondent, their legal representative, or both of them, if the Tribunal is satisfied that the respondent was properly informed of the hearing. The respondent is entitled to give and adduce evidence, to call witnesses, to cross-examine any witness, to have access to any books, documents or other objects produced in evidence and to make submissions to the Tribunal before the conclusion of the hearing.<sup>86</sup> Upon the conclusion of a hearing, the Tribunal must record its findings of fact, including the cogency and sufficiency of the evidence and the demeanour and credibility of any witness, and its findings as to the merits of the allegations in question. It should then submit a report containing its findings to the JSC. The Tribunal must submit a copy of its

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<sup>84</sup> Section 18 (4) (b) Judicial Service Commission Act 9 of 1994

<sup>85</sup> Institute for Democracy in South Africa (IDASA). Judicial Accountability Mechanism. A Resource Document. March 2007. Page 12

<sup>86</sup> Section 28 (3) Judicial Service Commission Act 9 of 1994

report, and all other relevant documents to the Chief Justice for safekeeping.<sup>87</sup> The JSC will then in cases of an impeachable offence submit findings to the Speaker of the National Assembly. If not an impeachable offence, the JSC will impose remedial sanctions on the offending Judge.

#### 4.5 ANALYSIS

The JCA of Zambia is in many respects similar to the office of the Judicial Conduct Commissioner of New Zealand, the Office for Judicial Complaints of United Kingdom and the Judicial Complaints Committee of South Africa in that they are all mandated to deal with complaints of misconduct by Judicial officers. Their overall function is to ensure public confidence in the judiciary. They uphold the important tenet of integrity and impartiality which is vital in the dispensation of justice. In terms of complaints, there is a requirement that the complaints are in writing. Although in the United Kingdom and New Zealand, complaints can be lodged via email.

In certain respects the JCA differs from the other complaints commissions. In the Zambian system for instance, the Authority has the discretion to dismiss a complaint without investigating if the complaint does not disclose any prima facie case of misconduct. There are no grounds stipulated under the enabling Act under which the JCA can dismiss a complaint and the JCA can dismiss a complaint for any reason. New Zealand, United Kingdom and South Africa on the other hand have stipulated grounds upon which complaints can be dismissed. These include among others where the complaint is frivolous or vexatious or involving a complaint that has already been dealt it. In order for a dismissal of a complaint to be justifiable, these grounds must be relied upon.

Also the JCA is empowered to make recommendations to the appropriate authority for disciplinary action or the Director of Public Prosecutions as to the course of action. Their recommendations are not preemptory as such the appropriate authority or Director of Public Prosecutions is not compelled to carry out the recommendations submitted by the Authority. This is not the case in New Zealand, South Africa and United Kingdom where recommendations are preemptory. In New Zealand, after a finding of improper conduct the Commissioner can

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<sup>87</sup> Section 33(2) Judicial Service Commission Act 9 of 1994

Judicial Complaints Committee can report to the JSC to recommend that a Tribunal be instituted to investigate very serious offences.

The JCA has no real power in regard to erring judges. This is due to the fact that its main role is to investigate and submit its findings and recommendations. It has no power to impose remedial sanctions on judges when it finds that a judicial officer is guilty of misconduct. In South Africa however, the Judicial Complaints Committee has remedial sanctions that it can impose on the judicial officer if the conduct is not serious as to warrant removal. These sanctions include a written warning, reprimand, apology, compensation and appropriate counseling. Similarly, the OJC in the United Kingdom and the Office of the Judicial Conduct Commissioner of New Zealand also have remedial sanctions such as recommending further training and removal of a judge from office.

The JCA does not have a body to which it is accountable to. Complaints as well as judicial officers who are subject to the complaint cannot challenge the findings of the JCA. Once the JCA makes a finding on the conduct of the judge or it dismisses a complaint, there is no right to challenge that decision. This is not so for instance in South Africa, the complainant can appeal against the decision of the Judicial Complaints Committee to dismiss their complaint within one month. Also in New Zealand, when the complainant is not satisfied with the manner in which the Judicial Conduct Commissioner dealt with the complaint, they can lodge a complaint with the Lay Observer to review the case. Likewise in the United Kingdom, a judge can have their case referred to a Review Body.

In light of the above, it can be advanced that the JCA is far behind the OJC, Office of the Judicial Conduct Commissioner and Judicial Complaints Committee in terms of progressive provisions for dealing with judicial misconduct. A lot needs to be done so as to enable the JCA deal adequately with complaints.

## 4.6 CONCLUSION

This chapter has discussed the Office of the Judicial Conduct Commissioner in New Zealand, the Office for Judicial Complaints in the United Kingdom and the Judicial Complaints Committee in South Africa with regard to their functions in dealing with judicial misconduct in the respective countries. The chapter discussed the Office of the Judicial Conduct Commissioner in New Zealand which receives complaints about judges, conduct preliminary examinations and recommends the appointment of a Judicial Panel in some instances. It also discussed the Office for Judicial Complaints which is responsible for investigating matters involving the conduct and behaviour of judicial officers in the United Kingdom. Further, it highlighted the function of the Judicial Complaints Committee of South Africa, the body charged with receiving, considering and dealing with complaints of judicial misconduct. Lastly, the chapter gave a comparison of the JCA with the aforementioned complaints bodies. It was observed among other things, that the JCA, although similar to the other complaints commissions has no stipulated grounds on which to dismiss a complaint, cannot compel an appropriate authority to take action, has no remedial sanction powers on the judge and no mechanism for appealing against its findings. The next chapter gives conclusions to the paper and general recommendations.

## CHAPTER 5

### CONCLUSION AND RECCOMENDATIONS

#### 5.0 GENERAL CONCLUSION

This research set out to evaluate the efficacy of the Judicial Complaints Authority (JCA) in dealing with public complaints of misconduct by judicial officers. The research in chapter one discussed the basic aspects of the paper, that is the general objective and methodology. In chapter two, the essay discussed the relevant law that establishes the Authority. Further, the essay in chapter three, discussed the effectiveness of the Authority in practice and the factors that affect its performance. Finally in chapter four, the essay compared the Authority to the Office for Judicial Complaint in United Kingdom, Office of the Judicial Conduct Commissioner in New Zealand and Judicial Complaints Committee in South Africa.

The research set out to uncover the role and effectiveness of the Authority in dealing with complaints by the public of misconduct by judicial officers. The research has shown that the JCA is an important institution in regulating the conduct of judicial officers. This is because it is the forum used when members of the public have complaints about the conduct of a judicial officer. The JCA carries out investigations and submits its findings and recommendations to the appropriate authority or Director of Public Prosecutions. That was the rationale behind the Authority's establishment as an important instrument in the maintenance of the rule of law and good governance.

The Authority has achieved a lot since it was established in 2003 because it has carried out investigations on eighty percent of all reports of complaints that have been submitted to it. However, the research has shown that the Authority as an institution has not adequately fulfilled its mandate in dealing with complaints especially with regard to the making of recommendations to the appropriate authority. This is evidenced by the finding that it has only made ten recommendations since its establishment in 2003. It must also be noted that even after the amendment of 2006, the situation remains the same. The JCA's effectiveness in discharging its duties has been affected by many problems including lack of public awareness about its existence, inadequate funding, lack of information management system, no office building and

inadequate personnel. Further, the current legal framework does not encourage the autonomy of the Authority. There is need to address all these problems accordingly.

## **5.1 RECCOMENDATIONS**

Having examined the role and effectiveness of the Judicial Complaints Authority, and based on the conclusions above, the following are now proposed for purposes of reform. The recommendations and proposals are divided into two (the short term and the long term) so that those areas which need urgent attention can be addressed with the urgency they deserve and the long term can be addressed progressively.

### **5.2. SHORT TERM RECOMMENDATIONS**

#### **5.2.1 INCREASE PUBLIC AWARENESS**

This paper has shown that the Authority is not well known, neither are its functions fully appreciated. It is proposed that for this problem to be rectified there is need for members of the public to be acquainted with the Authority so as to enable them to report the complaints about judicial misconduct. In this regard, the JCA should engage in massive sensitization programs and advertisements both in the print and electronic media. Also, the JCA should develop a service charter to disseminate to the public. This will not only make the general populace aware of the functions of the Authority, it will also enlighten them on the role it plays.

#### **5.2.2 INCREASE FUNDING**

It has been shown that that the JCA cannot fully discharge its mandate due to financial constraints. The Authority needs to be provided with the necessary financial, administrative and technical resources. Therefore there is need to increase funding to the JCA to enable it discharge its mandate effectively, the funding of the Authority should not only be increased but should be adequate for the Authority to be more responsive to the challenges it faces. This will ensure that the Authority meets most of its requirements.

### **5.2.3 INSTALLATION OF AN INFORMATION MANAGEMENT SYSTEM**

It has been shown that the JCA has no information management system for information sharing in the decision making process. It being the era of information technology, it is proposed that the JCA install an information technology system. The system will enable easy access to information as it will improve the storage and dissemination of information. Further, Authority's non-functional website must be redesigned and updated. The website must contain all the current information about the Authority and all its functions and mandate.

### **5.2.4 APPROPRIATE OFFICE BUILDING**

The Authority does not have an office building due to the fact that the building it occupies at present is rented. As a result most of its funds go to the payment of rentals. There is need for an office building to be built or procured. The government has to ensure that an appropriate building is provided so as to enable the Authority concentrate on discharging its mandate.

### **5.2.5 ADEQUATE STAFF**

The JCA has a shortage of staff as some positions are not filled and this has affected its effective functioning. It is suggested that the JCA should make a concerted effort to employ more staff. A Stenographer and Register Clerk must be employed. Also, the structure of the Authority must be reviewed and revamped so as to enable it function properly. The structure could include the employment of investigative officers to help in investigations which will in turn reduce the legal officer's work load for effective delivery. It is further suggested that in ensuring a quorum at all times for arriving at decisions, the number of members of the JCA should be increased to seven.

## **5.3 LONG TERM RECOMMENDATIONS**

### **5.3.1 DECENTRALISATION OF OPERATIONS**

The operations of the JCA are centralized and it operates only in Lusaka. It is proposed that government establishes offices in other parts of the country. This centralized organizational structure should be decentralized to a provisional level by providing Provincial Judicial Complaints Offices. These offices can further be decentralized by establishing district offices as

well. This must be done because most complainants from other parts of the country cannot afford the cost of transportation to Lusaka.

### **5.3.2 LEGISLATIVE REFORM**

It has been shown that the Authority has no real power and is a mere conduit in the disciplinary process of erring judges. The legal framework in which the JCA operates is weak in that the Judicial (Code of Conduct) Act lacks enforcement mechanisms in cases of erring judicial officers. It does not fully articulate the manner in which the Authority's findings and recommendations are to be dealt with and enforced so as to ensure that judicial officers act in accordance with the code. The Judicial (Code of Conduct) Act must be amended to provide autonomy and powers to the Authority to enforce adherence to the code of conduct.

The Authority can also be transformed into a Commission by revising the Act. A Commission is a group entrusted by government with the authority to perform certain duties.<sup>88</sup> A Commission differs from an Authority in that a Commission is established as an autonomous body which, in the performance of its duties, is not subject to the direction or control of any person or authority. In view of this, a Commission has an advantage as over an Authority in that it does not serve under a government ministry. In this instance it will not have to rely on the government and it will be seen as free from the influence of government and have recognition as an independent mechanism for effectively dealing with judicial misconduct. Despite this, it must have links with the State for administrative purposes. Such links may be established through the Office of the Vice President.

The Commission can also appoint its own staff on such terms and conditions as it may determine. It does not have to seek permission from the Minister of Justice because it will not be affiliated to the Ministry of Justice. This will enhance the public's confidence in the institution as it will be viewed as separate from the very people that the public is complaining about. The Commission can also engage the services of such advisors and experts as it thinks fit. The following are the proposed amendments to the Judicial (Code of Conduct) Act.

Firstly, the Act does not provide for the time limit in which to lodge a complaint. It is proposed that a complaint be made within twelve months of the event or matter complained of. In

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<sup>88</sup> Oxford Illustrated Dictionary. Oxford University Press, London, 1998. Page 21

instances of a complaint relating to a continuous state of affairs, that complaint may be made at any time while that state of affairs continues or within twelve months from when it ends.

Secondly, the Act does not stipulate the timeframe within which a person should respond to the Authority's enquiries. It is proposed that the timeframe for response to the enquiries of the Authority should be twenty-one days for persons within Lusaka. For persons resident outside Lusaka, it should be forty days. Moreover, the Act does not provide for measurement of time for doing an act in response to a notification, invitation or request made by the Authority. The time for doing such an act should run from the second business day after the day on which the notification or request is sent by express mail service to the person invited or required to do the act.

Thirdly, the Act provides that the Authority may dismiss a complaint that does not disclose any *prima facie* judicial misconduct without investigating it. It is silent on the grounds that warrant such dismissal of a complaint. It is proposed that the following provisions be incorporated;

The Authority may dismiss a complaint, or part of a complaint, if it falls into any of the following categories;-

- (a) It does not adequately particularize the matter complained of;
- (b) It is vexatious;
- (c) It is about a judicial decision or judicial case management and raises no question of misconduct;
- (d) The action complained of was not done or caused to be done by a judicial office holder;
- (e) It is without substance or, even if substantiated, would not require any disciplinary action to be taken;
- (f) It is untrue, mistaken or misconstrued;
- (g) It raises a matter which has already been dealt with, whether under these regulations or otherwise, and does not present any material new evidence;
- (h) It is about a person who no longer holds judicial office;

- (i) It is about the private life of a judicial office holder and could not reasonably be considered to affect his suitability to hold a judicial office;

Fourthly, the Act does not provide for the appropriate authority to act upon the recommendations and findings made by the JCA. The appropriate authority is not mandated to act upon recommendations. In this regard, it is recommended that acting upon the Authority's recommendations should be made peremptory under the Act and the appropriate authority must be compelled to act upon the recommendations. The appropriate authority must thereafter report back to the Authority on the action it has taken. Additionally, a time period of ninety days within which the appropriate authority should report back to the JCA should be stipulated.

Lastly, under the Act, the Authority has no power to impose corrective measures on a judicial officer. The Authority has no powers to impose sanctions on erring judicial officers which create a weak spot. It cannot in the interim impose curative measures to redress the situation. It is suggested that the Act be amended and confer such powers on the Authority. These measures that can be imposed by the Authority may include demotion in rank, reprimand, apology, written warning, compensation, appropriate counseling, or specific training. In serious matters against judges, the Authority should be legally empowered to report directly to the Head of State and recommend that he appoints a tribunal to investigate the matter. The Authority's report could be copied to the Chief Justice.

## **5.4 CONCLUSION**

This chapter has given the general conclusion to the whole research paper. It has also highlighted the areas for reform and given recommendations to address those areas. Overall, the JCA is an important institution in a democratic society like Zambia as it is an instrument of good governance. It provides for accountability of judicial officers who are vital in the dispensation of justice. It is important that all the factors that enable the effective functioning of the JCA are put in place so that the Authority can discharge its mandate as a forum for dealing with judicial misconduct.

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