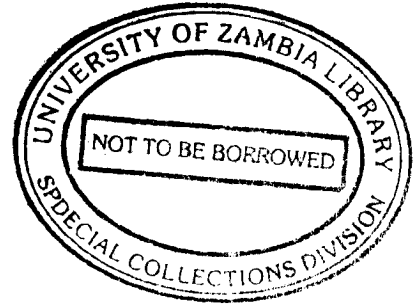


THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW



POLICE BRUTALITY: IS THE ESTABLISHMENT OF THE POLICE PUBLIC COMPLAINTS AUTHORITY A SOLUTION?

BY

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OBLIGATORY ESSAY

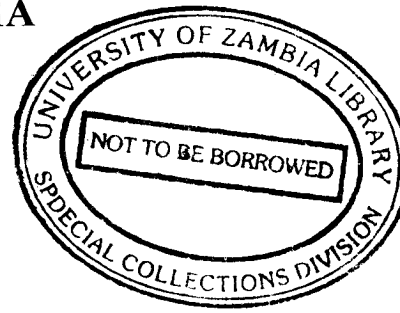
Submitted in partial fulfillment of the requirements for the award of the degree of bachelor of Laws (LL.B)

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Date

A handwritten signature in black ink, appearing to read 'K. Chanda', written over a dotted line.

Justice Kabazo. C .Chanda (RTD)
SUPERVISOR

DEDICATION

To my parents Christine and Abel, my elder sister Mildred and her husband Mr. Chekwe all the afore mentioned relations have been very instrumental in Making it possible for me to have attained the level of education that I have attained despite the Psychological, sociological and economical draw backs that I was going through but with their support the ultimate product has been this work which would not have been there if it were not for their natural love in nurturing me into a responsible adult.

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My heartfelt thanks goes to my parents for having made this work become a reality especially for having exempted me from serious family responsibilities which is a very rare thing in the African set up with special regards to the Bemba proverb that “*Kolwe akota asabilwa na bana*”[*meaning that when a monkey becomes of age it is the responsibility of the off springs to fend for it*].Mr and Mrs Chekwe and the family Ntawa and Chikuku for their support morally, spiritually and financially.

My Grandmother Fostina Kasonde has also been very helpful through out my life. Inspector Akamandisa of Chifubu Police Station thanks for your support too. am also indebted to Chali Tresford who encouraged me to do this research for it falls within the ambit of my policing career . Special thanks also go to my campus friends Brian Mphanza who has always put his tight schedule aside to edit my work.Sister Eliza, Tiny, Emmanuel, Brian, Kingstone a good friend and coursemate , Lindick, Changa and Carlos I am indebted to you guys. Uncle Chomba thanks for your support too.

I am greatly indebted to Judge Kabazo Chanda (R.T.D), my supervisor for devoting his time to this work by giving a valuable critique and going through the scripts submitted to him and paying attention to details there by giving the work substance and form.

Above all, thanks to the living God for having been with me through out my life at campus. *I will praise you, O LORD, with all my heart; before “the gods” I will sing your praise.Psalm 138:1*

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CHAPTER ONE

1.0 INTRODUCTION

In a country which practices democratic governance, the citizen's lives rely on the quality and effectiveness of the State police of that particular country. This is because police officers are at the centre of initiating criminal justice, protection of human rights as well as maintaining order. A country that has a professional Police Service brings about a good reputation in terms of good governance because the citizens can enjoy their rights freely and provide checks and balances to the government in that citizens can criticize government without being intimidated by the police when criticisms tends to shock the government of the day. Realizing from the fact that the citizen's lives rely on the quality and effectiveness of the state police, the essay endeavors to make it emphatic that the Zambia police needs to resist from brutality behaviour for they are supposed to maintain law and order but it is clear that they have departed from what they are supposed to do. As a result of this departure from profession etiquettes, it is truism that brutality of the police has been the concern of the people because officers who are supposed to maintain law and order have become the culprits of breaking the law. It therefore means that there is a problem in the way the police have been operating and the rate of police brutality in Zambia does not seem to decline despite bodies such as the Permanent Human Rights Commission and the Police Public Complaint Authority trying to do the best in curbing police brutality and making sure that peoples rights are respected.

The significance of this essay lies in the fact that it will provide viable solutions that will contribute towards the change in our police service which seems to derive pleasure in torturing the general citizenry as they endeavour to combat crime and provide security to the nation. This defies logic because there is no way in which officers who are supposed to protect human rights can start violating the same rights.

There are also other authors who have written about police brutality such as Amnesty International Zambia, and police brutality has been attributed to lack of training among police officers especially the paramilitary unit.¹

As much as the literature by Amnesty International Zambia and that of other scholars has been appreciated for they have brought out relevant materials alluding to police brutality but this research will be unique. Its point of departure will be comprehensive and novel for it will inquire into whether or not the establishment of the Police Public Complaints Authority is a solution to Zambia's police brutality as well as other things that need to be done to overcome police brutality.

This essay is of utility to the general public which needs to know about how the people who are supposed to protect them have continued to depart from their duties. The junior police officers and the police high command will find it helpful in the efforts of trying to make sure that the police conform to the tenets of democracy which allows people to enjoy their rights and freedoms without any interference from the police.

1 Historical Background of the Police in Zambia

The origin of the Zambia Police Force which is today called Zambia Police Service can be traced back to 1889 when the charter to administer Southern Africa was given to the British South African Company (B.S.A). This was precipitated by the Rhodesia discovery of gold and diamond in the South which brought about wide conviction of the prospective riches of Northern hands. Consequently, the British South African Company granted a Royal Charter of Incorporation to the British South African Company². The company was given power to obtain territories by treaty from its traditional rulers as was provided for under **Section 4 of The Royal Charter of October 29th 1889**, entrusted the administration of the B.S.A Company and empowered it to enforce laws, establish a police force and courts to try offenders. On 27th June, 1890 a treaty was signed with Chief Lewanika by which the latter agreed to accept a British Protectorate and confer upon the company full general mining rights. It is believed that a detachment of policemen arrived in Southern Rhodesia in 1899

¹ Policing to protect Human Rights, 1997-2002

² Nkwazi Magazine Vol. 5 April, 1988 P.23

was included in this expedition.³With the passage of time, the enforcement of the law had taken political orientation. This was during the time of nationalists movements fighting to introduce black majority rule and to introduce an inclusive political culture had emerged .The Africans formed the African National Congress(ANC) under the leadership of Hurry Mwaanga Nkumbula .He wanted an energetic agitation for independence of the indigenous people .This new phenomenon in the public affairs of the country , inevitably changed the role of the police force from a mere Government property guard to a state agency fighting the danger created by the political awakening of the native population .Thus, the colonialists had to crush the black political activists with the most effective weapon at their disposal and the police was found to be the best tool. This gave rise to police brutality a legacy of state terror which is still in existence in Zambia today. The public Order Act was used to control the indigenous Africans who advocated independence from Britain. Quite often, the Police suppressed dissenting opinions by using force and affecting arbitrary arrests and detentions which brought about the wide spread dislike and mistrust of the Police by natives.

The historical background of the Zambia police Service has been looked at and it is evident that it had a main role of crushing the Africans desire to get there independence. This role entailed the use of all the mighty force to crush the groups that agitated for this cause .The role played by the police then may be seen to have been warranted because of the political status that was prevailing in the country and what it is today .It is on this premise that the political status that is at play is democracy and opposition views as to the running of the affairs of the country need be given a platform and this can be attained if the attitude of the police ceases being colonial –minded or the attitude of only serving those that are in the government of the day instead of being mindful of the fact that state police should serve all the citizens not only the politicians who have formed the government of the day .If the above is attained then the brutality behaviour portrayed would be avoided.

2 Roles and Duties of the Police

It is difficult to propound on police brutality without determining their roles and functions so that anything done outside their powers can be identified by the general public that this is an illegal act .In most cases illegal acts are the ones that bring about cruel and violent behaviour

³ Ibid p.23

f the police towards members of the public. As we have seen in many cases where the police have detained citizens for civil cases. This is an illegal act because the police have no power to detain an individual for a civil wrong. Thus, resulting in brutality behaviour by the police service and this brings about shame to the service in who peoples protection from danger lie.

The Zambia Police Service falls under the Ministry of Home Affairs. It is established under article 103 of the constitution and the Police Act as per Chapter 107 of the laws of Zambia. The function of the Zambia police are: to protect life and property; to preserve law and order; to detect life and prevent crime; and co-operate with Civilian Authority and other security organs and the population generally.⁴The Zambia police service has a mission statement which states that:

The Zambia police are committed to providing high quality Service, by upholding and applying the law fairly and firmly to all. We will apply proactive methods to prevent crime, arrest those who break the law and take them to court and assist the victims of crime through counseling. We are committed to cultivating rapport and partnership with the community. We pledge to respect individual rights while recognizing the community expectations and obligations. We are committed and will review our roles and law enforcement methods where necessary in order to facilitate good democratic governance while upholding our professional standards and ethics.

When law enforcement officers are carrying out their duties, circumstances arise which require them to use force even deadly force is permitted. For example, a defense of self defense can be used by a police officer who uses reasonable force against an enemy because the law provides so.

When it comes to international human rights law, the fundamental human rights principles are that, when ever the use of force and firearms is necessary, law

⁴ Article 104 of Cap1 of the laws of Zambia.

enforcement officer must exercise in such use and act in proportion to the seriousness of the offence and the legitimate objectives to be achieved and intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life and only if other means remain in effective⁵. The standards for the use of force are based on the balance of between the right to life and security of the person and the need to prevent crime and to bring criminals to justice. All rights emanate from the supreme right to life, and no state may derogate from the supreme right to life even at a time of public emergency but this seem to be not a known thing in the minds of the police because they are always in contravention with this provision as has been evidenced from the high rate of police brutality which is being recorded.

1.3 POLICE BRUTALITY ON THE PEOPLE WHO'S HUMAN RIGHTS NEED TO BE PROTECTED.

There are three broad context in which police commit human rights violations; during the investigation of crime and the arrest, detention interrogation of suspects; when dealing with vulnerable social groupings such as women, refugees, street children, ethnic or other minorities; and in the policing of activities essential to participation in the political life of the country. The vulnerable people such as women have been seen detained in the cells over civil matters such as debts. This is done in most cases by way of giving a bribe to the officer who is on duty so that when the debtor is given a call-out, when that person comes he is detained so that the officer facilitates the process of collecting a debt on behalf of the complainant when in fact the officer has no legal basis for doing such an act because the police are not empowered to collect debts. The end result in most cases is that if the detainee does not have money to clear the debt he is detained for a fake charge and a person who has no means to engage a legal practitioner will have suffered irreparable damage after having spent many days in the police custody where the conditions are not habitable for humans .Surely,

⁵ Basic Principles on the use of Force and Fire Arms by law Enforcement Officials (principles 4,5 adopted by the U.N Congress)

this is brutality on the part of our Zambia police service in that a professional man cannot detain a citizen for a civil wrong instead of advising the two parties to seek redress in the law of contract in order to avoid unlawful detention.

Law enforcement officials are provided with the power to arrest and detain suspects in the course of investigating crime. The exercise of this power affects a number of fundamental human rights, including the right to liberty and to a fair trial. These rights are protected under international and regional human rights treaties and standards, in particular the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and People' Rights (African Charter). The rights to liberty are violated in the sense that in the papers we hear the police officers saying, "We have got Mr. X to help us with investigations." This is unwarranted because at a time they are going to release that person, because he is not connected to the case, his rights will have already been violated. This is brutality behavior on the party of the police for they make arrest before they have built up evidence. This evades the obligations under national laws to bring detainee before a court of law within a specified period of time. They may conceal the whereabouts of a detainee from family and lawyers. The arrested person is then at risk of "confession-oriented" investigation in which the police seek the information they need, sometimes simply in order to conclude their "investigation" and often by torturing the suspect. What happens as seen above is brutality on the part of the police. For example, in Zambia to put pressure on a suspect to surrender, police officers illegally detain their relatives. The practice is locally referred to as "kidnapping". The Women and Law in Southern Africa project in Lusaka notes that the victims are often women and children.⁶

In almost all countries in the region, the policing of public gatherings involves special police units. Many of these are paramilitary units, whose officers receive different training and have a separate command structure although they are usually answerable to the head of police. One needs to evaluate the fact that in

⁶ Policing to protect Human Rights , p.20

modern times do we really need the paramilitary whose objective was to provide security at a time when Zambia's relationship with its neighbours like had gone sour then in the 1980's the government of the Republic of Zambia saw the need to devise a crush programme to produce paramilitary officers to handle such situations in a semi –military but at a time when the situation is cool one wonders whether it is necessary or not to have a paramilitary officers who are trained in a crush programme with the syllabus not paying much attention to human rights issues which have become very crucial in a democratic state. This is why where political misuse of the police occurs, these units are frequently implicated. They have at times undertaken police duties without adequate training. The lack of adequate training has resulted in the detaining of people unlawfully without charge and setting up roadblocks and conducted searches of person and vehicles without warrants.

The brutality of the Zambia Police Service towards members of the public has been seen towards opposition party leaders upon whom the police has been quick to arrest even on trumped up charges .For example in 1997 the police arrested the former president Kenneth Kaunda and Dean Mung'omba leader of (ZADECO) an Opposition political leader was badly subjected to torture at the police service Headquarters on suspicion of involvement in the 1997 abortive coup by soldiers .The state dropped up charges and entered a nolle prosequere just before the commencement of the treason trial after the detainees had spent a number of months in prison as treason is not aailable offence. The brutality of the Zambia police Service has also been seen in the case of **Resident Doctors Association of Zambia and 51 others v. The Attorney General**⁷ in which the petitioners were matched to the police station but when they declined to match to the police station they were bundled in truck and detained in cells until they were released at midnight.

The two cases above clearly attest to the brutality levels that exist in the Zambia Police Service and this is an indicator that the service has departed from its main duty of protecting life in that you cannot claim to protect people's lives when you are exposing them to in

⁷ Appeal NO.39 2002 S.C.J 12 2003.

human and degrading treatment as seen in **Resident Doctors v .Attorney General and Dean Mung'omba's** case in that taking people who are not a threat to national security as was seen in the afore mentioned cases defies logic and it is torture which is contrary to the spirit of the constitution as provided under Article 15 of the Constitution.

The conduct portrayed by the Zambian Police Service has brought shame to the nation because our country has rich laws that protect citizens from torture as provided in our **Constitution and the African Charter** to which Zambia is a member. Furthermore, the brutality of the police has also been seen in the following cases .In the case of **Mofya V. Attorney -General**⁸The appellant was unlawfully imprisoned and subjected to assault as a result of which he suffered from injuries consisting of swollen arms, body abrasions swelling on the head as he was suspended on his wrists .The all act was done by suspending him on a swing .The court awarded damages to the plaintiff. Also the use of excessive force entails brutality on the party of the law enforcement officers as seen in the case of **Attorney General v Martha Mwiinde** ⁹in which the respondent was shot in the elbow and buttock after the police man had spoken to the driver of the minibus in which she was traveling in but the other officer who was also at man the road block thought that the driver had run away and it is him who fired such shots .All this points out to the brutal behaviour of our police service because this entails negligence for a professional who is supposed to respect human rights to have done such a thing .The above points out to the brutal behaviour of our police service which is unprecedented in that an innocent civilian does not deserve such a treatment.

The cruel and violent behaviour has also been seen in the case of **Attorney General v. Musonda** ¹⁰in which exemplary damages were awarded to the respondent because the appellant acted in contumacious disregard of the plaintiff's rights by the detaining authority .This too is a clear indication of the police's disrespect for human rights .It can be inferred from the brutal behaviour of the police that this has been due to the flaw in the Zambian rules of evidence because although an involuntary confession will nonetheless be admissible in

⁸ (1995-1997) ZR 49

⁹ (1987) ZR 71

¹⁰ (1974) ZR 220

evidence provided it is relevant to the issues before court as was held in **Liswaniso v.The people**.¹¹

There are memories of The University of Zambia demonstrations upon which the police

Service has unleashed there brutality is another example of police cruelty on the citizens.To give some examples, the stories of Tamiwe Mbewe and Inonge the two being first year students are shocking .Tamiwe Mbewe ,a 23 year old student suffered a back bone dislocation during the police raid after she was forced to jump from the third floor of student hostel October block 2 room 27.The fall coupled with the repeated brutal kicks by the police has left her partially paralysed .The truth is that Tamiwe would never walk again .The story of Inonge is as well shocking, the police paraded Inonge naked and she was traumatized and humiliated.¹²She had only a towel on her, unfortunately three police officers grabbed her, removed the towel from her brutally whipped with a sjambok .It can be seen from the brutal behaviour of the police officers at UNZA that the service has breached its duty not to subject humans to inhuman treatment under the Zambian constitution as well as at international level under the African Charter and the convention Against Torture (CAT).The recent police action at UNZA raise questions whether or not the Police Service adheres to the provisions of the law .This is because any action made by a public officer, there must be a law from where he derives that power so that they can be held accountable to the people when they have done anything contrary to the law. One may say that the police are empowered to use force under the law but the issue is the force has to be reasonable. And yet the force unleashed on the UNZA students is unreasonable there by resulting in there conduct being cruel, violent and completely acting without feelings. Also on 30th August ,2000 police officers fired tear gas into student accommodation at the University of Zambia following protests about rising fees .One student sustained serious injuries when she jumped from a window to avoid the gas and the police. Despite a public outcry, the Minister of Home Affairs then Dr Peter Machungwa issued a statement in support of the police action that the police were right to have used such force on the UNZA students .The statement by the Minister is unwarranted because it gives

¹¹ (1976) ZR 297

¹² www.jctr.org.zm

the police unlawful powers to act in such a manner .The statement by the minister is disappointing because there is no way he could sanction such a horrible thing to the custodians of the law. This is because if these people who are supposed to up hold the laws are the ones breaking it then who is going to protect the law can not be known.

One important principle that should not be forgotten in the minds of the police is that no one should be punished beyond what their action deserve .The punishment should be proportional to the kind of wrong that one must have committed but to the police this principle seem to be unknown as one can tell from the brutal conduct of the police towards innocent citizens .The brutality behaviour was also seen in the coalition of civil society and the opposition parties who demonstrated in there cry for the adoption of the Constitution through a constituent Assembly but recruit police officers ruthlessly battered some reporters during the foiled demonstration.

The above shows a departure from there roles and duties as provided under the Police Act as well as the police mission statement which emphasizes on the upholding of human rights and yet these people were exercising their freedom of expression but the people (police officers) who are supposed to protect them are the ones who are violating them.¹³ There have also been a number of deaths in police custody being recorded. Some of the people, who have died in the police custody, had not been registered as detainees in police station records. Deaths have also occurred as a result of torture or culpable negligence. In others, arrested suspects appear to have been deliberately killed.¹⁴

Human rights oganisations and members of the public have expressed concern over the high number of deaths in police custody in Zambia .The answer given by the police in most instances is that this person committed suicide or as a result of illness. The question that needs to be answered by the police command is whether or not the illness is a natural one or it is unnatural which comes about as a result of beatings by the police and with standing the cause of the illness was the detainee taken to the hospital for medical attention? Obviously

¹³ Daily Mail Monday 25 February 2006.

¹⁴ Policing to protect human rights P. 19

the answer is no because the police have no enough transport, so they cannot afford to take the suspect to the hospital. The failure to take the sick detainee for medical attention is brutality behaviour on the part of the police even if there is no transport to take the detainee to the hospital .When in fact in many situations, when the detainee has began feeling sick, he tries to inform the police well in advance so that he can even walk to a near by clinic but the police's response is that "you are just pretending. "When a detainee dies then it is the police to blame for lack of care and mistreatment of the detainees so much that even when some one is sick they do not want to pay attention to him.

1.4 THE SERVICE THAT THE POLICE HAVE TO OFFER.

This function is a synthesis of the watchman and a legalistic one. It stems from an understanding that most of the police Officers time especially that of functionary is spent on giving advice and meeting needs, and on other duties that do not relate directly to any threat or violation of the law and that helps create a contended society .This is almost similar to community policing where the police are treated as part of rather than outsiders of the community with a sympathetic attitude the police have a far more positive image as a service oriented institution than an over emphasis of the enforcement function. Community police as against traditional policing is increasingly becoming recognized as the most important part of police work.¹⁵ Within the context of the above debate, the controversy is on the form of intervention police approaches should take over the role and function as has been defined .The issue is on the extent to which the police should interfere with individual privacy in their pursuance of maintaining social order in a manner compatible with constitutional rights of every individual .Maintenance requires that the state of order will be protected in the interest both of society and of the individual.

The law enforcement school of thought, which appears to be pre occupied with the protection of personal freedoms and privacy, prefers a police intervention that is minimal or reactive. In other words, police contact with the community should be limited to situations when they are actually summoned to do so by the members of the community. They should react to the

¹⁵ SARPCCO Human Rights and Policing p.11

specific calls for assistance from the community and go straight back to their stations when they are finished. They should only act after the deed. The maintenance of order and function supports a police public contact that is intensive and proactive. This enables police to attend to other community needs other than law enforcement ones which help to create a contented society. Curtailing of limited individual's freedoms for purposes of achieving social order is desirable according to this school of thought. As seen from the above paragraph the question that can be posed on the police service's command is that: Has the police offered a service or not? Obviously a service is being offered but not to the requisite standard because one cannot claim to offer a service when there is discrimination in the way in which the services are being offered.

In most instances the police has regularly been seen lacking professionalism and this has come out in the selective arrests that are made by the police in the politically sensitive cases, the police over the past years have been reluctant to arresting ruling party officials who have committed criminal offences but have been quick to arrest opposition leaders and their members, even on trumped up charges. For example, there was a demonstration organized by both the ruling elite and the opposition political parties on 16th February, 2001, three hundred(300) United Party for National Development (UPND) cadres were nabbed by the police and charged of unlawful assembly. The Times of Zambia reported that police spokes person then Remy Kajoba said: *The cadres defied the Public Order Act and as such we could not allow them to carry on with the demonstration. The demonstration was illegal because they had no permit allowing them to do that*¹⁶

However, in a related incidence over 500 Movement for Multy-party Democracy (MMD) cadres had on 6th February, 2001 demonstrated against the Lusaka province MMD's resolution rejecting a presidential third term office. This was done without obtaining a permit but no one was arrested for non-compliance with the Public Order Act but because they were from the ruling party they were not arrested. The illustration above goes to point out the fact that the Zambia Police Service has not been providing a service to the requisite standard because an institution which is supposed to provide a service to the people whose rights it is

¹⁶ Times of Zambia 16 th February,2001

then violating by battering them as was seen when the UPND cadres were beaten and this attests to the highest levels of brutality which has been existing in Zambia.

The behaviour portrayed by the police service is disappointing as shown above between the MMD law breakers and the opposition party law breakers, the treatment given to the two groups has been different and it seems the police are not aware of the doctrine of equal protection before the law. Equality is a fundamental principle of human rights .Article 7 of the Universal Declaration of Human Rights states: All are equal before the law and are entitled without any discrimination to equal protection of the law.¹⁷The African Charter prohibits any discrimination in the enjoyment of human rights (Article 2) and provides for equality before the law (Article3).The brutality behaviour of the police has continued as was reported recently that three street kids were wounded when police opened fire to disperse rioting youths at Kalembula youth Training Camp in Lufwanyama district at the weekend .Police opened fire when the youths tried to prevent officers from arresting there colleagues terrorizing villagers near the training centre.Of the three wounded two were treated and discharged while one of them is still in the hospital.¹⁸This incident is actually an unfortunate on the part of the police who had to use such force in affecting an arrest of that nature because the force was excessive. The **Ng'ombe Compound Saga** is also another human right abuse where the police shot at two youths on suspicion that the two were criminals but the investigations have shown that in fact the two youths were in no way criminals but only innocent citizens who were passing in the night go and attend a funeral service in the neighbourhood.Although the government of the republic of Zambia speak of the democratization of policing, discrimination and differential treatment by the police based on political, ethnicity, sexual identity, age, gender and social status have been seen as the basis on which the law is being applied as seen in the case above in which UPND cadres were arrested for demonstrating while in breach of the Public Order Act while the MMD cadres went freely¹⁹. At face value one cannot see that this is brutality behaviour because being selective in carrying out arrests is an indication of acting without feelings for other individuals and this is what brutality is about.

¹⁷ Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948.

¹⁸ Monday , November 13 , 2006.

¹⁹ Ibid 16th February,2001

CHAPTER TWO

2.0 THE OPERATIONS OF THE POLICE PUBLIC COMPLAINTS AUTHORITY.

This chapter will make a flash back on the human rights atrocities that have been committed by the Zambia Police Service hence the need to have the Police Public Complaints Authority (PPCA) as an independent body that can protect the peoples rights from being violated .The operations of the PPCA and whether it has made scores in combating police brutality will also be looked at . An examination of its success if any or not will as well be determined in comparison with similar bodies that perform the same roles in other jurisdictions such as South Africa and Jamaica.

2.1 HUMAN RIGHTS ATROCITIES THAT JUSTIFY THE FORMATION OF THE POLICE PUBLIC COMPLAINTS AUTHORITY.

The Zambian society has had experiences of police brutality which have been seen in many instances where the police have remained the biggest obstacle to the proper administration of the provisions of the Public Order Act. They were callous and uncooperative to opposition political parties or to groups that were opposed to the government. In 1996, the Supreme Court of Zambia struck out sections of the Public Order Act for being inconsistent with the constitution to the extent that the subordinate law empowered a police officer to license the right of assembly before one could gather and enjoy it. The 1996 amendment had a positive impact on the freedom of association

However; the police still abused the revised Public Order Act to disperse peaceful demonstrations. Often, police action seemed to be instigated by the government and the ruling party officials, as some events showed on 2nd May, scores of Evelyn Hone College students demonstrating against attempts to allow former president Chiluba to go for a third term were tear-gassed by police.²⁰ Another record of human rights violation was in the year 2000 when a policeman shot dead three teachers in Lusaka's Avondale area police claimed that the three were part of the five suspected criminals who attempted to rob the resident of State House Permanent Secretary Gibson Zimba .The lone cop had not been identified and repeated request from the police to identify him failed .It turned out that the three bandits shot dead by police at Mr Zimba's house were not bandits but teachers from Kasisi Secondary School .This incidence was very unfortunate and a grave violation of human rights because the overzealousness of the police on the trigger has been portrayed and yet there was no need to resort to such force under the prevailing circumstances . This behaviour has to be condemned in the strongest terms in that this was unprofessional on the part of the police as custodians of the law.

On 5th May 2003, Obert Simwanza, a freelance journalist , was beaten by a police officer and suspected ruling MMD supporters, following the violent disruption of a planned rally in Lusaka which was called by an MMD faction opposed to Chiluba's third term bid .Simwanza said he was assaulted by a police officer at Kulima Tower police post in the City Center where he was taken by a suspected pro-Chiluba MMD Members, who had earlier beaten him on suspicion of being sympathetic to the anti-Chiluba faction whose planned rally had been disrupted by police using tear gas and live ammunition.²¹

²⁰ Zambia Human Rights Report 2001 p .20

²¹ Zambia Human Rights Report 2001 p .37

What has been highlighted above shows human rights violation by the police who are supposed to protect the citizens from such in that violation democracy can be hampered if such behaviours by the police were to be left unchecked .It was on this basis that the Police Public Complaints Authority needed to be formed?

2.2 THE OPERATIONS OF THE POLICE PUBLIC COMPLAINTS AUTHORITY, ITS LEGAL BASIS FOR ITS FORMATION AND THE ATTRIBUTES IT NEEDS.

The Police Public Authority was created pursuant to section 57B of The Zambia Police (Amendment Act) No.14 of 1999. The functions of the Authority are provided for under section 57G of the same Act and they provide as shown here under:

- (1) .It shall be the responsibility of the Authority;
 - (a) To investigate all complaints against police actions that results in serious Injury
 - (b) To submit its findings, recommendations and directions to:
 - (i) The Director of Public Prosecutions for consideration of criminal prosecution.
 - (ii) The Inspector-General for disciplinary action or other administrative action
 - (iii) The Anti-Corruption Commission or any other relevant body or authority
- (2.) Where the Authority directs the Inspector –General, the Anti-Corruption Commission, or any other relevant body, or authority under subsection (1) the Inspector-General, Anti Corruption, relevant body or authority shall give effect to such directions.

Going by the above provisions, one examines the operations of the Police Public Complaints Authority in a country which has the police service that inherited brutality behavior from the colonial legacy. That is why this institution has been given a task to

receive the complaints from the members of the public against police brutality and investigate them. Thus, the Police Public Complaints Authority requires the support staff which is adequately trained in human rights law and investigation techniques for they are central to the operations of this institution in that some of the human rights violations are very sophisticated there by requiring the expertise on the part of the investigator. For example, if X has been raped by a battalion of police officers who have been providing security in a particular area and then they decide to relieve themselves in her .When this complaint reaches the Police Public Complaints Authority the professional response expected from the investigating officers is to do the under ground investigation because if this is not done evidence may be lost and for a case to be made against the suspects will be very difficult and the cause for this is lack of professionalism .Apart from this, there is need for the investigators to have the skills to counsel the victim so that she avoids the harassment from the accused. But at the moment the Police Public Complaints Authority has no investigator which is a disadvantage when it comes to the performance of its duties as provided by law.

It is indeed unfortunate for an institution like this one not to have investigators and there is no any prudent way in which they can perform there duties to the required standards. In fact , under international human rights law, countries need to investigate human rights violations such as torture and the deprivation of life by unjustified lethal force .Where serious human rights violations are disclosed , the investigation must lead to disciplinary or criminal proceedings that ensure effective accountability both by perpetrators and officials implicated in perpetrating or covering –up violations .The United Nations

Assembly has stressed that “ All allegations of torture or other cruel, in human treatment should be promptly examined by the competent national authority.”²² The Convention against Torture makes a similar requirement.²³ States must establish an “effective remedy “and entrench in domestic law the right of the victim to lodge complaints of torture or ill treatment²⁴ International and regional human rights bodies have clarified the essential components of an effective remedy, which include promptness in examining allegations initially and the pace of the full investigation , to protect the victim and to minimize loss of evidence .It also includes impartiality , to ensure due weight is given to all evidence, from complainant, accused and witness. Independence is also another factor which the investigating wing needs to have in order to ensure that there is no conflict of interest, concealment of evidence or unfair procedure. Apart from that, the Police Public Complaints Authority needs to have an attribute of being able to protect complainants and witnesses, to ensure no reprisals against the complainants, witnesses and others involved in the investigation.

The other attribute is thoroughness, to ensure consideration of all relevant information for proving or disproving information.²⁵ Also police officers suspected of torture or ill – treatment should be suspended from active duty during an official investigation without prejudice to the out come of the investigation. The steps and attributes highlighted above are very important in that they lay out some principles of natural justice which a body that performs adjudicatory functions like the (PPCA) must learn to put into full practice but it seems they are not practiced fully because the application of these principles need

²² Resolution 56/143 of Dec 19 2001

²³ Article 13 of the Convention Against Torture

²⁴ Hugo Rodriguez v. Uruguay, 19 July 1994.

²⁵ [www.unhchr .ch /tbs/doc.nsf](http://www.unhchr.ch/tbs/doc.nsf).

to start from the time of instituting the investigations but because currently the (PPCA) has no investigators therefore these principles are not being applied fully except when the (PPCA) is sitting and this is unfortunate.

One of the reasons that led to the establishment of this office (PPCA) was to serve the people .Thus, inspiring trust in the people they are supposed to serve is very cardinal .The trust and confidence can be gained if members of the public become aware of the existence of the (PPCA) and its procedure for making complaints .But if one asks any member of the public about the Police Public Complaints Authority, its only the elites and a few ordinary members of the public who know about it .I had an opportunity of interviewing 20 people in Kalingalinga Compound and only 6 of them happened to know the Police Public Complaints Authority. Now if people in Lusaka do not know about this institution how about the people in rural areas? Where in fact there are no radio stations that can transmit information about this institution. And yet it is in the rural areas where human rights abuse is even rampant because the abusers take advantage of their ignorance about the institutions that can protect them when their rights have been violated this is not only unfortunate to the general public but also to the institution itself which was formed so that people can run there for protection. It therefore follows that the (PPCA) needs to do a lot in making people aware of the existence of the Police Public Complaints Authority as well as its functions so that it can contribute to curbing police brutality in Zambia. Mrs. Dorothy Zimba the Secretary of the (PPCA) had this to say about the awareness campaigns that are being done: evident that very few people know about the existence of this office as such awareness campaigns and workshops are being

performed around the country though the pace is slow .According to the interview which I carried on the 20th July ,2006 with the Secretary of the (PPCA).

This year 2006 we have managed to carry out drama performances at least in the entire provincial headquarters as well as at police stations. we managed to have also carried a phone in radio interview at radio Maria in Chipata and people appreciated this progress in that their questions were answered and sensitized about a body which is to protect them when there rights have been abused.

The efforts being made by the (PPCA) to sensitize the members of the public as well as the police is a step ahead in trying to make it known to the members of the public. However, much need to be done in terms of advertisement in public media such as ZNBC and radio.

2.3 THE INADEQUACIES AND THE PROBLEMS THAT THE POLICE PUBLIC COMPLAINTS AUTHORITY HAS BEEN FACING.

The Police Public Complaints Authority has been understaffed, currently; there is only one driver, one secretary who does the paper work, one office orderly and the full –time Secretary who is a serving public officer who is responsible for the management and administration of the Authority as well as the implementation of matters referred to her office. There is of course the Chairperson, the Vice-Chairperson and three other members. Surely there is an inadequate member of staff running the Authority which attends to a population of over twelve million people. This is very unfortunate because

this takes away the efficiency, professionalism and effectiveness that the members of the public need to be guaranteed with. On 20th July, 2006 when the interview was being done, the secretary who does the paper work was in fact on leave. Thus, the full –time secretary was the one doing the ordinary secretarial work instead of administrative duties. This does just point to the problems that the institution goes through and the government’s lack of commitment and yet most countries in the region have the similar form of internal investigation system provided under the regulations governing the police and there is enough logistical and manpower support from government in that strong internal systems are crucial in helping to entrench a culture of accountability of the police to the members of the public.

However, in general such a system like our police public complaints Authority fails to meet the needs of the victims of human rights violations in ensuring the confidentiality of there complaints and providing security against reprisals because there is no enough logistical and support staff to do so. Our Authority does not inspire trust in the people it is meant to serve.²⁶ The Zambian case as seen is contrary to the spirit discussed above for the (PPCA) does not seem to be responsive to the victim’s needs like it is in Jamaica where the Jamaican Police Public Complaints Authority which was established in 1993 by an Act of Parliament has enough support staff who have the investigating skills that are very much needed in this cause in order to be responsive to the needs of the society.²⁷ Apart from this, Jamaica also has a Constabulary Force which is a unit within the police and the two are deeply juxtaposed and dependent on each other so that there is

²⁶ Policing to Protect Human Rights a Survey of police practice in Southern Africa, 1997-2002.

²⁷ Police Public Complaints Authority –Ministry of Justice .htm.

a coordination between the two institutions but we do not have this set up in Zambia and this is fatal to the effectiveness of the Zambian police public Complaints Authority.

One of the problems that the institution has been facing is that it has no data base system and this makes the institution to be slow in handling cases because checking the files manually takes time when the Authority is sitting unlike when the computers are being used they can make the work easier²⁸. Apart from this, a well maintained data system would make it easy for the (PPCA) to evaluate the progress being made in the matters that the authority is dealing with so that planning is done in accordance with the priorities.

The institution is not only handicapped in terms of the data base system but also transport has been a problem and this has made it difficult for the institution to perform in accordance with the people's hopes as well as demands. It was until last year in 2005 when the American Government donated a second hand –minibus which is currently being used. It is clear that the lack of transport is an indication that the Zambian Government has not been serious in supporting this office and this is a problem in that an institution like this one is very cardinal and should not entirely depend on donor support as this may weaken the independence that it is supposed to enjoy. Besides the wealth complainants and the accused may take advantage of the situation by giving donations to the institution so that they can be favored and this may defeat the very purpose of justice. Other scholars may not realize that there is that possibility of the accused taking advantage of the institution but this is practically possible.

²⁸ Interview of the Secretary PPCA on 20th July, 2006.

Another problem being faced by the institution is its lack of decentralization .This is because so far the office is only in Lusaka and yet if the decentralization was done, it would have helped in decongesting the influx of complaints to the Lusaka office there by speeding up the case hearing process especially that it is a well known principle that justice delayed is justice denied .Besides this the delay in the (PPCA) due to its lack of decentralization would also result in the loss of evidence which is very important in ascertaining the innocence or the guiltiness of a particular officer .

Furthermore, Amnesty International has pointed out the in adequacy of the Police Public Complaints Authority to be that the investigation processes appear to be slow and yield a few results .The other in adequacy seen in the (PPCA) is the lack of positive elements in the legislation that creates the Police Public Complaints Authority .For example, there is no obligations on all organs of the state to provide such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the institution just as it is in South Africa where there is even the most developed independent oversight investigation body in SADC region which is called the Independent Complaints Directorate(ICD) has a similar provision which gives an obligation to all state organs to give reasonable assistance to it there by securing its dignity. In the country's first report to the United Nations Committee against Torture in December 2000, it noted: during the period under review the Zambian Police Service recorded a total of 32 cases in which acts of torture were alleged to have been committed by police officers .These cases have yet to be concluded by the relevant authorities.²⁹

²⁹ UN Committee against Torture, CAT/ C/47.

It can not be disputed that it is an inadequacy on the party of the Police Public Complaints Authority to have its members being paid allowances and remuneration as per determination of the Minister of Home Affairs.³⁰This arrangement were the remunerations and allowances are to be determined by the minister undermines the independence and the effectiveness of the (PPCA).The Minister of Home Affairs, who is responsible for the police also appoints the Chairperson , the Vice-Chairperson and the three other members of the (PPCA). The budget is also derived from the allocation made to the Ministry of Home Affairs .Civil society organizations have called for the (PPCA) to be established on a separate legislative basis as a statutory body answerable directly to parliament , to reduce any potential conflict but these cries have not been adhered to.

Police Public Complaints Authority Chairperson Mr. .Christopher Mundia who submitted before a parliamentary Watchdog Committee on legal and Human Rights that Mr.Siakalima had difficulties in interpreting the (PPCA) Act and led to the sour relationship because he does not want to be instructed³¹. The argument made above is one There has also been failure to coordinate between the police Inspector - General and the other problem that the Authority has been facing and yet the two bodies need to work in harmony because the objective of the two institutions is to make sure that the bad eggs in the police service are eliminated .In addition, a police service which does not violate the citizens rights brings pride to the police high command and the nation as a all. Therefore, there is nothing wrong in the Inspector –General being instructed because the Act provides so.

³⁰ Section 57F of The Zambia Police(Amendment) No.14 of 1999

³¹ Times of Zambia 2005.

The other problem that the Police public complaints authority is facing is that its operation is hampered by lack of full implementation of mandate³². The parliamentary committee on Legal Affairs, Governance, Gender and Human Rights has revealed that the work of the Police Public Complaints Authority (PPCA) was hampered by the lack of the full implementation of the authority's mandate. According to a report released in Lusaka recently, which was made available to Zambia News and Information Services (ZANIS), the committee urged government to ensure the full implementation of the mandate of the PPCA, if it is to operate effectively.³³

The committee recommended that accommodation and staff problems being faced by the police should be resolved quickly in order to improve the operations of the Zambia Police service. It further recommended that there should be a serious time frame for recruiting programmers adding that there is need for the time frame for the restructuring programme to be in place so as to make it easier to monitor such programmers.

The committee also expressed concern at the rampant abuse of authority by some police officers, especially those manning roadblocks. It recommended that conditions of service of the Police Force be improved so as to address the issue of corruption amongst police officers. In order to meet the recommendations of the PPCA government through the ministry of Home Affairs has responded positively in implementing the PPCA mandate so as to improve the operations within the Zambia police service.

³² November, 20 ZANIS.

³³ Ibid November ,20 ZANIS.

2.4 EXAMINING THE SUCCESS MADE BY THE POLICE PUBLIC COMPLAINTS AUTHORITY IF ANY.

One area which seems to be a score on the part of the Police Public Complaints Authority is the fact that they have managed to acquire the premises at New Kent building, Ground floor, Haile Selassie, Lusaka .This is a success on (PPCA) in that they have just been renting all along and yet an important institution like this needs to have permanent offices for it can even help it to gain confidence from the members of the public in that it entails their commitment to serving them better.

It is true that the institution is not famous to many Zambians in terms of what it does and this year public awareness campaigns are being conducted all over the country with the help of the Norwegian government .Drama performances have been conducted at police stations and community halls so that members of the public as well as police officers can know that their main role is to protect the rights of the citizens not to abuse them. Members of the public are also being highlighted on the action to take when they have suffered injury. According to Mrs. Dorothy Zimba who is the full –time secretary of the Police Public Complaints Authority this year 2006 a phone in radio programme was conducted in Chipata.³⁴ It is evident that what this office is doing is a step ahead in sensitizing people on the role of this institution.

One of the functions of the Authority is to submit its findings, recommendations and directions to the Inspector-General for disciplinary action or other administrative action.³⁵

³⁴ Author interviewed Mrs Zimba The PPCA Secretary on 20th July 2006.

³⁵ Section 57G (I) (C) (ii) Police Act.

The (PPCA) can realize the above provision if the relationship existing between the Authority and the Inspector –General of Police should not be sour as was seen between Mr. Zunga Siakalima and the chairman of the (PPCA) Mr. Mundia .But currently there has been a cordial relationship between Mr.Mateyo The current Inspector –General of police and Mr. .Mundia therefore this is a score on the party of the PPCA because a sound relationship has to exist in order for better results to come.

In the year 2003, the Police Public Complaints Authority received 369 complaints and 4 Police officers were fired .In 2004 there were 456 complaints received and 10 officers were fired .In 2005 there were 210 complaints received. The interpretation that may be placed on the reduction in the number of complaints being made is that the cases of police brutality are reducing because the officers are aware of the consequences that can befall them if they abuse the rights of the people .The other scholars may not consider the reduction in the number of complaints being made to the police public Complaints Authority as a score on its part especially with the memories of police brutality on UNZA students as the police fired tear gas on students who were dissatisfied with there being sent on recess instead of telling them that the school had been closed. Besides, the memories of July ,2002 in which police beat up a 22-year –old man who later died in police custody on allegation that he had stolen a bag belonging to one of the pupils at Chikankata Secondary School.³⁶

³⁶ Zambia Human Rights Report 2001p.93.

CHAPTER THREE

3.0 HOW THE POLICE HAVE PERCEIVED THE FORMATION OF THE POLICE PUBLIC COMPLAINTS AUTHORITY

This chapter will look at how the police service as a system has perceived the formation of the Police Public Complaints Authority (PPCA) and whether there is a co-ordination between the two institutions especially that the PPCA is a check on the police on their operations especially on erring officers. It is on record that most countries in the region have some of the internal investigation systems provided under the regulations governing the police. Strong internal systems are crucial in helping to entrench a culture of accountability, hence the need to examine how the people whom the institution is supposed to check perceive the institution as the perception that the police service has about the PPCA may enhance or undermine the very operation of such an institution.

There are different views held by police officers about the PPCA .The senior police officers who I managed to interview hold the view that the Police Public Complaints Authority is an enemy of the police high-command in that it has taken away the independence that the police have had been enjoying for many years.³⁷ For example, Section 57 G (2) (I) of the police Act provides that “where the Authority directs the Inspector General of police, the Anti-corruption Commission, relevant body or Authority shall give effect to such directions.”³⁸ This provision has been seen to have taken away some discretionary powers that the police Inspector-General has had when it comes to the disciplining of the erring officers .It is the above provision that make the senior police officers of the Zambia police Service perceive the PPCA as an enemy of the police. The

³⁷ Author interviewed c/inspector Phiri on 10th September 2006 at Mpulungu Police Station.

³⁸ Section 57 G (2) (I) of the Police Act.

former Inspector-General of police Mr. Francis Ndhlovu seem to hold the same view as well because he observed that when the Act that established the PPCA was in bill form he little had thoughts that the PPCA was going to have powers to give mandatory directions to the Inspector-General of Police . It is true to a certain extent that the PPCA has compromised with the administrative powers of the Inspector General of Police who has always dealt with the officers administratively when they have been found wanting .For example, an officer who violates the citizen's rights is guilty of professional misconduct and it would ordinarily invite a charge against him and if found guilty a certain percentage would be deducted from his salary and no promotion would be awarded for a specific time but the advent of the PPCA such exercise of this power by the Inspector General is not tenable in that if the case has been dealt with by the PPCA the usual sentence passed is the termination of services as seen in most of the cases it has dealt with so far . It is also clear that Mr Francis Ndhlovu the former Inspector General of Police threw his weight behind the then Inspector General of Police Mr Zunga Siakalima's position over the powers of the PPCA saying that the purpose for which it was formed has been misconstrued .He has observed that the PPCA was only meant to make checks and balances on the performance of the officers in order to level the playing field in situations where officers cannot investigate themselves not the PPCA chairperson to direct the Inspector General of police on the decision to take against the erring officer.³⁹ On the view above, the police high command views the PPCA as an enemy of the police command for in their view it has taken away the powers and the independence that the command has been enjoying for many years. The enmity has also been seen in the confrontation between the then police Inspector General Mr.Zunga Siakalima and

³⁹ Zambia Police News August / September 2004 Issue No.24.

the PPCA Chairperson Mr.Christopher Mundia who submitted before a parliamentary Watchdog Committee on legal and Human Rights that Mr.Siakalima had difficulties in interpreting the PPCA Act and this has led to the sour relationship between the two because Mr.Siakalima didnot want to be instructed on what to do and yet the Act provides so .⁴⁰ The argument made above is one other problem that the Authority has been facing and yet the two bodies need to work in harmony because the objective of the two institutions is to make sure that the bad eggs in the police service are eliminated .The view taken by the police that the PPCA has taken away the powers that the Inspector-General of Police has been enjoying because the PPCA can give directions to him which are mandatory is not by itself taking away there independence in that the police cannot investigate themselves that is why it was the intent of parliament to give powers to an independent body like the PPCA which should be impartial so that it cannot favour the police officer who is a culprit or a member of the public who is the complainant .It can therefore be said that the police's claim that the PPCA has compromised with there independence is not valid in that a body independent from the police is inevitable and need to be given powers as the ones that the PPCA has in order to curb police brutality. The same has also been done in South Africa there is the Independent Complaints Directorate(ICD) which perform the same functions like the PPCA and the ICD has been successful in Central Africa and the South African Police has not complained that their independence has been compromised with so it should be the case with Zambia police service as the cry that there independence has been compromised with may be construed as an excitement in the abuse of human rights that has been going on in the country.

⁴⁰ Times of Zambia 2005.

Mr. Simukoko Emmanuel who is a police superintendent in charge of Criminal Investigations and Statistics Department holds the view that the Police Public Complaints Authority's main purpose is that it is aimed at bringing professionalism in the system so that those who abuse the rights of the members of the public are dealt with in accordance with the law. Much as the PPCA is aimed at bringing professionalism in the police service, it is evident that it does not seem to take this direction in that it does not seem to address the issues on the ground because the PPCA has not taken time to look at the causes of this vice of police brutality in that if one has to prevent something from happening it is important to start with the causes but this does not seem to be the case with the PPCA. For example, if the PPCA was looking for causes of police brutality in its operations so as to help the police as a system to change, it would have been airing out some of the constraints that the police go through which result in brutality behaviour⁴¹. For example, the police have no trade union that could speak on their behalf and this means that the freedom of association which is a very important right is not being enjoyed by the police and a person whose rights have been suppressed is not expected to respect the rights of others in that the dictatorial tendencies that the police have will be unleashed on innocent victims. On the basis of the foregoing argument, it has been observed that the PPCA is a body that is only aimed at punishing the police officers instead of being objective by looking at the root causes of their actions so that they can make recommendations to the government in order to find everlasting solutions in the interest of the Republic in that the police service is an important instrument of governance.

⁴¹ Author carried interview with Mr. Simukoko Emmanuel officer-in charge Criminal Investigations Service Headquarters on 09 September 2006.

It has also been observed by Inspector Akamandisa who is the officer in-charge of Kawama Police post of Ndola that the formation of the PPCA is an interference on quality service delivery by the police. This is because the PPCA seems to be an unjust and partial body whose sole interest is to please the donor community or rather meet the donor community set bench marks of good governance by taking punitive actions against police officers being complained against by the members of the public. Further the Authority usually operates as a biased monitor who regularly checks the police operations with a view of seeing errors or short comings. In dealing with complaints against police officers the PPCA usually passes judgement that are often unfair and unreasonable⁴². It is true that in most cases harsh punishments are slapped on officers regardless of the circumstances and conditions of the matter being complained about as was seen in the case of **W M Sitali and Constable Emmanuel Banda**⁴³ in which the complaint by Mr.Sitali was that he was arrested and detained by the respondent in a matter which was purely contractual and civil which was an abuse of power by the police officer therefore in accordance with our powers conferred by section 57 G (1) (c) (ii) of Zambia Police (Ammendment) Act NO.14 of 1999, we here by direct the Inspector General of police to terminate the service of Constable Banda forth with and to report to the Authority within 60 days that the said directive has been done. The harsh punishments pronounced by the PPCA has not only been seen in **Sitali's case** but also in **Collins Chinyama and Sub/Insp Kaywala Munukayumbwa**⁴⁴ in which the complaint arose from the detention of Mr and Mrs Chinyama and two juveniles, namely Nawa, aged 9 years and Njamba who were alleged to have broken into the Head master's Office at Lukulu. The complaint

⁴² Author interviewed Insp/ Akamandisa on October 12, 2006 at Kawama Police Post in Ndola.

⁴³ PPCA/489/2004

⁴⁴ PPCA/475/2004

is that both Mr and Mrs Chinyama who are the parents of the two juveniles were detained for a week without any specific charges preferred against them .The decision of the PPCA was that we have repeatedly warned that any violations of Human Rights will not be taken softly by the Authority. We have therefore decided to direct the Inspector General of police in accordance with the powers upon us by Section 57G (1) (C) (ii) of Zambia Police (Amendment) Act NO.14 of 1999, to terminate the service of Sub/Insp Munukayumbwa fourth with. The two cases above point out to the fact that the PPCA is fast at pronouncing the termination of the defendant's services and this seem to actually justify the allegation that the police have made against the PPCA that it has been acting unfairly and unreasonably in that terminating the officer's services should not be the quickest punishment to rush to every time the officer has been found guilty of violating human rights of the citizens. The sentences passed are very harsh because it is clear that the only principle of sentencing they are applying is that of deterring the would- be offender that is why they are always passing these sentences when in fact principles like is this person the first offender or not need to be considered and at times the junior police officers are just given orders by senior officers that detain that person so that he can help us with investigations and yet when a complaint has been brought against the junior officer the PPCA will pass a sentence against the junior officer on the principle that one need not to obey unlawful instructions .The fact that junior police officers are sometimes subjected to orders that are unreasonable by superior officers there is need for the PPCA to strike a balance on the interests of the complainant and the defendant when passing the sentence. In addition, the important role being played by the PPCA in enhancing the respect for human rights cannot be overlooked, but the idea of terminating the police

officer's contract of employment every time the officer is found guilty is not always the best thing to do in that it takes away the man power from the police yet to train a police officer is an expenditure on the resources of the state and the police officers dying from both natural and unnatural causes is high thus the need to pass other punishments not only termination of employment as the police service may have no man power in the long run.

From the above one can safely say that the PPCA has actually brought down the general morale of the officers there by impairing the smooth operations of the police in that the police have now become timid and are no longer working freely as they are supposed to for fear of being treated unfairly and unreasonably in case a complaint is brought against him just as it has been seen in the **Sitali's case** because the punishment mated on him was just too much especially that he was the first offender and yet even in criminal matters first offenders are punished with a bit of lenience which does not seem to be the case going by the case above in that to terminate the respondent's employment does not reflect any lenience at all especially to a person who has served for some years and this is the unreasonableness that the police officers have been complaining about on the part of the PPCA.

Constable Lwanga Tony of Chifubu police of Ndola District of the Republic of Zambia had this to say about the police public complaints Authority .According to him he views it as a partial judge who has already passed the verdict upon the two parties filling the documents in court ⁴⁵.Further, the PPCA is like a judge that can leave the bench while the two parties are making oral submissions and when he comes back , he stops the defendant from giving the evidence which is relevant to the case on the pretence that the evidence

⁴⁵ Interview carried by the author on 6th August 2006 at Chifubu Police Station in Ndola.

being given is irrelevant to the case in issue and goes on to finding the defendant liable. According to him, this has been seen in the members of the PPCA who seem not to appreciate the fact that police officers can use reasonable force in making arrests. This is also because when people hear that a police officer has assaulted someone they always take it that he is a violator of human rights when in some cases, it is as a result of the suspect's fault because he does not want to cooperate and when the PPCA sits, it sometimes does not look at the merit of the case. Thus, finding the officer liable based on newspaper reports. The view held above that the PPCA is like a partial judge who would make a decision without being willing to hear the defendant's defence is not a true reflection of what happens on the ground in that the PPCA is headed by the chairperson who qualifies to be judge of the High court surely he understands the impartiality status that one is supposed to have in such matters. The view held by Constable Lwanga Tony is not correct in that the PPCA has strived for excellence because the legal reasoning in the decisions they make are based on the acceptance of all the relevant evidence before it and correct law application to the facts of the case there by rendering them credible in their operations though their sentences are very harsh in most cases.

The PPCA has been perceived to be a body that has not been part of the police service there by not instilling confidence in the police servicemen because the Act has not been framed in such a way that it recognizes the police as an entity that needs to cooperate with the PPCA in many ways for it to succeed. Furthermore the Authority does not include a member of the police service to be sitting on the Authority when the Authority is sitting as per Section 57(c) I. The view held above may be supported in that the police

feel neglected in that there is no person of their profession who sits on the Authority there by feeling that their interests can not be guarded jealously because there is no person of their own on the PPCA there by not instilling confidence in the police officers. The other unfortunate situation about the PPCA that makes it difficult for it to instill confidence in the police officers is the fact that it receives complaints from the members of the public only not vice versa and yet to instill confidence in the people it is supposed to serve in this case the police and the members of the public the PPCA must be careful to strike a balance in all its operations especially that the pendulum is already tilted towards the members of the public from whom it receives the complaints. It therefore means that the PPCA needs to be thoroughly acquainted with the police ethics, circumstances and conditions under which they operate. This knowledge of the wheel within the wheels of the police operations of the police will help the PPCA to win confidence in the sight of the police officers there by balancing the pendulum which is tilted in favour of the members of the public and this has made the police not to have confidence in the PPCA so much that even the judgements passed are not accepted by the police. In this way, the police do not feel that the PPCA is there to help them improve in their service delivery by providing checks and balances in that the PPCA has not instilled confidence in the police. It is true that for any person to feel that he is part and parcel of the system there must be representation of his interests to that particular body which is not the case between the PPCA and the Police Service. Much as there is no express provision that a police officer should also be sitting on the Authority it seems steps are being made to that effect in that the Vice –Chairperson of the PPCA currently is The former Inspector-General of police Mr. Francis Ndhlovu and this is a head way to

the outcry of the police that they need some one with police expertise to protect there interests except that there is no guarantee that the next time his tenure of office comes to an end his successor will be a person with police work experience for there is no legal guarantee of this situation to continue being the practice.

Currently, the PPCA is just like a body that is aimed at fixing the officers who commit professional mistakes without looking at the merit of the case in that the merit of the case can only be looked at if there is enough evidence to help it arrive at a decision but as long as the (PPCA) has no investigators who can investigate the cases before it in a professional manner , the allegation that it is aimed at fixing the police officers can not easily be rebutted because investigators can play a greater role as witnesses when the Authority is sitting but it has no investigators and this is fatal in that a body that is handling sensitive matters that may result in taking away the rights of an officer if he is found wanting needs to have investigators but it does not have despite having been given powers to investigate under Section 57H of the Act.

The PPCA has been seen to be an hindrance on the operations of the police in that police officers fail to execute their job to the requisite standard in the sense that the PPCA as a watchdog to the police restrains them from extracting evidence from hard core suspects who cannot cooperate with the police until some force is used against them. There by hindering the police in their work for fear of facing sanctions from the PPCA. Much as there are very few police officers who do not seem to have positive views about the

PPCA there are also some who hold positive views about it .Chief Inspector Phiri of Mpulungu Police Station has this to say:

In most cases the police have been found not to have respect for human rights, therefore there is need to have the PPCA to Act as a screener of the bad eggs in the police so that they can contribute favourably in the protection of human rights and the enhancement of democratic governance .Besides this the PPCA has helped to bring sanity to the police service so much that some officers Have come to realize that respect for human rights is an integral part of the professional policing.

3.1 DETERMINING WHETHER OR NOT THERE HAS BEEN A COORDINATION BETWEEN THE PPCA AND THE POLICE SERVICE.

There has been some misunderstandings between the PPCA and the police Inspector-General and this resulted in serious differences between the two institutions until the Deputy Minister of Home Affairs then Mr.Kennedy Sakeni to reconcile both parties. Following the misunderstanding between the two, the Police Public Complaints Authority Chairperson Mr. Christopher Mundia submitted before a parliamentary Watchdog Committee on legal and Human Rights that Mr.Siakalima had difficulties in interpreting the (PPCA) Act and this has led to the sour relationship because he does not want to be instructed⁴⁶ .

⁴⁶ Times of Zambia 2005.

The differences have been there but currently the current Inspector –General of police Mr.Ephraim Mateyo has been getting on very well with the PPCA chairperson Mr.Christopher Mundia and when the directions have been made to the Inspector-General he has been performing the duties in accordance with the law.⁴⁷ In order to facilitate the coordination between the two institutions, the Liaison officer who is a full time police officer based at Lusaka Central Police has been appointed and he has been Coordinating the operations between the two institutions.

⁴⁷ Author Interviewed Mr .Daniel Musonda Legal and professional Standards officer, Police Service Headquarters on 11th October , 2006.

CHAPTER FOUR

4.0 CONCLUSION

In conclusion, this essay has answered the question that: is the establishment of the PPCA a solution to police brutality? The response to this question has been given by first taking the meaning of solution to mean an answer to a problem as per **Webster's New Collegiate Dictionary p .1099**.

It has come to light that the PPCA is moving in a right direction in helping to curb police brutality in that the cases that have been handled by it so far have made some officers to lose their jobs and retirement packages thereby deterring the would-be erring police officers from conducting themselves in the same manner. It should therefore be commended for the job being done. However the PPCA on its own as an institution is not a solution to police brutality because it has been seen from the research that the factors that bring about police brutality are quite complex and the mandate that the PPCA has been given does not go to handling the same complex issues .For example, it has been observed that poor conditions of service contribute to police brutality in that police officers in many cases detain people in custody with a view of torturing them so that the family members of the detainee can solicit for the release of their relative by giving the dealing officer some money .Police officers who have been interviewed do not hold the view that the PPCA is a solution to police brutality and to them the solution is improved conditions of service in that most of the brutality behaviour as seen in **Collins Chinyama and Sub/insp Kaywala Mukayumbwa** supra, a case dealt by the PPCA

one would tell that the officer disregarded the rights of the complainant because he was bribed and in most instances its poverty and poor conditions of service that drive them into doing such things .Thus, as long as the PPCA is not addressing these issues it is not a solution to police brutality because all the remedies that people can seek from the PPCA can also be sought from the courts of law. Those are some of the factors which have contributed to police brutality but the PPCA has no mandate to recommend to the Government about this root cause of police brutality so that the everlasting solution can be found. It has also come out that the police officers so far regard the PPCA as a body meant to punish them even when there is no cause. In other words it has been accused of partiality in that many of the cases that go before the PPCA are always in favouring the members of the public not the police and this has been the concern of the police. Thus, the PPCA alone can not be a solution to police brutality because of its limited mandate in that all it does is to act as a judicial body that handles complaints lodged by members of the public against the police which is not adequate if at all the PPCA is to be a solution to police brutality in that a body that is to be a solution to police brutality has to also address the root causes of the same vice of police brutality by making sure that their problems are taken care of by government such as making sure that they have a body that airs their grievances such as a trade union in that it has been argued that the fact that the police do not have a trade union they can only express there grievances through their brutality behaviour because their freedom of association and expression has been curtailed indirectly therefore it is very difficult to expect the police to respect human rights when it comes to the citizens when they are exercising there freedom of expression and association in that the police themselves have been denied this right.

The PPCA has been seen not to be a solution to police brutality in that the rate of police brutality has not been reduced when one looks at a period of five years before the establishment of the PPCA and five years after its inception the rate in the brutality behaviour of the police has not reduced but that is when the grave brutal incidents are happening. For example, the **Ng'ombe Compound Saga** where the police shot dead two youths as suspected criminals but investigations have shown that in no way were those youths criminals. It is not only the **Ng'ombe Compound Saga**, but also The unwarranted force that the police had unleashed on the University of Zambia students during the recess period the police fired tear gas on them. The above examples just show that the PPCA alone is not a solution enough to overcome police brutality, especially that it is not even adequately funded by the government there by depending on well wishers which in fact also does compromise with its independence as this brings about familiarity with the would- be offenders or complainants so much that the PPCA may fail to exercise the impartiality that is supposed to be exercised if it so happens that the defendant is a serious well wisher. Apart from this, the PPCA is not a solution to police brutality in that it is currently not well equipped legally and logistically because its powers do not go in as far as making recommendations to government so that the factors that cause police brutality are dealt with. The inadequacy of the PPCA in logistical terms has been affirmed by the fact that the institution does not have the data base that can make the work easy and allow the complainants make the complaints through the internet. Having said that the PPCA is not a solution to police brutality in its state of affairs, is not to say that it is not doing anything to combat police brutality it is trying and it has to be commended for this despite the legal and logistical problems that it has been going through it has to a certain

extent contributed slightly to the curbing of police brutality. What has also come out from this research is that the police also need to be trained adequately in human rights matters more especially the paramilitary officers.

4.0 RECOMMENDATIONS

Having looked at the police service's rampant brutality on the people in this country ,the operations of the Police Public Complaints Authority and whether it has made scores in *combating police brutality and the perception that the police have on the PPCA, it shall* now look at the necessary recommendations which can help to overcome police brutality.

THE POLICE PUBLIC COMPLAINTS AUTHORITY

The PPCA needs to be given a mandate to allow it make recommendations to government as it may deem fit in order to carter for the complex factors that bring about police brutality such as poor conditions of service which has been seen as a major cause of police brutality .In other words if the PPCA'S recommendations to government concerning the welfare of the police should be binding on the government of the day in that punishing the erring officers by dismissing them is not enough if police brutality is to be prevented .Thus, the need for legal reform in the Police Act which creates the PPCA. Apart from this the PPCA needs to be equipped with the required support staff in that the officers running a big office like this one they are not enough .There is also need to receive enough funding from government for this institution to operate effectively as it is

in South Africa the ICD which perform similar functions like the PPCA is well funded and its performance is far much better than the Zambian one.

THE POLICE SERVICE AND THE GOVERNMENT

Provide effective training

- Ensure that all police officers receive human rights training which is practical, relevant to police work and based on international and regional human rights standards .Police training in the following areas should always be based on human rights standards and aimed at ensuring the highest standards of professional conduct .Training should pay due attention to the obligation to respect the human rights of vulnerable groups ,such as women and children .In the training of police officers there are three training schools the Mobile Unit in Kamfinsa Kitwe , the Police College at Lilayi in Lusaka and the Paramilitary Unit in Lusaka .The only training school which is training the officers a bit seriously in human rights matters is the Police College the rest there is nothing at all hence the need to train them seriously in human rights matters if the police brutality rate is to reduce.

- Public order policing .Use of force in public order policing should conform to international standards unlike what was seen in the **Resident Doctor's case** where the doctors were treated in an inhuman way by the police thus, Police need to judge reasonably whether there is need to use firearm and force and this can only be done if police officers do

understand the principles of necessity and proportionality which have been set in the international human rights documents. Lethal force should only be used as a last resort to protect life. This component of training should be associated with a programme to review equipment at the disposal of law enforcement officials to ensure that they are able to undertake policing in accordance with these principles;

➤ Arrest and detention procedures. police should carry out arrests using the minimum force necessary in a manner which is consistent with the prohibition against torture and ill-treatment .Training should be based on international and regional human rights standards relating to the use of force and to the treatment detainees or prisoners;

➤The interrogation of criminal suspects .Training on “scene of crime management”, the gathering , analysis and preservation of evidence and other aspects of the investigation of alleged crimes , including techniques of interviewing and taking statements from suspects and witnesses, should be designed to develop the capacity of law enforcement officers and the police to build a case in an efficient manner that avoids coercion ;

- Victims of crime .Training should be given to the police on interviewing complainants reporting abuses, particularly where allegations of rape and domestic violence are involved. This training should be linked to other initiatives intended to raise the standard of medico-legal examination of survivors;

- Ensure effective monitoring and evaluation of training programmes .The criteria for evaluating the success of training programme –including the evaluation of trainees’ understanding of and commitment to human rights standards –should be established at the start of the training programme to ensure that lessons are learned from previous training and that those lessons are incorporated into the coming recruitment initiatives.

- Need to make sure that police officers have been given qualified persons to train them in human rights issues in that human rights are cardinal for any development hence the need to have professionals in this training process;

- All training and reform initiatives should be linked to the creation of effective accountability mechanism.

Set standards

- Zambia needs to develop a culture of respect for regional and international human rights standards in national jurisdiction after all it is a member of the African Union and a signatory to the Universal Declaration on Human Rights and the Convention Against Torture.
- Ensure that the people of Zambia know their rights and the means of enforcing them and this can be done by conducting public awareness campaigns because people cannot be expected to lodge complaints to the PPCA when they do not know about it as well as the Permanent Human Rights Commission because if this is not done many people would be sleeping on their rights.
- Ensure that the Zambian judiciary is independent from executive pressure and all litigants should be willing to accept the outcome of the cases and observe the rule of law unlike what we saw to the former Chief Justice Skinner who was harassed by the then President of the Republic of Zambia Dr. Kenneth Kaunda for acquitting the Portuguese immigrant on the basis that he was not a threat to national security as alleged by state. As a result of the harassment the Chief Justice decided to step down which was very unfortunate to the Zambian judiciary.

- There is need to make sure that career progress within the police service include police behaviour which is professional and conforms to international and regional human rights standards;
- Where necessary , reform laws , regulations and police operating procedures to bring them in line with international human rights standards;
- Provide all “community policing” bodies (community policing forums, neighbourhood watch schemes, crime prevention committees, etc) with a meaningful legal and regulatory framework in national law which defines the roles and responsibilities of members and officers. Such rules should ensure that all law enforcement activities are carried out in accordance with human rights standards. These rules should be widely disseminated and publicized;
- Make private security companies subject to national regulations ensuring strict accountability and rigorous training of their personnel. Training should include a comprehensive component concerning human rights standards. The roles and responsibilities of private security officers should not undermine those of national police and law enforcement agencies.

Ensure accountability

- Investigate and bring to justice suspected perpetrators of human rights violation. It is vital that the authorities take effective measures to investigate allegations of

human rights violations promptly, thoroughly, impartially and independently in accordance with strict international standards for such investigations. Judicial proceedings against perpetrators should be carried out in accordance with international and regional standards for fair trial and without recourse to the death penalty;

- Ensure that all reform initiatives are monitored and evaluated. The monitoring of the impact of these initiatives is essential to ensure that objectives are being achieved and that resources are properly allocated.

Guarantee professional and impartial policing

- End the political use of the police. Governments should cease to use law enforcement officials for political purpose, including to suppress peaceful, non-violent public assemblies and to persecute opposition parties, non-governmental organizations and minorities, including gays and lesbians. All police officers should receive clear, instructions to respect human rights of all, irrespective of political beliefs, sexual identity, religion, ethnic origin, sex, color, language or similar identity;
- Take steps to improve police officers' conditions of work and the resources available to enable the Zambia police to perform there duties in a professional manner.

Specific Legal reforms

- Zambia needs not only to demonstrate its commitment to protecting and promoting human rights for all citizens by ratifying international treaties that contain safeguards against human rights violations but also domesticate the same treaties so that one can enforce his rights in Zambia.
- Ensure that torture is defined as a crime in the national laws of Zambia. This is a clear obligation under Article 4 of the Convention Against Torture and Zambia has violated this provision because it has not complied with this provision.
- Repeal or amend laws which allow the use in any proceedings of any statements or evidence obtained as a result of torture , except as evidence against the person accused of torture which is an illegal way should not be admitted .Thus the law outlined in the case of **Liswaniso V. The people** that illegally obtained evidence is admissible as long as it is relevant, should be outlawed because it has contributed to the brutality behaviour of the police in Zambia because they know that much as the evidence has been obtained in an illegal manner the court will accept it as long as it is relevant other jurisdictions like the United States of America have taken the view that illegally obtained evidence is inadmissible even if it is relevant to the case. Thus Zambia should also take a leaf from the U.S.A.

- There is need for the law to change so as to allow the police to have a trade union which can air out their grievances because currently the Police Act and The Industrial and Labour Relations Act excludes the police from having a trade Union and yet the Constitution of the Republic of Zambia provides for freedom of association so that the police can fight for their grievances because lack representation in this strategic governance institution is fatal to human rights protection and this has been seen from the brutal behaviour portrayed and perhaps this is the only way the police can speak for their rights.

- The Police Act should be amended to provide that the Inspector General should be vested with day to day operational control of the police with powers directly derived from the constitution and he shall not be subject to directions from any body including the president and the Minister of home Affairs .These should only provide regulatory power reinforced by financial control to ensure effective running of the police .The position of the Inspector General should be advertised for suitably qualified candidates to be selected subject to ratification by parliament. Inspector General also should serve a fixed term of years to avoid the whims and caprices of those in power, as his term will be protected .The current method of hiring and firing the Inspector General of police should be done away with. Instead a representative tribunal should always be constituted

in order to look at the General's gross misconduct or incapacity to perform the duties, to determine whether there is sufficient reason for him to be fired. As regards other police officers it should be stated clearly in the statute that none of them is politically accountable for operational decisions taken by the Inspector General of police, the relationship between the Inspector General and other police officers is not that of employer and employee. Each policeman has powers and duties directly derived from the General Law. Therefore, the Inspector General of police can order a policeman how to exercise his powers. It was reported for example in September 2000 that the officer commanding Northern Division, Bernard Mayonda, was prematurely retired by the Inspector General allegedly for *thwarting attempts by the Movement for Multiparty Democracy to trick the opposition into not filling nomination papers on time in Kasama* when in fact the intervention of Mayonda into the tricks of the MMD should have been seen as a positive move by the police command in spearheading the basic tenets of democratic governance.

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