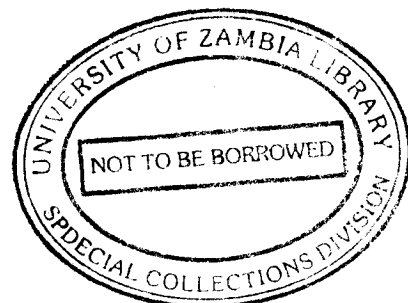


**THE ZAMBIA POLICE SERVICE: DO THEY PERFORM TO THE
EXPECTATION AND SATISFACTION OF THE PUBLIC? WHAT
IS THE PROBLEM? A LEGAL PERSPECTIVE.**

BY



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SCHOOL OF LAW

I recommend that the obligatory essay prepared under my supervision by James C, Masiye, Computer No. 20007701 entitled;

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Being a fallible human I may have made mistakes inadvertently and I therefore without any hesitation state that whatever mistakes that remain in this work are mine alone.

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“That which has come to be, that is what will come to be; and that which has been done, that is what will be done; and so there is nothing new under the sun.”

Ecclesiastes 1 : 9

James C. Masiye

December 2005

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CHAPTER ONE

1.1. Introduction

The Zambia Police Service is the only constitutionally established institution in Zambia charged with the responsibility to enforce the law and maintain public order. Its entire command is vested in the Inspector-General of police who governs the police subject to orders and instructions of the Republican President.¹

Zambia being a democratic society entails that it is a society that is governed by the rule of law and this poses a very difficult and challenging task on the Police especially that in a democracy power resides in the people who are sovereign. Therefore, there is good reason in Zambia today for the Police to be very effective by positively satisfying the needs of the people for whom they are established to serve, *vis-à-vis* policing services. There is indeed a compelling need that democratic and contemporary policing strategies and initiatives be appropriate in which case the delivery of services should ultimately benefit the people at large.

Formally and officially, the law and administrative mandate determine the role and functions of the Police. In common parlance, these roles are; protection of peoples' lives and property and the prevention and detection of crime and maintenance of law and order. However, society perceives police roles as all pervasive. As Cardwell and Nardini observe;

"Police agencies are public service agencies primarily responsible for

¹ Sec 3 of Zambia Police Act (Cap. 107)

*maintaining order and enforcing laws, but they are also responsible for
The regulation and protection of the community especially with respect
to matters affecting public health, comfort, morals, safety or prosperity.”²*

In a democracy, the role of the police has undoubtedly widened and at times over stretched. While true democracy stresses emphasis on individual liberties, policing places restraints on those liberties as an operational necessity to enable everyone enjoy his or her liberties without infringing on others' freedoms. Thus policing in a democracy becomes a bit problematic because most democratic societies are characterised by non-homogenous cultural norms and standards of livings. Since policing is supposed to be consensual in such areas, the question that arise is, whose norms the police are to enforce and according to whose procedural norms, *vis-à-vis* the poor and the rich, the various racial groups and of the different cultures. The economic liberalisation which is another feature of a democratic society also adds pressure on the demand for police services to enable citizens carry out their commercial activities on a 24 hourly basis, providing a safe, crime free environment for economic prosperity. It is in the quest to strike a balance between such interests that police are at times alleged to fall short of the aspirations of aggrieved interest groups, consequently placing the police in an adversarial position with the public they serve.

It is therefore the intention of this study to appraise the various alleged constraints, in the legal sense that hinder the police from meeting the aspirations of the public they serve. This will be done by examining some of the critical provisions of the laws that

² Caldwell, R and William Nardini. Foundations of Law Enforcement and Criminal Justice.
(1977) .P: 42

govern various concerns of the society. This will inevitably entail an examination of the law and police duties. Precisely, the study will look at effects on policing of some provisions of statutes such as the Penal Code,³ Criminal Procedure Code (CPC),⁴ the Zambia Police Act,⁵ the Road Traffic Act,⁶ the Public Order Act⁷ and the Constitution⁸ itself, to mention but a few, that have an everyday link with police work.

A cross section of members of the Zambian Community, including the current President, Mr. Levy P. Mwanawasa, have complained that the performance of the police is below what is expected of them. It has become everyday normal news to hear such statements as; "Police should stop giving people fake charges..."⁹, "Police let loose a 43 year old man who defiled his 9 year old niece..."¹⁰ "Police batter pupil to near death."¹¹ "... There is too much disorder in the nation and I am not happy with the Police; says Mwanawasa."¹² The Police have specifically been accused inter alia, of failing to respect suspect's human rights, brutality, delays in responding to crime reports, failure to conduct foot and motor vehicle patrols, corrupt practices, especially in the traffic wing and the motor vehicle clearing wing (under International Police). Further, the public have alleged incompetence in handling various cases leading to acquittals of suspects and various acts of negligence.

³ Cap 187 of the Laws of Zambia

⁴ Cap 188 of the Laws of Zambia

⁵ Cap 107 of the Laws of Zambia

⁶ No. 11 of 2002

⁷ Cap 113 of the Laws of Zambia

⁸ Cap 1 of the Laws of Zambia

⁹ Legal Resource Foundation Newsletter No. 29 of July 2001 P: 1

¹⁰ The Post News. No 2749. Tuesday April 27 2004

¹¹ Legal Resource Foundation Newsletter No. 30 of August 2001 P: 1

¹² Zambia Daily Mail, Vol. 9 No. 134 of 6th June 2005

Several times individual police officers have been alleged to fail to promptly attend to complaints on the spot giving excuses such as, one being off duty. This is against the provisions in the Zambia Police Act¹³, section 14(2) of which provides that a police officer is deemed to be on duty at all times and shall perform all functions as laid down in section 14 (3) promptly and competently.

The above and many more indicators of the magnitude of police inertia, too numerous to mention, clearly shows that not all is well in the way the police deliver services to the public. Their performance leaves much to be desired.

No public agency or institution, in a democracy, is of greater importance to the community than the police. Caldwell and Nardini¹⁴ write that if the above statement sounds surprising, then one only needs to consider these facts;

“...The police are charged with the maintenance of order and enforcement of the law. They must, therefore, act to regulate and protect the community with respect to public health, comfort, morals, safety and prosperity. It is not surprising, then that the police officer is usually the first point of contact between the citizen and the law. Indeed for many persons, the police are the law, and for this reason their appearance, conduct, and effectiveness do much to destroy or create respect for law...”

Further, the increasing complexity of our society, with its urbanisation, industrialisation, technological improvement and mobility have brought greater need for appropriate laws and efficient police protection. With the contemporary

¹³ Cap 107 of the Laws of Zambia

¹⁴ Caldwell and Nardini. Foundations of Law Enforcement and Criminal Justice (1977) P. 42

democratic political dispensation which inter alia emphasises on the rule of law and greater respect for human rights, indeed the police ranks highly among all institutions that ought to enhance and promote good governance for the young democracy to thrive.

Arising from the foregoing observation, it comes out clearly that the demand for satisfactory police services from the public is immense and this, in turn, suggests that a number of conditions and good laws should exist to enable the police carry out their respective functions. In fact an ideal police institution is naturally expected to be well ahead of criminals in terms of knowledge, skill and equipment otherwise, the battle will be lost to the criminals and contraveners of various laws enforced by the police. But this seems not to be the case as Ndulo observed;

*"...In Zambia there has long been a crisis of confidence on the part of the public as to the ability of the force to deal effectively with the crime. Some view the police with suspicion; others treat officers with hostility and contempt. There's no doubt that the performance of the force has left a lot to be desired, with clear-up rates for many offences remaining unsatisfactory."*¹⁵

1.2. THE PROBLEMS

In explaining the problems faced by the Zambia police service as an organisation, the following reasons were advanced;

¹⁵ Hatchard, J and Muna Ndulo. Readings in Criminal Law and Criminology in Zambia (1994) P. 78

1.2.1. Inadequate or obsolete laws

An examination of most provisions of the laws and regulations the police enforce reveals either inadequacy or obsolescence for effective and satisfactory policing in the democratic multi-party political dispensation we are in. Among such laws, as earlier alluded to are some provisions in the Penal Code, the Criminal Procedure Code the Public Order Act and the Road Traffic Act to mention but a few. Some of the provisions there in are so archaic that their enforcement clearly violate people's rights and some so inadequate that offenders go unpunished. As long as such laws are not reviewed, the police will be seen either not to be doing their work efficiently or violating people's rights (as the case may be). After all, a bad law remains valid and enforceable until it is repealed. Chapter three will discuss in detail the above facts.

1.2.2. Inadequate manpower

There is a marked relative decline in police strength compared to the rapid increase in population and increase in crime. This is largely due to restrictions on recruitment and lately, deaths resulting from HIV and AIDS, which have hit not only the police institution but also every other public and private organisation. Currently there are only about nine thousand police officers versus a population of about twelve million people.¹⁶ This has been compounded by the none recruitment of new officers for the past two years to replace the lost manpower.

¹⁶ Zambia Police Annual Report (2004) P: 4

1.2.3. Inadequate Police Stations

Whilst the population of the country is growing at a fast rate, no new major police stations are being built. This serious shortage of police stations both in rural and urban arrears has created an enormous strain on existing stations. Even the existing old stations have become too small as they were built and established to cater for small areas prior to independence, or just after, and now cater for areas almost ten times more than they were designed to cover. A number of Community Police Posts that have been established do not operate 24 hours due to inadequate manpower.

1.2.4. Other Factors

These factors include lack of transport, inadequate accommodation, poor salaries, and other conditions of service, inadequate and obsolete operational equipment, lack of safety at various areas of operation,¹⁷ to mention but a few. All these factors coupled with other inadequacies earlier mentioned have a negative effect on the police service's effort to offer satisfactory services to meet the needs of the community in the various areas of human endeavour.

Having highlighted some of the legal, administrative and operational problems faced by the Police in the delivery of their service to the public, the essay will proceed in Chapter two to look at the objectives and functions of the Police. A brief history of the Zambia Police Service will also be given in the Chapter. In Chapter three is the examination of various legal instruments and any other factors that some how tend to

¹⁷ Simukoko, Emmanuel "The Exemption of Trade Unions from the Zambia Police Service: A Quest for a Meaningful Reform" (2004) Obligatory Essay,P: 5-7

negate the police's quest for satisfactory and quality service. The fourth Chapter looks at recommendations arising from the research findings dealt with in Chapter three. The Chapter will also contain the conclusion byway of giving a summary of the whole work. It must be acknowledged at the outset that this study is not exhaustive but merely illustrative of the various factors that hinder the police operations. These are due to both administrative constraints and lacunae or inadequacies in the various laws that the police enforce.

CHAPTER TWO

2.1. BASIC OBJECTIVES OF THE POLICE

In the preceding chapter, it was mentioned that other than the usual legalistic functions of the police, they are also charged with the responsibility to regulate communities' activities with respect to their health, morals, safety and prosperity. On a general perspective, therefore Robert Caldwell and William Nardini¹⁸ outline the following as the basic objectives of the public police agencies that are authorized to exercise general powers of the law enforcement.

- (i) The prevention of crime and delinquency, by helping to modify and change the conditions that produce them, by instilling respect for law and order, and by cooperating with other agencies in the promotion of public welfare.
- (ii) The repression of the criminality and delinquency of persons so inclined by patrolling neighbourhoods, inspecting premises and keeping fully informed regarding the affairs of the community.
- (iii) The apprehension and identification of offenders and the accumulation of evidence against persons charged with crimes and delinquency.
- (iv) The recovery of stolen property so as to reduce the cost of crime and to restrain those who, though not active criminals themselves might benefit from the gains of crime and delinquency.

¹⁸ Caldwell and Nardini. Foundations of Law Enforcement and Criminal Justice. (1977). P. 3 - 4

- (v) The regulation of people in their non-criminal activities, for example, by the direction of traffic and the enforcement of sanitation and licensing laws.

2.2. ROLES AND FUNCTION OF THE POLICE

In line with the outlined general objectives, the *Zambian Constitution* in article 104 provides as follows:-

The functions of the Zambia Police force shall include the following:-

- (a) to protect life and property,
- (b) to preserve law and order,
- (c) to detect and prevent crime,
- (d) to co-operate with civilian authority and other security organs established under this Constitution and with the population generally

The enabling Act¹⁹ of Parliament regulating the administration and operation of the Zambia Police in section 4 spells out the functions of the police as, prevention and detection of crime, apprehension of offenders, preservation of law and order and the protection and due enforcement of the law and order.

¹⁹ CAP 104 Laws of Zambia

Wilson²⁰, in legal study of the roles and functions of police as stipulated above identifies two basic aspects which by and large summarize the roles and functions of the police: the “legalistic or order maintenance” aspect (which embrace function ‘a’ ‘b’ and ‘c’ above) and the “service” aspect (which embraces function ‘d’ above).

In the legalistic or order maintenance sense, the police use both active and proactive methods to ensure a safe environment in which people can enjoy their lives. Active methods involve the arrest and prosecution of offenders. They involve coercive means to bring about social order where public peace has been breached by application of minimum force in the event of resistance. Proactive means include all measures put in place to prevent commission of crimes or breaches of the peace before they occur. This is by way of community foot and vehicle patrols and static guard duties of vital installations. Simply said the role of the police in the maintenance of order is to enforce the law according to its definition. Once this is done, then the violation of the law is prevented, persons and property of citizens will be protected and individual rights and freedoms will be protected in the process.

Service provision entails moving away from those functions and duties that directly relate to some threat or violation of the law, yet that helps to create a satisfied society. This is in the context of community policing where the police are treated as part of, rather than outsiders of the community. When police are considered as such, they have a far more positive image as a service oriented institution than an over emphasis of the enforcement function.

²⁰ Wilson, J. Varieties of Police Behaviour. (1968). P. 8

Through community policing, the police take time to educate the community, especially the youth via the School Liason Unit, on what acts or omissions constitute crimes. Counseling services are also offered by the Victim Support Unit of the police.

Since the police serves different communities of different cultures and different activities, it is important that it adopts an all embracing strategy to meet everyone's needs vis-à-vis police service. In the same vein, it is also important that the police perform their law enforcement functions in tandem with the service provision. For example, when a community experiences a period of high crime, it is appropriate for the police to emphasize on the law enforcement function and when the community experiences of social disorders, it is appropriate for the police to emphasize on the order maintenance function, yet when the community experiences relative tranquility, in terms of crime and disorder, it is only appropriate for the police to emphasize the public service provision function.

2.3. HISTORY OF THE ZAMBIA POLICE SERVICE

The importance of understanding the brief history of the Police Service is that it assists to answer some queries that may arise such as why the police on several occasions tend to be biased towards the government in powers or why the police quickly resort to use of violent means or use of excessive force when dealing with the public even where such force is not necessary.

The historical background of the Zambia Police can be traced back to the year 1891 when the British South African Company (BSA) was granted the charter of incorporation to administer Southern Africa, an area that was then extended further north up to the Zambezi river.²¹ Basically it was a transformation of the Northern Rhodesia Police, which itself was an amalgamation of the North- Eastern Rhodesia constabulary and Barotse Native Police. Thus the two forces that policed the two territories for years were finally joined to form the Northern Rhodesia Police upon the political merge of the two territories (North Eastern Rhodesia and Barotseland – North Western Rhodesia). This was done through a legal Instrument; Proclamation No. 17 of 1912.²² The combined strength of the two forces upon amalgamation had 9 senior officers and 8 non-commissioned officers (all British) and 750 other ranks from the natives. The police headquarters was at the new capital (then) of Livingstone from which the territory was administered by the British South African Company.

The functions of the police during the colonial period were only military in nature whose main functions were to safeguard the BSA company's property, protection of its officials, employees and colonialists. It being a commercial organization, the BSA company was only interested in maximizing its commercial profits in the area and this meant that securing of natives' welfare was not of its major concern. Therefore, the police under the BSA Co. did not do much of the civic duties among the African population, but only for those that wielded power.²³

²¹ Francis, X Musonda History and Reformation of Zambia Police Service. (2002). P. 1

²² Francis, X. Musonda (2002) P : 1

²³ Kaoma, Kennedy "Democratization and the Challenge of Policing Initiatives and Strategies in Zambia: A Comparative Approach to a Fragile Democracy." (2002). Obligatory essay. P. 18

During the time when the nationalists movements fighting to introduce black majority rule and to introduce an inclusive political culture had emerged, law enforcement had taken political orientation. The African National Congress (ANC) under the leadership of Harry Mwaanga Nkumbula advocated for an energetic agitation for the 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 colonial rulers had to crush black political activities 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 seems to have continued as a practice in Zambia to date. Quite often, the police suppressed dissenting opinions by using force and effecting arbitrary arrests and detentions which attitude brought about widespread dislike and mistrust of the police by the natives.

After 1964, with the achievement of independence, the people of Zambia hoped that the government would repeal all the oppressive pieces of legislation that infringed on their meaningful enjoyment of basic human rights and freedoms as was enshrined in the Constitution. However, there was no real change in the laws and police performance. Police brutality against the civil society, which began in the colonial era continued even after independence, under the leadership of Dr. Kenneth Kaunda. People's hopes were further dashed when all the oppressive laws were not only retained but also exceedingly

strengthened and used by the police force to oppress and suppress existing and emerging political parties.

The post independence era also saw the declaration of an interminable state of emergency²⁴ (enforced by the police), the introduction of authoritarian rule of a one party state system of government and the abolition of a multiparty political dispensation. Thus the Constitution in article 4 provided only for one political party. In all this, it was the duty of the police force to ensure that no person could lawfully form or attempt to form any political party or organization other than the United National Independence Party (UNIP), or to belong to, assemble or associate with or express opinion or do any other thing in sympathy with such other political party or organization.²⁵

During the twenty-seven years of Kaunda's rule, the country was under a state of emergency characterized by detentions of political opponents in large numbers. This was facilitated by the presidential constitutional power to declare a state of emergency²⁶, which in turn formatted the derogation from peoples' fundamental rights and freedoms. Two other pieces of legislation were largely invoked to arrest and detain any perceived political or human right activists, namely the Emergency Powers Act²⁷ and the Preservation of Public Security Act.²⁸ For example, section 3 of the Emergency Powers Act provides that the President may as it appears to him to be necessary or

²⁴ Article 20 of 1973 Constitution provided for the Republican President any time, by proclamation published in the Gazette to declare a state of emergency

²⁵ Article 4 (2) of the 1973 Zambian Constitution

²⁶ Article 20 of the 1973 Constitution

²⁷ CAP 108

²⁸ CAP 112

expedient for securing public safety or the defence of the nation, maintenance of public order, make provisions for the detention of persons or restriction of their movement, whenever the emergency proclamation is in force.

Similarly, the preservation of Public Security Act in regulation 33 gives power to the president to order the detention of persons. The section provide that:

“whenever the president is satisfied that for the purpose of preserving public security, it is necessary to exercise control over any person, he may make an order against such person directing that such person must be detained and ...be arrested whether in or outside the prescribed area...”

With such laws in place, the police was used to detain large numbers of political opponents, an act that greatly eroded the little confidence and trust that people had in the law enforcement agency. The police’s character now became one of protecting the interests of the ruling party just as the colonial police protected the interests of the colonial administration. This way of policing socially isolated the Zambia Police further from the community it was intended to serve.

The declaration of a one party state also meant that all the state organs became affiliated to the ruling party. The police was not left out. The appointment of the Police commander, the Inspector General of Police, to be precise, became more political. For example, Mr. Fabiano Chela in 1973 was appointed Minister of State in the Ministry of

Home Affairs whilst holding the office of Inspector General. Similarly, during Harry Mtonga's reign Police partisanship was consolidated. This followed his appointment, whilst holding the position of Inspector General of Police in 1984, as a Member of Central Committee, which was the highest party's policy making organ. Mtonga further established the office of political commissar at the force headquarters in 1985 to specifically deal with political matters.²⁹ In order to bring the Police more in line with party policing programmes, the government introduced the vigilante policing scheme in 1986 which came into force after amending the Police Act through the Zambia Police (Amendment) Act, No 23 of 1985. Although this scheme was under the direction and control of the police, the party took charge and officials began giving instructions on policing within the communities. Thus, their authority superceded that of the officers-in-charge of police stations. Police could sometimes receive instructions from party functionaries contrary to police professional ethics and conduct.

The growth of the Zambian population and falling economy brought an increasing demand on the police for services due to escalating criminal activities. This necessitated the introduction of the Mobile Unit to handle riotous situation, the Paramilitary Unit to provide a striking force against most violent incidences and the Anti-robbery Squad (flying squad) to specifically curb armed crimes. In most of their operations, the aforesaid units used maximum force, to deal with the public and indeed offenders even when not necessary. This provoked resentful reactions from the public as the police shot dead rather than apprehend offenders. In the case of the People v. Chipaya³⁰ in which a

²⁹ Francis, Musonda History and Reformation of Zambia Police Service. (2002). P. 26

³⁰ (1987) HP/103 (unreported) ✓

police officer was charged with murder after shooting to death a passenger in a car suspected to be driven by criminals, the high court was prompted to remark that the police warning shots had become killing shots.

In 1991, when Zambians successfully campaigned and bloodlessly fought for the restoration of multi party politics, the public was promised a change in policing methods by the new Movement of Multiparty Democracy (MMD) government.. However, soon after the restoration of multiparty politics, the Police in the new MMD government under Dr. Frederick Chiluba, started to be criticized again. There were glaring incidents of abuse of power by police in the discharged of their duties. In August, 1992, the then Minister of Home Affairs Hon. Newstead Zimba ordered police to “shoot to kill” armed robbers. By the end of 1993 at least thirteen people were fatally shot in circumstances that suggested that excessive force was used.³¹

Following public discontent over rising cases of police abuse, incompetence and corruption, the government in 1995 decided to transform the police force from a military – oriented organization to a more civil one. Mr Francis Ndhlovu was appointed Inspector General of Police and in the same year (1995), he launched the Police reform programme. He formulated a mission statement in which the police pledged to respect individual rights and freedoms and to facilitate democratic governance through community oriented policing.³² The Police Public Complaints Authority was established as an independent body to hear serious police abuses. In a bid to eliminate the old

³¹ Amnesty International Report on Zambia – April 1999

³² Francis, Musonda. History and Reformation of Zambia Police Service, (2002). P. 23 - 24

military policing system, the title “force” was replaced with “service” and the police acquired a new name: Zambia Police Service.

Further, the police adopted the community – policing model as a panacea to the creation of safer communities and neighbourhoods. The model emphasized closer partnerships between the public and the police and sought to identify policing problems with a view of finding solutions together. New structures were introduced to deal with various community needs and to enhance public relation. These included “inter-alia” the Victim Support Unit, School Liason Unit and the chaplaincy. Identification tags were introduced for all the police officers so that erring officers could be identified and reported to the authorities.

However, no sooner had the reforms been put in place than they suffered a serious set back. This was following the 1997 coup attempt when soldiers seized the national radio station in the government Mass Media Complex in Lusaka. Several people were detained (upon declaration of a state of emergency) and allegedly tortured by police whilst in custody. Detainees included army officers and other civilian accomplices. The Torture Commission appointed in May 1998, chaired by Judge Japhet Banda, in its findings confirmed many cases of police abuses, which included torture of suspects.³³

The police was once more found wanting vis-à-vis treatment of members of the opposition parties. Thus, most civic organizations complained of police using force and

³³ Report on Police Brutality in Southern Africa. Published by Inter – African Network for Human Rights and Development (AFRONET) P. 188

disruptive tactics when policing public meetings organized by opposition parties whilst closing their eyes to certain excesses of the ruling party.³⁴ Many political rallies and processions organized by the opposition were met with police in full riot gear, who disrupted such gatherings by firing tear gas canisters at the crowds and yet the same officers escorted and protected similar gathering sympathetic to causes to the ruling party. The Roman Catholic Commission for Justice, Peace and development in its "State of the nation" review of the socio-economic situation in Zambia in 1998, observed that in spite of the Supreme Court's ruling, in the case of Christine Mulundika and Others v. The People³⁵ that some provisions of the Public Order Act³⁶ were unconstitutional, the police still used the 1996 amendment to suppress activities of the opposition. Police cited "inter alia" insufficient manpower to cover them, but in the same vein having enough manpower to quell their meetings and processions.

The above historical background of the Zambia Police clearly indicate that the present adversarial position between the police and the public is quite historical and still persists. To date the police despite its well meaning intentions to serve the general public, still remains a very useful tool for the party in power to suppress not only the political activities of the opposition but also to infringe on any other person's rights and freedoms especially freedoms of expression, assembly and association as enshrined in articles 20 and 21 respectively, of the Zambian Constitution. Other than the aforesaid, the examination of this historical background of the Police will help us to understand

³⁴ This was characteristic of the colonial and Kaunda era, but then repeating itself in the third republic.

³⁵ (1996) 2 LRC. 175

³⁶ CAP 104, Laws of Zambia

some of the problems involved in achieving the basic objectives of the police and the differences of opinion regarding the possible solutions to these problems.

CHAPTER THREE

3.0. INTRODUCTION

This chapter examines some salient provisions of various pieces of legislation that have a direct influence on the police operations, thus making the police to fail or seem to fail to deliver satisfactory services to the public. For the purpose of this study, as earlier alluded to, some provisions of the Penal Code, the Criminal Procedure Code, the Public Order Act, the Road Traffic Act and the Zambia Police Act are considered in this chapter, to the extent that they affect police performance. It was discovered that the laws were either inadequate or ambiguous, or archaic, or logistically difficult to enforce. Once more, it must be mentioned from the outset that the cited provisions are merely illustrative and not exhaustive.

3.1. THE PENAL CODE ACT

The Penal Code Act³⁷ defines criminal acts, circumstances under which certain conducts can constitute crimes, defences to criminal acts and prescribes appropriate penalties for criminal acts. Joseph Daka³⁸ writes that the Zambian criminal law is enshrined in the Penal Code, whose objectives are;

- (i) to sound a fair warning to citizens who might commit offences,
- (ii) to act as a guide to matters of criminal trespasses,
- (iii) to distinguish between misdemeanors and felonies and offer respective sentences,
- (iv) To deter conducts that threaten or inflict harm on human life.

³⁷ CAP. 87 of the Laws of Zambia

³⁸ Joseph, Daka. Sexual offences in Zambia and How the Police Deal with them. (2003) P. 1

The Act is a very important tool for the police in that the success of police work is greatly dependent on the provisions of this Act vis-à-vis prosecution of offenders or rather criminals. Thus any lacuna weakness, or ambiguity in any provision of this law has a direct bearing on police work with the resultant effect that criminals may either go unpunished or end up with light punishment or punishing an innocent person. In its current form, some provisions of the Act exhibit some, if not all of the aforementioned weaknesses. Due to public outcry two sets of provisions of the Act are examined, namely provisions relating to defilement³⁹ and those on criminal defamation of the President.⁴⁰

3.1.1. The Law on defilement

The Penal Code defines defilement of girls less than sixteen years of age in section 138 (i), as follows:

“Any person who unlawfully and carnally knows any girl under the age of sixteen years is guilty of a felony and is liable to imprisonment for life”.

Simply said, defilement is the act of having unlawful sexual intercourse with a girl under the age of 16 years. The law on defilement considers girls less than sixteen years to be incapable of making sound decisions on sexual intercourse. Hence the law is so set to protect these girls from being sexually abused. Besides that, it is biologically argued that girls under sixteen years of age are not yet ready to bear the consequences of sexual intercourse, among others, pregnancy. Under normal

³⁹ Section 138 of CAP. 87

⁴⁰ Section 69 of CAP 87

circumstances such girls are supposed to be in schools. It is for these reasons and many others that in the case of defilement, consent is immaterial.

Statistics show a marked increase in defilement cases reported at various police stations throughout the country. For example in 2001, 680 cases of defilement were reported country wide, while 2004 recorded 1,375 cases. Between January and October 2005, 620 cases were reported in the city of Lusaka only; giving an average of 2 girls being defiled per day in Lusaka. In 80% of the reported cases, it was established that only 10% were successfully prosecuted by the police.⁴¹ This high failure rate is indeed a cause for the public out cry that the police are not doing enough to address the situation.

The police in their efforts to find out the cause for the increase in the reports discovered that there are two issues to be well established; either indeed there is an increase in the commission of the crime or, it is just that the public has become aware of the need to report such cases because most of the abusers of these minors are either family friends or relatives to the victims (fathers, grandfathers, brothers or uncles to the victims).

However, the high failure rate to successful prosecution is attributed to two areas of concern; first is the high rate of withdrawal of the reported cases. This is because the offenders are most of the times either friends or are related to the victims. Secondly, lack of investigating facilities to prove some cases beyond all reasonable

⁴¹ Statistics obtained from the Victim Support Unit of the Zambia Police Service Headquarters, Lusaka

doubt as required by law, where an accused person pleads not guilty. Thus where a plea of not guilty has been taken by an accused person, the only conclusive evidence required, when testimonies by witness fail to prove a case⁴², is to do what is known as the Deoxyribonucleic Acid (DNA) test. The test is quite expensive and unfortunately cannot be done in Zambia. All this renders police work inadequate.

3.1.2. Defamation of the President

Enforcement of the law on defamation of the president has continued to put the police in an adversarial position with the public especially with the multiparty democratic political dispensation we are in. The Penal Code provides that;

*“Any person who, with intent to bring the President into hatred
ridicule or contempt, publishes any defamatory or insulting
matter, whether by writing, print, word of mouth or in any
other manners, is guilty of an offence and is liable on
conviction to imprisonment for a period not exceeding
three years”⁴³*

This provision has a stifling effect on freedom of speech and of the press as it does not lay down any guidelines for determining what constitutes an insulting matter. This gives the police discretion to decide what publication is defamatory or insulting and what is not. Now, in a democracy, the president is a public figure who is expected to be accountable to the people and should be transparent in his actions. This therefore means that the people

⁴² Usually, defilement, like any other sexual offence has no other witness, other than the victim herself to give evidence. So where there is no deposit of semen or injuries on the private parts of the victim, penetration becomes difficult to prove.

⁴³ Section 69 of CAP 87

including the press should not be subjected to criminal sanctions for making unpalatable remarks about the president. Predictably, this law has been used to shut up citizens and to harass journalists, especially from the independent press.⁴⁴

Attempts made to challenge the constitutionality of this law have been defeated by the courts in the cases of Fred M'membe and Bright Mwape v. The People⁴⁵, and in Fred M'membe, Masautso Phiri and Goliath Mukonge v. The People⁴⁶. The Supreme court in the two cases held that section 69 of the Penal Code is reasonably justifiable in a democratic society as there was no pervasive threat inherent in the section which endangered the freedom of expression. The court further stated that no one could seriously dispute that side by side with the freedom of speech was equally, very important public interest in the maintenance of the public character of public men for the proper conduct of public affairs which requires that they be protected from destructive attacks upon their honour and character.

Despite the above interpretation of section 69 of the Act by the Highest Court, people still contend that this law is inconsistent with democratic principles. Adding their voice to this concern, the Inter-African Network for Human Rights and Development (AFRONET) observed that section 69 is not only obnoxious, but an asset in undermining freedom of expression and it should be scrapped off from the statute.⁴⁷

⁴⁴ Such harassments have been demonstrated by continued arrests of the Post Newspaper Chief Editor Fred M'membe and threats to ban its future publications. (Latest arrest of M'membe for defamation was on 7th November 2005; the matter is still in court).

⁴⁵ (1996) SCZ No. 18

⁴⁶ (1996) SCZ No. 107

⁴⁷ AFRONET Zambia Human Rights reports: Chapter three (1998)

3.2. THE CRIMINAL PROCEDURE CODE (C.P.C.)

The Act⁴⁸ makes provision for the procedure to be followed in criminal cases. The Act is quite instrumental in disposing of criminal offences that the Penal Code and any other pieces of legislation create. The Act is so much related to the Penal Code that almost every amendment made to the Penal Code affects the provisions of the Act.

3.2.1. *The Law on Bail or Bond*

Section 123 (i) of the C.P.C has been found to be inconsistent with the people's wish vis-à-vis the current increase in sexual offences against women; defilement in particular. Thus, people feel the offenders in such crimes should not be released on bail or bond as opposed to provisions of the Act. Section 123 (i) provides that when a person is arrested or detained or appears before any court, whilst in custody or at any stage of proceedings, he may be granted bail or bond, provided that such a person "has not" been charged with, murder, treason, misprision of treason, treason felony, aggravated robbery or any other offence carrying a possible or mandatory capital penalty. Further, section 125, (i) of the Act provides for immediate release of a detainee or prisoner in whose name the bail or bond is executed.

From the provision of the Act we see that defilement is not among the offences under which bail or bond cannot be granted. This means that any person charged with the offence is entitled to be released on bail or bond if he meets the conditions

⁴⁸ Chapter 88 of the Laws of Zambia

therein, among them, being a person of fixed abode and having capable sureties. Cross and Jones⁴⁹ write that the only test to be applied by courts when considering whether to admit an accused person to bail or bond is whether he will appear to stand trial. In R v. Philips⁵⁰, it was held inter alia that bail can be denied where it seems probable that the offence will be repeated if the accused is released or there is a likelihood that he would interfere with witnesses.

With such laws in place, the courts and indeed the police are left with no option but to use their discretionary power to release any suspect who satisfies the conditions of bail, regardless of the prevalence of the crime and the age of the victim of the sexual assault. Unless this law is revisited, the status quo remains the same.

3.3 THE PUBLIC ORDER ACT

The Public Order Act⁵¹ is another piece of legislation that the police enforce. It has been said to be the most controversial piece of legislation to be enforced in a democracy, putting the police in very bad standing with the public. The Act regulates public assemblies, processions and demonstrations among other things. Section 5 of the Public Order Act provides that any person intending to assemble or to convene a public meeting, procession or demonstration should notify the police in writing of such intention seven days before the meeting. The said notice should be in the prescribed form and should contain an undertaking by the conveners of a public meeting, procession or demonstration that order and peace shall be

⁴⁹ Cross and Jones. Introduction of Criminal Law, 5th ed, (1964) . P:350

⁵⁰ (1947) 32 Cr. App. Rep 47

⁵¹ Chapter 113 of the Laws of Zambia

maintained through the observation of conditions specified therein. Some of the conditions include information on site, route, sufficient marshals and commencement time. The information required also include duration and destination of the intended meeting or procession.

3.3.1. *The effect of the Public Order Act*

It must be mentioned from the out set that the Public Order Act has a limiting effect on people's rights and freedoms provided for in articles 20 and 21 of the Zambian Constitution.⁵² The freedom of the people to assembly in public in order to express their views especially on how they are to be governed is generally regarded as an essential element in a free and open society (a democracy). Other than the provisions in the Constitution, the freedoms of expression and assembly are recognized in international human rights instruments such as the Universal Declaration of Human Rights of 1948⁵³, the International Covenant on Civil and Political Rights of 1966⁵⁴ and the African Charter on Human and Peoples' Rights of 1981.⁵⁵ This is a clear indication of the values of these freedoms, and it is therefore important that the state does not unnecessarily interfere, no matter how unpleasant they may appear, unless there is a real threat to social order.

⁵² Articles 20 and 21 provide for freedoms of expression and assembly respectively.

⁵³ UDHR, Article 19 (freedom of expression) and 20 (freedom of peaceful assembly)

⁵⁴ ICCPR, Article 19 (freedom of expression) and 20 (freedom of peaceful assembly)

⁵⁵ ACHPR, Article 9 (freedom of expression) and 11 (rights to assemble freely with others)

Justice Brandeis in an American case, Whikney v. California⁵⁶ outlined the importance of free expression in the following words;

“those who won (the) independence (of the United States) ...believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth, that without free speech and assembly, discussion would be futile, that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine (and) that the greatest menace to freedom is an inert people ...only an emergency justifies repression”.

Freedom of expression provides a mechanism by which to establish a reasonable balance between stability and social change.

Freedom of assembly is quite essential in a democratic government. As Justice C. Chitoshi aptly put it in the case of William Steven Banda v. The Attorney General⁵⁷

“the very idea of a government, republican in form implies a right on the part of citizens to meet peacefully for consultations in respect of public affairs. The purpose of public meetings is the education of the public and

⁵⁶ (1927) 274. US 357

⁵⁷ (1992) HP.1005 (Unreported)

formation of opinion on religions, political economic and social problems. Hence the right of assembly is intimately connected with the right of freedom of speech and expression...”

It is however admitted that these rights are not absolute. Thus uncontrolled liberty could definitely lead to anarchy and disorder as well as the infringement of the rights of others.

The Constitution attempts to strike a balance between individual liberty and social control. In doing so, the Constitution provides for restrictions to these freedoms and rights which the Public Order Act apparently purports to enforce. Thus articles 20 (3) (a) and 21 (2) (a) provide, inter alia;

“Nothing contained in or done under the authority of any law shall be held to be in consistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision...that is reasonably required in the interests of defence, public safety, public morality or public health...and except so far as that provision, or the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society”⁵⁸

⁵⁸ Chapter 1 of the Laws of Zambia

To be valid, the afore provided restrictions on fundamental rights must meet certain criteria. Thus, the restrictions must firstly be prescribed by law and secondly, shown to be reasonably justifiable in a democratic society.

The meaning of “restriction to be prescribed by law’ was stated in a Tanzanian case of Pumbun and others v. Attorney General and Another,⁵⁹ that such a law must be lawful in the sense that it is not arbitrary. Thus it should make adequate safeguards against arbitrary decisions, and provide effective controls against abuse by those in authority when using the law. Secondly, the limitation imposed by such law must not be more than is reasonably necessary to achieve the legitimate object; this is called the principle of “proportionality”. The principle requires that such law must not be drafted too widely so as to net everyone including even the untargeted members of society.

The Zambian Supreme Court in the case of Christine Mulundika and 7 Others v. The People⁶⁰ equally stated that, there must be adequate guidelines so that the exercise of a discretion by the competent authorities should have the scope indicated and the manner of its exercise set out in the affected law with sufficient clarity. It further stated that there must be effective controls on the exercise of the power to grant or refuse a permit and that there must be a procedure to allow the aggravated person to challenge the decision. Such a procedure must be reasonable, fair and just.

⁵⁹ (1993) 2 LRC 317

⁶⁰ (1996) 2LRC 175

To demonstrate the meaning of what is reasonably justifiable in a democratic state, the court in Christine Mulundika's case took time to describe what is meant by a democratic society by identifying inter alia, in a democratic society:

- the availability of a government which reflects the will of the majority of the people expressed at periodic and genuine elections.
- the power of the state should reside in the people
- the people enjoy basic rights and freedoms (available to both the majority as well as to any minority)

The court further went on to invalidate some provisions of the Public Order Act, which gave the police broad discretionary powers to regulate public meetings and processions. Delivering the judgment of the Court, Ngulube, C. J (as he then was), stated inter alia that the requirement of prior permission to gather and to speak, which permission can be denied sometimes for good and at other times for bad cause not contemplated by the Constitutional derogation, directly affects the guaranteed freedoms of speech and assembly. A derogation which is so broad as to cover restrictions both within and without the limits of Constitutionality could not be upheld.

In the Indian case of Bihar v. K. K Misra and Others⁶¹ the Supreme Court of India expressed the view on laws imposing restrictions on rights that, in order to be a reasonable restriction, the law must not be arbitrary or excessive and the procedure and the manner of imposition of the restriction must also be fair and just. Any

⁶¹ (1971) AIR 1667 at 1675

restriction which is opposed to the fundamental principles of liberty and justice can not be considered to be reasonable. One of the most important tasks to find out whether a restriction is reasonable or not is to see whether the aggrieved party has a right of representation against the restriction imposed or proposed to be imposed.⁶²

A restriction on freedom of expression and assembly that a government seeks to justify on national security grounds must have a genuine purpose and it should demonstrate its effect of protecting a legitimate national security interest. Thus, such a restriction is only legitimate if it is for a genuine purpose and its demonstrable effect is to protect the use, or threat of force. Similar to the above said, Philip Musonda, J in the case of Roy Clarke v. The Attorney General,⁶³ stated that the applicant was merely exercising his freedom of expression through “satire” and that limitation to such expression was only permissible if the article injured national security, territorial integrity and public safety (which in this case did not).

From all the aforesaid, it is questionable whether the provisions of section 5 of the Public Order Act are compatible with articles 20 and 21 of the Constitution. Thus, this law in its present form⁶⁴ is anachronistic and is incompatible with the requirements of an open society. The political situation in Zambia then which prompted the government to maintain such draconian legislation, which was meant to suppress multiparty political activism, has completely changed and people of

⁶² Chanda, A. W and Liswaniso, M. Media Laws in Zambia. (1999) . P. 79

⁶³ (2004) HP / 03 (unreported)

⁶⁴ Despite its amendment in 1996 to remove “Permit” and replace it with “Notice” and a few other minor modifications, its effects are the same.

the country continue to enjoys peace with each other, locally and across the territorial borders. We are thus now in an era when democracy and human rights have taken the center stage throughout the world.

It is generally observed that provisions of the Public Order Act are a serious fetter on freedoms of expression, association and assembly as they give the police unjustifiable discretion, as regulating officers, to decide who should exercise their constitutionally guaranteed rights. The possibility of appeal to the Minister is meaningless as the Minister, being an interested party and a politician cannot be counted upon to be impartial, especially where the proposed activity has political overtones. Moreover, it is not reasonable in every case to expect people to wait for up to seven days before holding a public meeting or demonstration to express their feelings on an immediate pressing issue. Therefore the enforcement of such a seemingly archaic and oppressive pieces of legislation, that grossly infringe on people's rights and freedoms, expressly provided in the grand norm (the constitution) of the land, puts the police in a constant adversarial position with the public they well meaning intend to serve.

3.4. THE ROAD TRAFFIC ACT

The Road Traffic Act⁶⁵ creates inter alia a number of traffic offences that are enforced by the police through its traffic section in conjunction with inspectors or

⁶⁵ No. 11 of 2002

officers from the Road Transport and Safety Agency⁶⁶ and officers from the Road Traffic Commission (RTC).

Some of the provisions in this Act have not been well appreciated by the members of public. On examination of some of the growing concerns that people express as being not well handled by this law enforcers, the study revealed that the issues are in four categories to be discussed below:

3.4.1 Weakness of the Law

All the offences that the Road Traffic Act creates are mere contraventions and not crimes.⁶⁷ Thus, they all can be disposed off by way of an offender paying the prescribed penal units (fines) upon conviction, or alternatively a light imprisonment sentence. This is provided for in section 225 of the Act:

“Any person who commits an offence under this Act for which no penalty is provided shall be liable upon conviction in the case of a first offence, to a fine not exceeding one thousand penal units or to imprisonment for a term not exceeding three months and in the case of a subsequent offence to a fine not exceeding three thousand penal units or to imprisonment for a term not exceeding six months or both”

⁶⁶ Established by section 3 of No. 11 / 2002

⁶⁷ A Contravention is an offence that can easily be disposed of by way of an accused person paying admission of guilty fine at any police station where such a charge is made, without necessarily appearing in court, while a crime can only be disposed of through the courts of law and usually punishable by a sentence of imprisonment.

This general penalty in terms of fines, and, or simple imprisonment sentences only as alternative, even on subsequent offence, for all the offences under the Act makes this law a bit weak vis-à-vis punishment. This observation is made because the levels of negligence or recklessness exhibited by offenders (drivers) on the roads amount to criminal conducts, especially when such recklessness results in a fatal accident, yet the law provides for an option of either a fine or imprisonment upon conviction. Section 161 (1) of the Act provides as follows:

Any person who causes the death of another person by driving of a motor vehicle on the road recklessly, or at a speed or manner which is dangerous to the public...commits an offence and shall be liable upon conviction to a fine not exceeding thirty thousand penal units, or to imprisonment for a period not exceeding 5 years, or to both”

Now, where the law provides for an option, the courts tend to opt for fines especially if the accused is a first offender regardless of the gravity of the circumstances. Following the general principles of sentencing, the objectives of punishment are, inter-alia , to deter the offender himself from future crimes and to reform him as far as possible⁶⁸. And following this principle, Gardner, J. (as he then was in the case of Phiri v. The People⁶⁹ stated that;

“a first offender should not be denied leniency although the circumstances may make the application of that leniency minimal. The reason for dealing with a first offender leniently

⁶⁸ Young, L. K. Magistrate's Handbook. 5th (1998) P. 45

⁶⁹ (1970) SJZ 178 (unreported)

is in the hope that a severe sentence is not necessary and that a lenient sentence will be sufficient to teach a previously honest man a lesson”.

Equally, in the case of Longwe v. The People⁷⁰, the court observed that where the legislature has seen it fit to prescribe a sentence of a fine or imprisonment or both, it is well established that a first offender in a case where there are no aggravating circumstances which would render a fine inappropriate, should be sentenced to pay a fine with imprisonment only in default.⁷¹

In the case of The People v. Hightone Simpungwe,⁷² the accused was charged with causing by dangerous driving the death of an infant who was a passenger in his vehicle. Despite the prosecution successfully proving that the accused's driving was indeed and in fact reckless and dangerous to the public, he, upon conviction, only paid a fine.

The general feeling of members of public in response to the aforesaid provisions of law is that, where recklessness or dangerous driving has been successfully established by the court,⁷³ the law should provide for a mandatory imprisonment sentence with no option for a fine.

⁷⁰ (1976) SJZ 30 (unreported)

⁷¹ Hatchard, J and Muna, Ndulo. Readings in Criminal Law and Criminology in Zambia. (1984) P. 101

⁷² (1977) ZR 390

⁷³ As was established in the case of The People v. Hightone Simpungwe (1977) ZR 390

3.4.2. *The role of Passengers and Pedestrians*

Most people are not aware that passengers and pedestrians are also capable of committing traffic offences on the road and are liable to be charged and fined accordingly just like motorists. Thus, it is provided in section 180 of the Road Traffic Act that no passenger shall permit any part of his or her body to protrude beyond the vehicle, nor should a person enter or alight from a moving vehicle whilst on a public road, push or pull a vehicle upon a side walk.⁷⁴ Thus, the conduct of any passengers in relation to any of the aforesaid circumstances constitutes an offence under the Road Traffic Act, attracting a prescribed fine in penal units.

In the same vein, section 184, (6) creates offences for pedestrians who, cross the road without satisfying themselves that the road is free from oncoming traffic. It is also an offence to loiter on the road whilst crossing, and any person, whose conduct on the road poses a danger to himself and other road users equally⁷⁵.

3.4.3. *Motorist deliberately ignore traffic regulations*

It was revealed that a number of motorists deliberately ignore the law thereby putting undue pressure on the law enforcers to be constantly on the move in pursuit of the offenders. This is more especially in relation to the newly enacted law⁷⁶ on the use of a hand held mobile telephone whilst driving a motor vehicle on a public road. Several motorists also ignore the law on non-use of unregistered vehicles.

Section 11 (i) of the Road Traffic Act provides, "inter-alia", as follows;

⁷⁴ Section 180 (3) (4) and 50 of No. 11 / 2002

⁷⁵ Section 184 (3) (4) and (3) of No. 11 / 2002

⁷⁶ Section 169 of No. 11/2002

“...no person shall use a motor vehicle or trailer unless such vehicle or trailer is registered in accordance with the provisions of this Act”.

It is a result of such attitude of deliberately ignoring the registration of vehicles that some criminals have taken advantage of the situation and use unregistered vehicles as get – away transport in various criminal undertakings.⁷⁷ This makes it very difficult for the police to trace such vehicles because they bear no specific registration marks or number plates. When the police or road traffic inspectors impound such motor vehicles pursuant to section 11 (10) of the Act, which empowers the law enforcers to impound and detain such vehicles for inquiries, the affected offenders claim to be unnecessarily harassed.

3.4.4. *Vehicle clearance procedure*

Another area of concern to the public is the long and tedious procedure to clear an imported vehicle into Zambia before it can be registered. Section 10 of the Road Traffic Act requires that, before registration, a motor vehicle should be cleared by the customs office and the International Police (Interpol) department of the Zambia Police.

Research revealed that it takes an average of six days to clear a vehicle with Interpol. This is because the vehicle has to undergo screening for any theft incidences. Thus, since the introduction of the Southern Africa Regional Police

⁷⁷ The latest of such incidences was the use of an unregistered motor vehicle by criminals in the robbery at El Thomas Bureau de change along the freedom way, Lusaka, in which K46m and \$2,000 were stolen and one employee shot dead. (The Post news. No. 3234, Wednesday 3rd / 08 / 2005)

Chiefs Cooperation Organization (SARPCCO) in January 2000, a new system of clearing vehicles was introduced in order to control the movement of vehicles in and out of concerned member states. This aims at reducing cross-border motor vehicle thefts.⁷⁸ At Interpol, motor vehicle examiners physically check engine and chassis numbers, then proceed to verify such data with the modern highly computerized system to ensure there is no match with records of reported stolen motor vehicles. On completion of such procedures, an "Export / Import Motor Vehicle Clearance certificate is issued. This certificate is valid and accepted in all SARPCCO member states.

The aforesaid system since inception has proved to be quite effective as the certificate so issued has features that cannot be easily forged. An example of such efficiency of the system was recently demonstrated in an Interpol-SARPCCO joint operation in August, 2005 in which 41 stolen vehicles from different member states were recovered in Lusaka alone.⁷⁹ It has thus been discovered that although the Interpol clearance procedure is so prolonged and tedious to complete, it serves an appreciated long term purpose in curbing motor vehicle thefts in that a stolen vehicle can not be registered in Interpol member states, hence can not be successfully sold.

There are at the moment eleven SARPCCO member states namely; Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland,

⁷⁸ Information obtained from Interpol office at the Zambia Police Service headquarters, Lusaka

⁷⁹ Times of Zambia, Issue No. 13,330 of Monday 15th August, 2005

Tanzania, Zambia and Zimbabwe. Kenya, Uganda, Mauritius and Democratic Republic of Congo (DRC) are yet to join. SARPCCO is a regional security body made up of the above mentioned states, security chiefs or commanders coming together to offer each other assistance vis-a-vis various cross border crimes. Thus SARPCCO supplements Interpol efforts, therefore all the SARPCCO member states are also members of Interpol. The public has perceived this seemingly long screening procedure to be a waste of their time and attribute it to unnecessary harassment by the police.

3.5. THE ZAMBIA POLICE ACT

The Zambia Police Act⁸⁰ is yet another piece of legislation with a lot of influence on the operations of the police. It greatly influences operations of the police in that it provides for the organization, functions and discipline in the police service. It must be mentioned from the outset that most of the provisions of this Act are quite obsolete and they do not make any sense in contemporary policing. Above all, some provisions greatly contravene certain provisions of the Constitution especially the bill of rights. But for the purpose of this discussion, only a few salient features or sections dealing with the source of police powers in their every day operations, the Inspector General of Police and his allegiance to the appointing authority, are examined.

The Inspector General of Police has the entire command of the police. The Police Act in section 3 provides:

⁸⁰ Chapter 107 of the Laws of Zambia

“The Inspector General shall subject to the orders and directions of the President, have the command, superintendence, direction and control of the force”.

Further, the Act in section 3 (2) provides, in relation to the above provision that:

“The Inspector General may, subject to the general instructions of the Minister and to the provisions of this Act ...from time to time make standing orders for the general government of police officers in relation to their planning, arms and accoutrement, clothing and equipment, places of residence, classification and duties, as well as to their distribution and inspection and such other orders and instructions as he may deem expedient for preventing neglect and for promoting efficiency and discipline, of police officers in the discharge of their duties”.

From the above provisions, we clearly see that the operations of the Inspector General and consequently of the police as a whole are greatly dependent upon the orders and directions of the President. This makes police work not to be independent of political control of the party in power, a situation that is not fair in a multiparty political dispensation. This further puts the police in an awkward position in regard to the members of the public, especially those belonging to the opposition political parties.

3.5.1. Appointment of the Inspect General

The Inspector General of police is appointed by the President. In his conduct of duties (as earlier alluded to) the Inspector General is subject to the control and

direction of the President.⁸¹ The research on interview with retired senior officers and Inspector General of Police revealed that there are no specific laid down requirements or qualifications that an appointee should possess, except that he must have been or is a serving senior police officer. This also applies to his deputy in command; the commissioner of police. The conditions of service and the period for which he serves are contained in the letter of appointment given to him on appointment. Simply said, there is no legal framework or guide that the President follows to appoint or dismiss the Inspector General. Thus the President has the discretion of appointing, dismissing and setting out the conditions of service for the Inspector General. There is absolutely no obligation on the President to consult anyone when making such appointments. It does not matter whether it is in public interest or not. However, one cannot rule out political loyalty by the appointee to the President. The previous trend clearly shows that every change of government or presidency sees a change in the office of the Inspector General and his deputy. For example, after being in office for only a year⁸², Mr Zunga Siakalima was removed from office and replaced by Mr Darius Kalebo. Similarly, Mr Sailas Ngangula was replaced by Mr Francis Musonda as Inspector General upon change of Presidency from Dr. Chiluba to Mr Mwanawasa⁸³. Other changes have been as a result of perceived reduced loyalty or merely falling out of favour of the president.

⁸¹ Section 3 (i) of CAP 107

⁸² Francis, X Musonda. History and Reformation of Zambia Police Service. (2002) P. 23 - 28

⁸³ Francis, X. Musonda (Ibid).

3.5. 2. *The effect of the appointment on operations of the police*

The Inspector General of Police vested with the power to govern the police does so by delegating some of his powers or duties to officers subordinate to him, not below the rank of Assistant Commissioner.⁸⁴ This goes further down to officers in charge of police stations and further down to officers in charge of various police posts, units and shifts. Given this hierarchy of command, any officer⁸⁵, who in the execution of his duties fails to carry out an instruction given by any officer superior in rank, impliedly means disobedience to the Inspector General and consequently to the President and this disobedience constitutes an offence against discipline.⁸⁶ Research revealed that it is this statutory obligation of obedience to instructions from senior officers that make junior officers to perform with little or no reasoning at all. This is to say, not all orders that are given to junior officers (below the rank of Assistant Superintendent) who are the “working” group, are lawful but officers have to obey and carry out such instructions without any debate or question.

Given the above situation, where the police officers are expected to obey all instructions coming from the President through the Inspector General of police, it becomes very difficult for the police to perform their functions professionally especially when it comes to administration and enforcement of laws that do not go down well with the public, such as the Public Order Act.⁸⁷ Thus, the President being an interested party in such matters apparently gives orders to enhance his own

⁸⁴ Section 3 (3) of CAP 107

⁸⁵ Below the rank of Assistant Superintendent

⁸⁶ Section 30 (i) (a) of CAP 107

⁸⁷ CAP 113 of the Laws of Zambia

personal interest concerning his political party, or merely to settle personal scores. This has happened from the historical development of the Zambia Police (discussed in chapter two) to date. On several occasions the Police has shown biasness in favour of the party in power when it comes to public meetings and public demonstrations to advance their various concerns. Any demonstration not in favour of the government is not given the so-called “permit” by the regulating officers (Police officer in charge) as prescribed by section 5 of the Public Order Act. A number of regulating officers interviewed expressed concerns in the manner in which instructions are given by the Police command and senior government officials to deny permits to any persons with a different view from the government. Meanwhile several demonstrations in support of the president in power have been permitted even without due notice⁸⁸ and are even given police protection and escort.

Police have in all the three Republics (1st, 2nd and now 3rd Republic) recorded cases of torturing seemingly political activists in detention, breaking up opposition meetings coupled with arbitrary arrests and hostage – taking, false imprisonment and several selective applications of the law.

In the case of Arthur Wina and Six Others v. The Attorney General⁸⁹ the petitioners alleged, inter alia, that the police were constantly refusing them permission to hold meetings and thus denying them their constitutional rights of

⁸⁸ On 10th June, 2005, several Movement for Multiparty Democracy (MMD) cadres demonstrated without notice to police in solidarity with President Mwanawasa. At the same time demanding the ban of the “Post Newspaper” for allegedly publishing insulting material. Post Newspaper vendors were assaulted by the MMD cadres but no arrests were made (Post Newspaper No. 3152 of June, 2005)

⁸⁹ (1990) HP / 15/1

freedom of expression, association and assembly on two separate occasions, one in Lusaka and one in Ndola. They further alleged that in denying them the permit in Lusaka, the regulating officer (the second in command) had indicated that he was too junior to give a permit as instructions were coming from the top. However, the court held that the regulating officer alone would exercise his discretion and would not be bound by general operational instructions of his superiors. The court further stated that the exercise of discretion means that the regulating officers' decisions must be based on their own individual judgement and not to be influenced or dictated by superiors.

A similar illustration is in the case of the Resident Doctors Association of Zambia and Fifty others v. The Attorney General⁹⁰ in which the petitioners were denied a permit (to demonstrate against the government) on grounds that the police did not have enough man power to police the event as they had information that a certain group of people who did not agree with the petitioners' demonstration was planning to attack the procession.

The petitioners having satisfied all the requirements in section 5 of the Public Order Act proceeded with the peaceful demonstration but were later intercepted by a full strength of heavily armed riot police, bundled into police tracks and detained at Sikanze's Edwin Imboelo stadium. They were released on Police bond the following day after being charged with unlawful assembly contrary to section 74 of

⁹⁰ (2003) SCZ No. 12

the Penal Code.⁹¹ The Supreme Court stated that the police should observe the law and not ignore it. Justice Chitengi noted that the impression he got was that some senior police officers who were regulating officers considered parameters of their police stations as kingdoms where they were absolute rulers and totally forgot that those police stations were within the sovereign Republic of Zambia with a constitution and laws which everybody, including the police should obey. He further stressed that the police have no powers to reincarnate repealed laws⁹² and make themselves an albatross around the necks of the Zambian people in the enjoyment of their rights.

Another illustration of alleged failure by the police to perform to people's expectation and lack of independence was seen in their biased handling of events preceding the June 2005 by – elections in Mapatizya and Kalulushi constituencies. Thus the Foundation for Democratic Process (FODEP) released a press report after the elections, which read in part:

“...the police continue to face some difficulties in conducting themselves professionally during elections. This is mainly due to interference from higher authorities, which has undermined the authority of the police. The deputy minister of Mines Mr Steven Mukuka who was in the area, also the deputy campaign manager for MMD candidate had earlier instructed

⁹¹ CAP 87 of the Laws of Zambia

⁹² The judge was commenting with reference to the Public Order Act provision before the 1996 amendments which provided for a person (s) to obtain a “permit” as opposed to a “notice provided in the amended Act (CAP 113)

*the police to leave after which violence broke out between MMD and Patriotic Front (PF) cadres. Police only arrested PF supporters while no MMD cadres were arrested....these limitations have greatly led to the loss of confidence in the law enforcement agencies, causing cadres to take law into their hands...*⁹³

It was also established that the officer in charge of Zimba Police station, the area in which Mapatizya constituency is located was allegedly transferred under suspected political grounds, that he contributed to the loss of MMD by allowing so many United Party for National Development (UPND) campaign rallies in his area⁹⁴.

In a related development, police in Mongu were reported to have blocked demonstrations from convening at the Community Hall, during the November 1 nationwide “New constitution demonstrations,” on the pretext that the hall was a government building⁹⁵. In Lusaka, several attempts by the police to stop similar demonstration failed due to mounting pressure from the civil society and the “Oasis Forum”.

All the examples cited above are a clear manifestation of the police’s failure or lack of independence and objectivity in applying the law due to divided loyalty between their duty

⁹³ The Post News, No. 3165 of Friday 17th June 2005. The report was dated 15 / 06/ 05 and signed by FODEP president Sam Mulafulafu

⁹⁴ Ibid.

⁹⁵ The Post Newspaper No, 3304 of November 3, 2005.

as law enforcers and their allegiance to the Inspector General of Police and apparently to the President who conditionally appoints him.⁹⁶ These were said to negatively affect police officers' morale and consequently affect their performance.

3.6. OTHER FACTORS (NON LEGISLATIVE)

Other than the afore discussed matters that arise out of the prevailing legal frame work, the police's performance is also greatly affected by what would be termed as administrative factors. These include, inter alia, inadequate manpower, inadequate police stations and lack of logistics to efficiently perform.

3.6.1. *Inadequate Man Power*

The study revealed that the Police Reform Program started in 1995⁹⁷ envisaged to increase of the police's strength (to match with the growing demand of their services) from, by then 8,000 to 15,000 by the year 2000. The second reviewed program to run from 2000 – 2006 envisaged to have a strength increase of up to 27,000 police officers. However, both programs failed due to lack of finances to support the recruitment exercises. Statistics obtained from the police service headquarters show that currently the service has only 14,000 officers evenly spread throughout the country, against a population of about twelve million people. With

⁹⁶ One of the pronounced condition is to obey promptly all orders and instructions from the President. This condition was emphasized by President Levy P. Mwanasawa when he recently swore in the current Inspector General of Police. Mr. Ephraim Mateyo and his deputy Mr Francis Kabonde. He stated that failure by the duo to follow his instructions (as head of the Executive) would warrant their dismissal "faster than they came into office".

⁹⁷ The reform program was introduced by the Inspector General, then Francis Ndhlovu to run from 1995 – 2000. When Mr Sailas Ngangula assumed office of Inspector General, he put in place yet another 5 year strategic reform program running from 2001 - 2006

the HIV/AIDS pandemic, the number of officers is expected to drop further as efforts to recruit new officers still remain financially unsupported.

3.6.2. *Inadequate police stations*

Other than the newly established police posts under the community policing initiative in place, the infrastructure vis-à-vis police stations countrywide is quite insufficient. The police still use the same colonial infrastructure of one station per district. This makes it difficult for the people from the countryside to access the police.

3.6.3. *Logistics*

Included in this category are transport, stationary and equipment such as speed traps, alcohol test breath analysers and firearms. Others include forensic equipment such as cameras and chemicals used in the various scientific investigations in the criminal investigations department. The lack of all such important logistics were said to be so frustrating to the police to the extent of failing to prosecute cases due to insufficient evidence resulting from poor equipment. This fact was admitted by the Home Affairs Permanent secretary Mr Peter Mumba when he handed over 20 vehicles to the police service in 2004, at which he commented that the criminals have taken over the city of Lusaka due to police's failure to deal with the situation.⁹⁸ The situation seems to remain the same to date.

⁹⁸ The Police News. No. 23 of April / May 2004, P. 11

3.6.4. Accommodation

The research findings revealed that the issue of housing is quite critical to such an extent that some officers were reported to be either sharing houses with horses (in stables) in Sikanze police camp of Lusaka or using disused toilets in the same camp⁹⁹. Elsewhere across the country, the situation is no different as officers use abandoned buildings and grass thatched single roomed mud houses (huts). The institution is reported to have no funds to rent houses for its officers in various housing areas.

Another issue raised by various officers interviewed was concerning uniforms and boots (shoes). Most officers especially in the juniors' ranks reported to have only a single pair of uniforms and sharing head dresses (caps or berets). They complained that they last received shoes or boots in 1995 (in some divisions like Central Province). This means that what they use is personally bought from various sources using own meager salaries.

All the above said factors coupled with poor salaries that also come late were reported to have a negative effect on the officers to provide effective services to the public, which result in low morale.

⁹⁹ The Police News. No. 24 of August / September, 2004, P. 7

CHAPTER FOUR

4.1. *Recommendations*

Having examined some selected provisions of the Penal Code, the Criminal Procedure Code and the Public Order Act, the Road Traffic Act and the Zambia Police Act, the following recommendations are proposed in respect of the cited provisions;

The law on defilement and other sexual offences on the increase should be strengthened by amending section 11 (2)¹⁰⁰ of the Criminal Procedure Code so that defilement and rape cases can be among the offences not to be tried by the subordinate court but by the High Court. This is because both offences attract life imprisonment as prescribed by the Penal Code,¹⁰¹ and the subordinate courts do not have the power to impose imprisonment sentences exceeding nine years.¹⁰² Otherwise the sentence prescribed by the Penal Code is quite adequate despite calls for something much stiffer. Further, it is recommended that section 123 of the Criminal Procedure Code should be amended to include defilement among its provisions of offences that are non bailable, because people feel such offenders are a big menace to the public.

In the same vein, it is recommended that to reduce unsuccessful prosecution of these cases which result from inadequate investigations by the police, the police

¹⁰⁰ Section 11 (2) prescribes cases like treason and murder to be tried by the High Court. It is therefore proposed that defilement and rape cases should be among them.

¹⁰¹ Sections 138 and 133 of CAP 87, respectively.

¹⁰² Section 7 of C.P.C

should be well equipped with DNA testing equipment that undoubtedly will offer conclusive evidence. This is because, in most cases defilement and rape cases have no other witnesses apart from the victim to prove the cases in court beyond reasonable doubt, hence the need for such scientific approach.

On criminal defamation of the President, it is observed that section 69 of the Penal Code is inconsistent with the fundamental right of expression. Therefore, it is proposed that it should be scrapped from the Penal Code. The President is a servant of the people and not their master and whether or not he has a good reputation depends on his conduct whilst in office. Thus a good reputation must be earned and not legislated. In fact as the law is, it gives the President liberty to defame his opponents at will at the same time, immunizing him from legal suits while making it criminal for his opponents and any other concerned citizen to defame him. Otherwise in the absence of section 69 of the Penal Code, the civil law on defamation is sufficient to protect the President's reputation.

The provisions of section 5 of the Public Order Act are undoubtedly a serious fetter on freedom of association and assembly as they give police discretionary power to decide who should exercise their constitutionally guaranteed rights; when and where. The Supreme Court of Zambia¹⁰³ has clearly stated that the law is inconsistent with multiparty democratic principles. It is, therefore, strongly

¹⁰³ This is in the appeal cases of Christine Mulundika and 7 Others v. The Attorney General (1996) 2LRC 175 and The Resident Doctors Association of Zambia and fifty others v. The Attorney General (2003) SCZ 12

recommended that his should be done away with or be greatly amended to allow citizens to enjoy the concerned rights and freedoms.

The Road Traffic Act should provide a mandatory imprisonment sentence in offences where it is proved that the cause of death in a given scene of accident is due to gross negligence or recklessness of the driver on a public road. Unregistered motor vehicles should not be allowed on public roads as by law established,¹⁰⁴ and those used should be well monitored that they are driven on public roads only for the purpose of registration process to avoid their use in crime promotion. The advantages of a centralized system for Interpol motor vehicle clearance seem to out-weigh the tedious disadvantages, and it is therefore proposed that the public should just be sensitized that the strict law is merely meant to make the sale and movement of stole vehicles difficult, consequently reducing the theft of vehicles.

Serious amendment to the Zambia Police Act should be made in most of its provisions which are quite archaic and unenforceable in contemporary policing. Critical among them is the Presidential appointment of the Inspector General of Police and the provisions of section 3 of the Zambia Police Act.¹⁰⁵ It is recommended that the recruitment or rather appointment of the Inspector General should be left to the Police and Prisons Service Commission. Further, his suitability should be ratified by Parliament and he must have a fixed tenure of

¹⁰⁴ Section 11(10) of Road Traffic Act empowers police to impound unregistered vehicles for inquiries.

¹⁰⁵ Section 3 of the Zambia Police Act provides, inter alia, that the Inspector General shall command the police subject to the instructions and directions of the President.

office, with specified terms for termination of such a contract. On recruitment, all police officers should swear and bear true allegiance to the Constitution and the people of Zambia, unlike the current situation where officers in their attestation swear to be faithful and bear true allegiance to the Republican President, and obey all orders given by the President.¹⁰⁶ Conditions of service of police officers should generally be improved to promote their working morale, for a demotivated officer can not perform, thus officers need to be provided with satisfactory salaries, enough transport and uniforms, boots, housing and bullet proof vests. In fact it was quite unbelievable to learn that very few police officers get risking allowance (thus only those working in the police clinics, forensic department, Anti – Robbery Squad and the Paramilitary Unit). The rest including all those manning various police stations do not get any risking allowance despite the various risking jobs they do. It is therefore recommended that all police officers should be getting risking allowance because they are all at risk.

4.2. Conclusion

The ever growing population and the rapid social change undoubtedly put a lot of pressure on the police to meet the security needs of the community. Whenever there is a social change, the law is supposed to follow suit in order to regulate the interpersonal relationships in the new order so created. From this study, we see that to a large extent, the police failure to meet people's expected standards of performance is attributed to the nature of the laws they enforce. The police's role

¹⁰⁶ Section 8 of "Zambia Police, form 106" (form of Attestation); completed by all personnel recruited or employed as police officers in the Zambia Police Service.

in law enforcement entails *that they should enforce the law as it is, thus whether bad, weak or inadequate*. This means that bad law still remains enforceable until it is repealed or amended and it is not the duty of the police to repeal or amend laws. This is the reason why laws like the ones cited in the study, that greatly dent the image of the police are still being enforced amid complaints from the public.

In the same vein, where there is no law, the police's hands are tied to take action. For example, the police can not continue to keep a defilement suspect in custody if defilement remains aailable or bondable offence. Currently there still remains no law and consequently no satisfactory police action in matters of child or human trafficking and, or removal of human body parts from a dead body. The call on police to take action on females who expose their sensitive body parts is unenforceable because there is no law on what is commonly referred to as "indecent exposure". Equally, there is still no punitive legislation specifically for negligently infecting another person with the most talked about HIV and AIDS, especially in the lime light of the increase in defilement and rape cases.

With the aforesaid, suffice it to conclude that indeed the police's performance is for much below the expectations of the public in their various security needs and service provision. Constraints being among others, the cited pieces of legislation in their current form as provided in the Penal Code Act, the Road Traffic Act and the Zambia Police Act (Notwithstanding other cited non legislative factors). It

must be stated that the cited pieces of legislation are not the only constraints or rather are not exhaustive, but merely illustrative of some reasons that make the police fail to perform accordingly. It is however submitted that the proposals (recommendations) made in the first part of this chapter if implemented can go a long way to improve both the police's performance and police's image. It is hoped that some other works to be done in relation to this study will seek to address many other concerns of the police towards attainment of satisfactory police services that will be commensurate with the growing population, sophistication in crime and the contemporary multi-party democratic political dispensation.

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