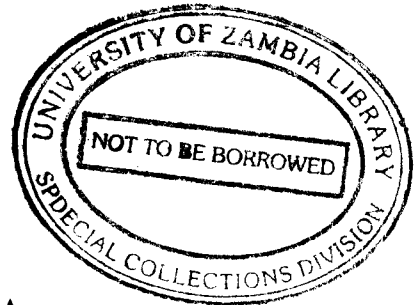


THE EFFICACY OF POLICE WATCHDOG INSTITUTIONS

BY



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**AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF
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Be accepted for examination. I have checked it carefully and I am satisfied that it fulfills the requirements relating to the format as laid down in the regulations governing Directed Research Essay.

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DECLARATION

I, Walubita Luwabelwa, do solemnly declare that I am the author of this Directed Research paper entitled "The Efficacy of Police Watchdog Institutions". I further declare that it is a work of my own ingenuity and that due acknowledgment has been made where other people's work has been used. I truly believe that this research has not been previously presented in the school for academic work. I therefore bear the absolute responsibility for the contents, errors, defects and any omissions therein.

Date 05/02/08

Signed 

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DEDICATION

To the members of my family, who have been there for me all along.

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My heartfelt gratitude goes to my Lord and Saviour Jesus Christ for this opportunity to contribute to knowledge.

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**Walubita Luwabelwa
University of Zambia
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ABSTRACT

This essay evaluates the successes and failures of police watchdog institutions, namely the Judiciary, the Human Rights Commission, the Anti Corruption Commission, the Commission for Investigations and the Legal Resource Foundation. It seeks to find out whether the Police Public Complaints Authority and the Police Professional Standards Unit have performed any better than the other police watchdogs and observes that these two institutions have made very little impact. The essay proceeds to look at police public relations in Zambia and the impact of human rights training on the Zambian Police Service, using the objectives on public safety and order in the Fifth National Development Plan as a yardstick for measuring the success levels of this training. The essay also gives an outline of the prevalence of reported cases on police brutality in Zambia and culminates by giving conclusions and recommendations.

TABLE OF CASES

Arthur Wina and Six Others v The Attorney General 1990/HP/1511

Banda v The People (1978) ZR 163

Christine Mulundika and Seven Others v The Attorney General (1995-1997) ZR 20 SC

Dan Kazangalala v Zambia Police (Turn Pike Police Post) HRC/C/68/2001

W M Sitali v Constable Emmanuel Banda PPCA/489/2004

TABLE OF LEGISLATION

Anti-Corruption Commission Act Number 42 of 1996

Amendment Act Number 1 of 1996

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

Public Order Act

Regulation 33 (6) of the Preservation of Public Security Regulations

The Anti-Corruption Commission Act, Cap 91 of The Laws of Zambia

The Constitution of Zambia, Cap 1 of the Laws of Zambia.

The Commission for Investigations Act, Cap 39 of the Laws of Zambia

The Zambia Police (Amendment) Act No. 14 of 1999

The Zambia Police Act, Cap 107 of the Laws of Zambia

The Zambia Police Force Standing Orders

Zambia Police Act Cap 107 of the Laws of Zambia, as amended by Act Number 14 of 1999

INTERNATIONAL CONVENTIONS

African Charter on Human and Peoples' Rights

International Covenant on Civil and Political Rights (ICCPR)

GLOSSARY OF ABBREVIATIONS

AFRONET	Inter African Network for Human Rights and Development
BSA Company	British South African Company
DANIDA	Danish International Development Agency
FNDP	Fifth National Development Plan
HP	Hewlett Packard
ICCPR	International Covenant on Civil and Political Rights
MMD	Movement for Multi Party Democracy
NCC	National Constitutional Conference
NCPPS	National Corruption Prevention Policy and Strategy
NGBSR	National Governance Baseline Survey Report
PPCA	Police Public Complaints Authority
PPSU	Police Professional Standards Unit
SIDA	Swedish International Development Agency
ZNBC	Zambia National Broadcasting Corporation

CHAPTER ONE

1.0 INTRODUCTION

The police are tasked with the job of enforcing laws for the good of the community as a whole. The duties of the police have expanded from merely acting as first hand social workers in looking after 'lost but found' children and those that have been abandoned, to include emergency services that respond to public distress calls in situations of danger.¹ According to section 5 of the Zambia Police Act², the function of the police force is to preserve the peace, prevent and detect crime and to apprehend offenders against the peace.

In order to keep the wide powers of the police in check, watchdog institutions play an invaluable role. They are primarily aimed at providing a culture of governance and respect for human rights particularly in the area of monitoring police abuses.³

1.1 PROBLEM STATEMENT

Police watchdog institutions in Zambia have not scored highly in ensuring police accountability and professionalism. The efforts of the earlier established watchdog institutions such as the Human Rights Commission, the Anti Corruption Commission, the Judiciary, the Commission for Investigations and the Legal Resource Foundation have not resulted in the reduction of reported incidents of police abuses and police brutality.

¹ Siakalima Z. **Police Public Relations as a Factor in Crime Prevention**. University of Zambia LLB Obligatory Essay (1984) p. 19

² s. 5, The Zambia Police Act, Cap 107 of the Laws of Zambia

³ Parliamentary Debates of the Third Session (Resumed) of the Eighth National Assembly. 9th Nov-9th Dec 1999, p 782

In order to mitigate the problems of these five police watchdogs, it was intended that the establishment of the Police Public Complaints Authority and the Police Professional Standards Unit would strengthen the police monitoring systems. Alas, these two institutions have not produced any better results than the other watchdog institutions that existed before their time. Compounding this problem is the ineffective police human rights training programme which has been hampered not only by financial resources but also insufficient skilled manpower. This has consequently fueled the continued public antipathy towards the police service.

1.2 STUDY PURPOSE

The aim of this research is to evaluate the work of various institutions involved in monitoring police action, outline their weaknesses and highlight the factors that led to the establishment of the Police Public Complaints Authority and The Police Professional Standards Unit. The research also aims to evaluate the performance of the PPCA and the PPSU to ascertain whether they have fulfilled their intended purpose. The impact of human rights training on the Zambian police force, particularly as regards brutality of suspects and police public relations will also be outlined.

It is submitted that if the recommendations of this essay are implemented, the police watchdog institutions will be able to function more effectively. The ultimate aim of this essay is to instill a culture of good governance and respect for human rights not only among the police but also among police watchdog institutions which will ultimately

benefit the community through improved police public relations and reduced incidents of police brutality.

1.3 STUDY OBJECTIVES

1.3.1 General Objectives

The general objective of this essay is to evaluate the effectiveness of police watchdog institutions with particular reference to the Police Public Complaints Authority and the Police Professional Standards Unit. Furthermore, the essay evaluates the impact of police human rights education on police public relations and the prevalence of police brutality.

1.3.2 Specific Objectives

The specific objectives that will guide this essay are:

1. To outline police public relations in Zambia and the factors that have led to public antipathy towards the police.
2. To evaluate the work of the Judiciary, The Permanent Human Rights Commission, The Anti Corruption Commission, The Commission for Investigations and the Legal Resource Foundation and how their failures led to the establishment of the Police Public Complaints Authority and the Police Professional Standards Unit.
3. To find out whether the Police Public Complaints Authority and The Police Professional Standards Unit have fulfilled their mandate, with particular reference to police brutality.
4. To find out the impact of human rights training on the Zambian Police Service, particularly as regards brutality of suspects.

1.4 RESEARCH QUESTIONS

This essay will attempt to answer certain research questions in light of the situation outlined above. These are as follows:

1. How adequate is the present law that regulates police watchdog institutions in enabling these institutions to effectively carry out their work?
2. What were the weaknesses of the Judiciary, the Permanent Human Rights Commission, the Anti Corruption Commission, the Commission for Investigations and the Legal Resource Foundation?
3. Were these weaknesses sufficiently alleviated by the Police Public Complaints Authority and the Police Professional Standards Unit?
4. Finally, what positive impact have these seven police watchdog institutions and the police human rights training programme had on improving police-public relations in Zambia and reducing the reported incidents of police brutality?

1.5 STUDY SCOPE

This essay will follow a legal centralist approach and its scope will be confined to the Courts in Zambia, the Human Rights Commission, the Anti Corruption Commission, the Commission for Investigations, the Legal Resource Foundation, the Police Public Complaints Authority and the Police Professional Standards Unit. It will outline the status of police public relations, the impact of police human rights education and the prevalence of police brutality in Zambia.

1.6.0 SYNOPSIS OF POLICE WATCHDOG INSTITUTIONS

This essay will focus on seven police watchdog institutions that are considered to be the forerunners in monitoring police abuses. These namely are the Judiciary, the Permanent Human Rights Commission, the Anti Corruption Commission, the Commission for Investigations, the Legal Resource Foundation, the Police Public Complaints Authority and the Police Professional Standards Unit.

The Human Rights Commission is a creation of the Constitution of Zambia⁴ and is also provided for under the Human Rights Commission Act.⁵ Its functions are, among others, to investigate human rights violations, maladministration of justice and to propose effective measures to prevent human rights abuse. It is also mandated to make recommendations to redress existing problems and to inspect prisons and places of detention or such related facilities to assess conditions of persons held in such places.⁶

This essay will show that the problems faced by the commission such as insufficient funding, staffing and transport facilities have contributed to the prevalence of police brutality in Zambia.

Another police watchdog institution is the Commission for Investigations. The office of the Investigator General is provided for under Article 90 of the Constitution of Zambia while the commission is established under the Commission for Investigations Act.⁷ The

⁴ Article 125 (1), Cap 1 of the Laws of Zambia

⁵ Cap 48 of the Laws of Zambia

⁶ s. 9 *ibid*

⁷ Cap 39 of the Laws of Zambia

commission has power to inquire into the conduct of any person in the service of the republic, local authorities, statutory or constitutional commissions and institutions established under an Act of Parliament or in which the government holds a majority of shares or exercises financial or administrative control.⁸

The commission enjoys wide powers of investigation and provides a mechanism that allows any person aggrieved by a police maladministration to lodge an oral or written complaint. This essay will show that although the commission enjoys wide powers of investigation, it is hindered mainly by limitations of funding and by its statutory limitations of making recommendations.⁹

The Anti Corruption Commission Act provides *inter alia*¹⁰ for the functions, autonomy and immunity of the Anti Corruption Commission.¹¹ Although the Anti Corruption Commission has not been spared from the problem of inadequate funding, it has scored some successes in prosecuting police officers, public and private administrators for corruption. A recent example is reported in The Post Newspaper headlined 'It's Difficult To Probe Chitoba, Charges Sata' involving alleged financial scandals against Drug Enforcement Commission Commissioner Ryan Chitoba and his deputy Jacob Koyi.¹²

⁸ Cap 39 of the Laws of Zambia

⁹ Mumba S.K.C. 'Ombudsman in Zambia: The First Decade' (1984) p 23. A seminar paper presented at the University of Zambia School of Law, 2nd February

¹⁰ 'among other things'

¹¹ ss. 5, 9, 10, 15 of Cap 91 of Laws of Zambia

¹² 2nd August, 2007 pp 1, 4

It is argued in this essay that the inadequacies of the Anti Corruption Commission contributed to the establishment of the Police Public Complaints Authority and the Police Professional Standards Unit.

The role played by the Legal Resource Foundation of Zambia, although a non governmental organisation, is notable enough to include it as an important police watchdog institution. This is a non-profit making foundation providing legal aid, promoting human rights and litigating in the public interest. It functions in areas which directly affect the disadvantaged members of society mainly through speaking out against police brutality.¹³ Its projects touch on a spectrum of issues including HIV/AIDS, Juveniles, Prisoners, Refugees, Children and Women.

Needless to say, the activities of the foundation are limited by insufficient funding and the constants departure of qualified lawyers. This essay will highlight the work done by the foundation and how its limitations have contributed to the establishment of the Police Public Complaints Authority and the Police Professional Standards Unit.

The next police watchdog institution that is evaluated in this essay is the Judiciary, an institution which gives an opportunity for complainants to institute proceedings in court rather than leave their complaints with the police. The Zambian Judicature is set up under Article 91 (1) of the Constitution of Zambia¹⁴ and is structured in such a way as to be

¹³ The Legal Resource Foundation News, July 2004, Number 64, p16

¹⁴ Cap 1 of the Laws of Zambia. It includes the Supreme Court of Zambia, The High Court for Zambia, the Industrial Relations Court, the Subordinate Courts, the Local Courts and such lower courts as may be prescribed by an Act of Parliament

autonomous, effective and efficient. Kaunda¹⁵ has observed that the Zambian judicial process is so slow and formalistic that there is a huge backlog of cases and that most litigants are met with high legal fees which are worsened by the delays in disposing off of court cases. He adds that the bench lacks sufficient numbers of magistrates, justices and judges who are further strained by having to administer circuit courts. The performance and weaknesses of the judicature will be evaluated by this essay.

1.6.1 Establishment of The Police Public Complaints Authority and The Police Professional Standards Unit

The coming in of the Police Public Complaints Authority was viewed as a sign of better things to come in the area of police accountability. The functions of the Authority are to receive all complaints against police actions and to investigate all complaints against police actions which result in serious injury or death of a person. The authority has wide powers of investigation and provides a faster mechanism of handling police complaints.

The Authority has been incapacitated by insufficient funding which inevitably determines the degree of autonomy by which it can work. The essay highlights certain legislative loop holes through which the investigative process of the Authority is undermined, such as the powers of the Minister of Home Affairs to determine the remuneration and allowances of members of the Authority.

¹⁵ Kaunda M.C. 'How effective are the Zambian Judiciary, Parliament and Ombudsman in Redressing Administrative ills', Legality Journal (1983) p. 6

An institution whose work is closely related to the Police Public Complaints Authority is the Police Professional Standards Unit which was created to monitor the observance of human rights by the police. Although the unit has acted as a check on the police in the area of human rights, it has not been spared from its own limitations. Lack of funds has seriously constricted its expansion and its powers are limited to making recommendations. Many people thus opt to take their complaints to the Police Public Complaints Authority instead.

It is the aim of this essay to evaluate the performance of the PPSU, to outline the factors that led to its creation and to ascertain whether it has fulfilled its mandate. Recommendations on how the PPSU can improve its performance will also be given.

1.6.2 Human Rights Training in The Police Service: Its Impact on Police-Public Relations in Zambia

The role of human rights training within the Zambia Police Service can not be overemphasized. This was necessitated by the increased diversity of police work and the developments in the law. The Zambia Police Force Training Policy, formulated in 1985, was primarily aimed at equipping personnel with the knowledge and skills they required to carry out their work efficiently.¹⁶ The trainees under this policy include recruit constables, Assistant Superintendents, reserve police officers, civilians among others.¹⁷ Policy refresher programs are also provided.

¹⁶ p. 4

¹⁷ Mataliro J. **The Impact of Human Rights Education on Law Enforcement Officers: An Evaluation of the Effect of Human Rights Education on Zambia Police.** University of Zambia Obligatory Essay (2005). pp 11-12

It is sad to note that the human rights training policy is narrow in scope and has remained much the same since it was established in the mid 1990's. It is argued in this essay that the continued abuse of human rights by the police cannot be attributed to a lack of human rights education because the training they receive, or have received so far, is sufficient for a basic understanding of human rights.

A direct consequence of a human rights training programme in any police service below standard is the negative view of the police in the public eye. Kaunda¹⁸ asserts that Zambia today still continues to suffer from colonial discriminatory actions that were enforced mainly by the police. Coupled with corruption and political interference, the police force has thus found it difficult to win the co-operation of society at large. In addition, police brutality has been used as a tool to intimidate members of society rather than maintain good police public relations.

This essay will evaluate the adequacy of the present law that regulates police watchdog institutions in determining whether it allows the PPCA and the PPSU in particular to effectively carry out their work.

1.6.3 Police Brutality in Zambia

The Zambia Police Service is notorious for the use of excessive force which is aimed at intimidating citizens rather than maintaining public order. This is prevalent in places of

¹⁸ K. Kaunda 'The Functions of the Lawyer in Zambia' in Zambia Law Journal Vol3 & 4 (1971 & 1972) p 3

detention such as police cells.¹⁹ The most common forms of police brutality that are identified in this essay are unlawful shootings, torture and ill-treatment.

Retired Judge Kabazo Chanda fittingly points out that the police abused human rights at a higher scale during the second republic than during the colonial era. He aptly notes that under the rule of first Republican President Doctor Kenneth David Kaunda, the police committed more cruel acts against government critics.²⁰

Increasingly, ordinary people have become the victims of unlawful deaths. The use of pre-independence modes of maintaining law and order, such as the use of teargas and batons, has survived to date.²¹ Police watchdog institutions therefore have an important role to play in Zambia in bringing cases where people are killed in police cells to the media and other relevant authorities. The premium that is placed on life should not be compromised. Rather than commit extra judicial killings, officers of the police service should remember that there is a better way in which they can extract information from suspects.

1.7 METHODOLOGY

This essay is qualitative and involved both desk research and field investigations. Primary data emanated mainly from statutes, subsidiary legislation, precedents, and

¹⁹ Nakamba N. **Prospects For Ideal Police-Public relations: The Role of the Police Public Complaints Authority**. University of Zambia. Obligatory Essay (2004) p. 24

²⁰ Chanda K. **“Zambia” Police Brutality in Southern Africa: A Human Rights Perspective** (Afronet Lusaka 2000). p 20

²¹ For more insight on this, please see the article ‘Applying the law fairly or fatally? Police Violation of Human Rights in Zambia’, www.amnesty.org.htm, last visited on 25th August 2007.

parliamentary debates while secondary data was collected from key informant interviews, reports, commentaries, internet websites and other related sources. Other sources of information that were consulted included court records and police reports.

1.8 CHAPTER OUTLINE

Chapter one has given an introduction and overview of the essay. Chapter two evaluates the work of the Judiciary, the Human Rights Commission, the Anti Corruption Commission, the Commission for Investigations and the Legal Resource Foundation.

Chapter three assesses the performance of the Police Public Complaints Authority and the Police Professional Standards Unit. The chapter also shows whether the two institutions have fulfilled their mandate.

The research in chapter four looks at police public relations in Zambia, the impact of human rights training on the Zambian police service and police brutality.

In chapter five, final conclusions and recommendations are given.

CHAPTER TWO

2.0 EVALAUTION OF POLICE WATCHDOG INSTITUTIONS

2.1 INTRODUCTION

This chapter evaluates the work of five police watchdog institutions, namely the Legal Resource Foundation, the Anti Corruption Commission, the Human Rights Commission, the Judiciary and the Commission for Investigations. It goes on to give an overview of these police watchdog institutions and outlines their achievements and constraints. It is argued in this chapter that these police watchdog institutions were created to curb particular vices and have since scored certain successes. Needless to say, they suffer from constraints that have hindered their effectiveness in monitoring police actions.

2.2 THE LEGAL RESOURCE FOUNDATION

The history of the Legal Resources Foundation is traced to 1991 during which time there were calls for an end to one party rule and human rights abuses by state agents. Following in 1993, the foundation was registered as a company limited by guarantee. Its core purpose is to advance democratic governance through the provision of legal aid services and public interest litigation in Zambia.²² The work of the foundation encompasses a spectrum of legal aid supportive programs such as mobile clinics, prison visits, outreaches, newsletter publication, outreach programs and workshops.

The foundation has managed to change the hostile attitude of the police towards it mainly because the police have begun appreciating the services rendered by its paralegals. While

²² Decade Draft Report of The Legal Resources Foundation 1993-2003, Unpublished p.5

this is so, the police still violate human rights by applying crude methods in arresting suspects.²³ Another notable instance of the recognition of the work of the foundation was in 1997 when the newly instituted Human Rights Commission requested it to represent 59 soldiers involved in the October 1997 failed coup led by Captain Steven Lungu, alias captain Solo.

The main constraint of the foundation, however, is that it depends on donor funding. The initial funding of the foundation was provided by Friederich Naumann Foundation from 1993 until 1996 when the latter closed its offices in Lusaka. From 2003, the main sponsors have been The Netherlands Institute for Southern Africa, the Swedish International Development Agency (SIDA), the Danish International Development Agency (DANIDA) and The Finnish International Development Agency. The foundation is also limited as regards computer and internet facilities. To alleviate this problem, the British Council in 2002 donated three computers together with read only memory compact disks containing the All England Law Reports. These efforts however can not meet the increased case load that the foundation has started receiving from clients.

2.3 THE ANTI CORRUPTION COMMISSION

The Anti Corruption Commission of Zambia was established in 1980 under the Corrupt Practices Act No.14, since repealed and replaced by the Anti-Corruption Commission Act²⁴. It is an operationally autonomous two-tier body composed of a Board and a Directorate that is headed by a Director General. Its functions are generally to prevent

²³ Interview with Mr Robby Shabwanga, Projects Officer, Legal Resource Foundation.

²⁴ Act Number 42 of 1996

and investigate corrupt practices, prosecute people involved in corrupt practices and to conduct community education on corrupt practices.²⁵

According to Ms Kayoba Ng'andu²⁶, the Government of the Republic of Zambia has in the recent past been concerned about the rising levels of corruption in the country. Thus, the commission in its Strategic Plan from 2004-2008 has shifted its emphasis from investigations and prosecutions to corruption prevention. Its main policy of prevention of corruption is contained in its National Corruption Prevention Policy and Strategy (NCPPS) which aims at having a focused and coordinated approach towards the prevention of corruption by government institutions. Following the launch of the NCPPS, the President of the Republic of Zambia also launched the National Governance Baseline Survey Report (NGBSR) that will help in establishing the extent and incidence of corruption in the country.

The commission however suffers from several setbacks. Firstly, its Board operates on part time basis and therefore may not have enough time to develop specialist techniques to investigate such wings as the police. The problem of temporal staffing is made worse because there is no specialized manpower to look into aspects such as forensic investigations. Secondly, the roles of the Director of Public Prosecution and the Director of the Anti Corruption Commission may at times cause tension especially where the latter is of a higher rank than the former. Section 46 (1) of the Act for instance provides that no

²⁵ s. 9, Act Number 42 of 1996

²⁶ Former Director of Prevention and Education, Anti Corruption Commission

prosecution for an offence under Part IV shall be instituted except with the written consent of the Director of Public Prosecutions.

Thirdly, the NCPPS has not yet been fully implemented and thus corruption prevention efforts are not yet coordinated and focused. Most Zambians do not have an opportunity to participate in the prevention of corruption because of legal and regulatory changes that have not yet been effected. Fourthly, Ng'andu²⁷ has rightly noted that more public sensitization needs to be undertaken to educate particular target groups about corruption in the police force.

2.4 THE HUMAN RIGHTS COMMISSION

The Human Rights Commission was established following the Munyama Human Rights Commission of Inquiry which was appointed in 1992 to examine the human rights situation in the First, Second and Third Republics. The 1996 constitution provides for the commission in Part XII²⁸ while its functions and powers are provided for in the Human Rights Commission Act.²⁹ This Act provides for matters such as the autonomy, appointment, composition, functions, powers, complaints mechanism and meetings of the Commission.³⁰

Section 5 (1) provides that the commission shall be composed of the Chairperson, the Vice Chairperson and not more than five other Commissioners. An interesting aspect of the Zambian Human Rights Commission is that it is not under the control of any ministry

²⁷ www.acc.gov.org, last visited on 21st September 2007.

²⁸ Article 135

²⁹ Act Number 39 of 1996

³⁰ *ibid*, ss. 3, 25 (1)

but rather it tenders its report concerning its activities during the financial year to the President.

Some of the achievements of the Human Rights Commission contained in its Annual Report³¹ shows that it recorded a total of 856 complaints from the public from all its areas of operation in Lusaka, Chipata, Ndola, Kasama and Mongu. Its Head Office in particular handled 556 complaints of which 74 were referred to other institutions, 84 were rejected for lack of merit and 1 was withdrawn by the complainant. 28 cases were resolved successfully while 369 were still being investigated by 31 December, 2005. The commission has also established three departments to promote its core activities of promotion and protection.

One case of interest handled by the commission is that of **Dan Kazangalala v Zambia Police (Turn Pike Police Post)**³² in which the complainant, having denied requests by police officers for money and fuel, was hit by a bullet that ricocheted from the ground and hit him in both legs. The Solicitor General offered compensation of K25 million but the complainant on advice by the commission to seek the services of a private legal practitioner proceeded to court to seek compensation amounting to K250 million kwacha.

Two factors that have affected the investigations of the commission are inadequate funding and understaffing. For instance, the commission's budget in 2005 could not

³¹ 2005 Human Rights Annual Report p. 4

³² **HRC/C/68/2001**

allow the purchase of new vehicles even though co-operating partners such as the Embassy of Finland gave money to the commission.³³

Another constraint of the commission is that the President is an appointing authority and this compromises the independence of the commission particularly where it is dealing with a politically sensitive case. The commission does not have the mandate to issue binding orders and is only able to recommend action to be taken by the appropriate authorities. The commission does not have power to act on a matter that is pending before a court of law.³⁴

2.5 THE JUDICIARY

The Judicature comprises the Supreme Court of Zambia, The High Court for Zambia, the Industrial Relations Court, the Subordinate Courts, the Local Courts and such lower courts as may be prescribed by an Act of Parliament. The Supreme Court is the highest court in Zambia and serves as the final court of appeal. The Chief Justice, Supreme Court judges, the Attorney General and the Director of Public Prosecutions are appointed by the president subject to ratification by the National Assembly.³⁵

The Zambian judicature plays a key role in acting as a bulwark against authoritarian rule by the executive and its agents such as police officers. According to Crisp³⁶, the questions

³³ Human Rights Annual Report, 2005 p. 37

³⁴ ss. 10 (1), 10 (5)

³⁵ Articles 91, 92, 54 and 56 of The Constitution of Zambia, Cap 1 of the Laws of Zambia

³⁶ Crisp B.F. (2000). **Democratic Institutional Design**. Stanford University Press

of when and how to engage in judicial activism and when to exercise restraint is particularly important for judiciaries in young democracies.

The Zambian judiciary has managed to score several successes. In a recent study³⁷ it has been shown that Zambians have relatively high confidence in the court system compared to other institutions of government. When measuring such public confidence in the judicature, one common barometer that is used is the number or percentage of cases in which superior courts decide against the state.³⁸ One good example is given by **Christine Mulundika and Seven Others v The Attorney General**³⁹. The applicants were charged with unlawful assembly contrary to section 5 of the Public Order Act and the Supreme Court struck down sections 5 and 7 of the Public Order Act for infringing upon the freedoms of expression and assembly contained in the Bill of Rights.

However, the political will by the government to comply with and implement the rulings of the court greatly affects the ability of the judiciary to monitor the police. In the same case of **Christine Mulundika and Seven Others v The Attorney General**, parliament speedily reacted to the ruling of the court by amending the Public Order Act in 1996. The amendments led to the enactment of a new section 5 (4) which now requires anyone intending to convene a public meeting, procession or demonstration to give the police seven days notice. Section 5 (7) also provides that where the police notifies the conveners of the public meeting that it is not possible for the police to adequately police the event, the same shall not be held.

³⁷ See the results of Afrobarometer 2000 study

³⁸ www.cmi.no.wpo, last visited on 21st September 2007.

³⁹ (1995-1997) Z.R 20

Another constraint of the judiciary is that it lacks sufficient equipment and is inadequately funded. Kunda⁴⁰ in his evaluation of the Zambian Judiciary in the twenty first century alludes to the fact that the court system is generally not accessible to the poor due to lack of knowledge, high cost of trial proceedings, corruption and inadequate legal aid. Further judicial constraints include the absence of court buildings in rural areas, lack of trained judicial staff and red tape.⁴¹

2.6 THE COMMISSION FOR INVESTIGATIONS

The commission for investigations is mandated to inquire into the conduct of any person in the service of the republic, local authorities, statutory or constitutional commissions and institutions established under an Act of Parliament or in which the government holds a majority of shares or exercises financial or administrative control.⁴² Any person who is aggrieved by a police action may lodge a complaint to the commission either orally or in writing and the commission will investigate such an allegation if it considers that it is not frivolous. In carrying out its work, the commission gathers evidence from any source and is not bound to follow any rules of evidence.⁴³

One clear advantage of the enabling statute of the commission is that it gives it wide powers of investigation. The commission has jurisdiction to inquire into any case in which it considers that an allegation of maladministration or abuse of office or authority

⁴⁰ Kunda G. 'The Zambian Judiciary in the 21st Century' (1998) Zambia Law Journal 30/29

⁴¹ Dyzenhaus D. 'The Legitimacy of Legality University of Toronto Law Review.' University of Toronto Law Review (1996) 46:129

⁴² Cap 39 of the Laws of Zambia

⁴³ *ibid* ss. 8, 9

ought to be investigated, unless the President otherwise directs.⁴⁴ Complaints may be made by any individual, or by any body of persons whether incorporate or not and the commission may act notwithstanding finality of a decision.⁴⁵

In addition, the commission may require any person who in its opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document and such an order, writ or direction by the commission may have the same force as an order, writ or direction of the Court.⁴⁶

Unfortunately, the commission is not immune from limitations. Firstly, the commission is under a duty to submit a report to the President about its findings and recommendations. Chanda⁴⁷ has noted however that very few cases are actually reported as the commission prefers to use quiet diplomacy to persuade erring officers to correct their ways. Secondly, sessions are held in camera and the identities of the parties are not publicized.⁴⁸ It is submitted that although this was intended to encourage 'whistle blowers' to come forward and provide information to the commission, an exposure of maladministrators would help the commission to be more effective in its work. Thirdly, the commission suffers from understaffing, lack of transport facilities and inadequate funding.

⁴⁴ *ibid* ss. 8, 9

⁴⁵ *ibid*. s. 11

⁴⁶ *ibid*. ss 12,14

⁴⁷ Chanda. **Transparency International Zambia, National Integrity Systems Country Study Report Zambia (2002)**, p.35

⁴⁸ *ibid* s.16

Fourthly, no person has a right to be represented by a legal practitioner or to be heard, which is a demerit to due process. Fifthly, Section 8 of the Act empowers the President to give directions to the commission to inquire into the conduct of any person to whom the Act applies and he may also proscribe certain premises from the ambit of investigation of the commission. Sixthly, the commission does not have jurisdiction to inquire into complaints that involve an executive authority or into matters that are before a tribunal or court of law.⁴⁹

CONCLUSION

It has been observed that police watchdog institutions were created with a view to preventing, investigating and punishing police malpractices. All these five institutions however have been hindered in their work mainly due to funding and statutory limitations. These limitations thus necessitated the creation of the Police Public Complaints Authority and the Police Professional Standards Unit which are mandated to deal with complaints against the police. The next chapter will evaluate whether these two institutions have fulfilled this mandate.

⁴⁹ *ibid* s.10

CHAPTER THREE

3.0 THE POLICE PUBLIC COMPLAINTS AUTHORITY AND THE POLICE PROFESSIONAL STANDARDS UNIT

3.1 INTRODUCTION

The previous chapter gave an overview of the achievements and constraints of five police watchdog institutions namely the Legal Resource Foundation, the Anti Corruption Commission, the Human Rights Commission, the Judiciary and the Commission for Investigations. It was observed that the limitations of these police watchdog institutions necessitated the creation of the Police Public Complaints Authority and the Police Professional Standards Unit. Chapter three now evaluates the work of these two institutions and determines whether they have fulfilled their mandate.

3.2 THE POLICE PUBLIC COMPLAINTS AUTHORITY

Munalula⁵⁰ in her research entitled 'Position Paper on the Effectiveness of Watchdog Institutions in Zambia' lucidly points out that in order to ensure the rule of law, watchdog institutions must enjoy the necessary autonomy and security from the control of the Executive. Watch dogs should thus enjoy certain rights, powers and immunities that are aimed at securing their autonomy. The Police Public Complaints Authority and the Police Professional Standards Unit are two such watchdog institutions that have been created to enjoy these privileges.

⁵⁰ Position Paper on the Effectiveness of Government Watchdog Institutions in Zambia, August 2002

3.3 FORMATION OF THE POLICE PUBLIC COMPLAINTS AUTHORITY

The Police Public Complaints Authority (PPCA) was established following amendments to the Zambia Police Act.⁵¹ Introducing the Zambia Police (Amendment) Bill⁵² in parliament, then Minister of Home Affairs Doctor Patrick Machungwa explained that the bill was intended to improve the fight against crime through the involvement of the community and to also promote human rights of individuals during the performance of police duties. The Minister went on to state that:

“...It is in the same spirit of striving to entrench the culture of governance and respect for human rights that this Bill seeks to establish an independent Police Public Complaints Authority.”⁵³

The creation of the Police Public Complaints Authority was also as a result of complaints that the Zambia Police Service was not only being uncooperative but also callous to opposition political parties and groups that were not in good standing with the government of the day.

One illustrative case of this attitude by the police involved freelance journalist, Obert Simawanza, who was on 5th May 2003 beaten by a police officer and other suspected Movement for Multi Party Democracy (MMD) supporters. Simawanza alleged that he was beaten by MMD members suspected to be pro-Chiluba after a violent disruption of a planned rally to demonstrate against Chiluba's third term bid.⁵⁴

⁵¹ The Zambia Police (Amendment) Act Number 14 of 1999

⁵² Of 1999

⁵³ Parliamentary Debates of the Eighth National Assembly, pp. 781-782

⁵⁴ Mwila A. **Police Brutality: Is The Establishment of the Police Public Complaints Authority a Solution?** University of Zambia LLB Obligatory Essay (2006). p. 15

3.3.1 STATUTORY COMPOSITION, FUNCTIONS AND POWERS OF THE POLICE PUBLIC COMPLAINTS AUTHORITY

3.3.2 Composition of the PPCA

The PPCA is established under section 57B⁵⁵ of the Zambia Police Act. It is comprised of a Chairperson, Vice-Chairperson and three other members who work on part-time basis and are appointed by the Minister. They hold office for a period of three years, which may be extended for a further like period. The Chairperson should be a person who has been or is qualified to be a judge of the High Court.⁵⁶

A member of the Authority may be removed for a number of reasons. These include dishonesty, failure to perform his duties and absconding from three consecutive meetings without reasonable excuse of which a member had notice. Once the office of a member falls vacant, the Minister may appoint another person to be a member in place of the member who vacates office but the new member shall hold office only for the unexpired part of the term.⁵⁷

Section 57D⁵⁸ allows the Minister of Home Affairs to appoint a full time Secretary of the Authority who is a serving public officer and is responsible for managing, administering and implementing the affairs of the Authority, including any other matters referred to him

⁵⁵ Cap 107 of the Laws of Zambia, as amended by Act Number 14 of 1999

⁵⁶ s. 57 C (1), (3)

⁵⁷ s. 57 C (5)

⁵⁸ Cap 107 of the Laws of Zambia

by the Authority. The current Secretary of the Police Public Complaints Authority is Mrs Dorothy Zimba.

3.3.3 Functions and Powers of the PPCA

The function of the PPCA is to receive all complaints against police actions and to investigate all complaints against police actions which result in serious injury or death of a person. According to the current Secretary of the Authority, the type of cases the Authority deals with include unlawful and illegal detention⁵⁹, police brutality, torture of suspects whilst in custody and debt collection. Others include police inaction, unprofessional conduct, abuse of authority and death of suspects while in police custody.⁶⁰

The Authority is also required to submit its findings, recommendations and directions to the Director of Public Prosecutions for consideration of possible criminal prosecution, the Inspector-General for disciplinary action or other administrative action, or to the Anti-Corruption Commission or any other relevant body or authority who shall give effect to such directions.⁶¹ The PPCA enjoys wide investigative powers and allows for a wide *locus standi* for complainants. It can receive complaints from an aggrieved person directly affected by police action, an association acting in the interests of its members and even from a person acting on behalf of an aggrieved person, body or organisation.⁶²

⁵⁹ Including detention beyond 48 hours

⁶⁰ Interview carried out by the author with Mrs Dorothy Zimba, Secretary of the PPCA, on 26th October 2007 at PPCA Headquarters

⁶¹ s. 57 G (1)

⁶² s. 57 H (1)

In carrying out its mandate, the Authority can issue summons or orders requiring the attendance of any person before the Authority and the production of any document, record, or anything relevant to any investigation by the Authority. It can question any person in respect of any subject matter under investigation and require any person to disclose any information within that person's knowledge relevant to any investigation by the Authority.⁶³

3.4 SUCCESSES OF THE POLICE PUBLIC COMPLAINTS AUTHORITY

Since its establishment in 2002, the PPCA has witnessed a gradual reduction in the number of complaints it receives. In 2003 the Authority received 369 complaints, in 2004 it received 417, in 2005 it received 380 complaints and in 2006 the Authority received 267 complaints. As of 31st September 2007, the Authority had received approximately 210 complaints and the number is not expected to exceed that of the preceding year.⁶⁴ The downward trend in the number of complaints received can be interpreted as an increase in the awareness among police officers of the work of the Authority.

Another success of the PPCA worth noting are its visits to the provinces during which hearings are carried out and witnesses come forward to testify. Suspects are given the right to be heard. One significance of this quasi judicial process is that it respects due process by ensuring that the Chairperson of the Authority is a person who has been or is

⁶³ s. 57 H (2)

⁶⁴ Statistics obtained from the PPCA

qualified to be a High Court Judge. According to Mrs Zimba, the Authority carried out its most recent provincial visits in Choma in July of 2007.⁶⁵

The Authority has at times used its coercive powers to force the appearance of alleged perpetrators from Force Headquarters. One case in point is **W M Sitali v Constable Emmanuel Banda**⁶⁶ where the complainant alleged that he was arrested and detained by the respondent in a civil matter which was wrong because he had not committed any criminal offence. The Authority proceeded to direct the Inspector General of Police to immediately terminate the services of Constable Banda and to inform the Authority within 60 days whether the directive had been carried out.

The outcome of such cases has resulted in police officers taking caution in their actions so as to avoid being summoned by the Authority.

3.5 LIMITATIONS OF THE POLICE PUBLIC COMPLAINTS AUTHORITY

It is sad to note that despite the advocacy campaigns that the Authority has embarked on, some people are still ignorant about its operations. This is evidenced in one random survey in Lusaka that was undertaken by the Zambia National Broadcasting Corporation (ZNBC) among Lusaka residents which revealed that very few residents knew about the Authority.⁶⁷ This serves as a disservice on the Authority as it may not achieve its intended purpose of entrenching a culture of good governance and respect for human rights among police officers because people will not know where to take their complaints.

⁶⁵ Interview carried out by the author with Mrs Dorothy Zimba on 26th October 2007 at PPCA Headquarters

⁶⁶ PPCA/489/2004

⁶⁷ ZNBC Television main news, 26th June 2004

Staffing has also proven to be a big hindrance in the operations of the Authority. Apart from the Chairperson and the Vice Chairperson, the staff consists of the Secretary, one driver, one cleaner, one registry clerk and one typist. These workers are seconded from other places of work and are not on a permanent salary. The Authority is so understaffed that it does not even have a fully fledged investigations department.

Another constraint of the PPCA is that it is not decentralized. Currently, the head office at the New Kent Building in Lusaka is the only permanent office that the Authority has. To improve this inconveniencing situation, the complaints procedure allows for lodging of complaints from other offices and locations such as the Inspector General of Police⁶⁸, police stations, councils, the Minister of Home Affairs and even the Secretary to the Cabinet. However, there are no desk points in these offices that are specifically reserved to collect such complaints and moreover, the nature of these institutions and offices tends to scare away the general public from lodging complaints through them.

Furthermore, a good records system has not yet been efficiently established. At the time of the interview on Friday 26th October 2007, the officer in charge of statistics had not yet reported for work and nobody else could retrieve statistics on his behalf as there is no data base system. To try and provide readily available statistics on the operations of the Authority, it is currently printing its first consignment of annual reports that will include activities from the time of its formation in 2002 to date. This however is not enough to raise public awareness and confidence among the citizenry about the achievements of the

⁶⁸ s. 57 I (1) (3) (a), Cap 107 of the Laws of Zambia

Authority. More information needs to be made readily available to the public through electronic and print media including avenues such as an internet website.

It is not an understatement to mention that there are certain legislative flaws within the amendments to the Police Act that established the PPCA. As was expressed during the parliamentary debates by then Kamfinsa Member of Parliament Mr Chipili, the channel of reporting through the Inspector General is open to interference of the investigative process. Such complaints may never reach the Authority especially where it involves organised crime.⁶⁹

The common limitation of lack of sufficient funding has not escaped the PPCA. Only in 2005 did the American government donate a second hand mini bus to ease its transport constraints.⁷⁰ It may be argued that where the Authority does not have independent funding, the autonomy of its investigations is brought into question. Such a situation is also seen in the powers of the Minister of Home Affairs to determine the remuneration and allowances of members of the Authority, which provides a loop hole for undermining its investigative process.

3.6 FORMATION OF THE POLICE PROFESSIONAL STANDARDS UNIT

The Police Legal and Professional Standards Unit (PLPSU as it is fully known)⁷¹ was established in July 2003 as an internal section within the police service mandated to investigate corruption, arbitrary arrests, detention and other unprofessional behaviour

⁶⁹ Parliamentary Debates of the Eighth National assembly p. 791

⁷⁰ Mwila *ibid.* p.22

⁷¹ Commonly shortened to PPSU

within the service. The formation of this standards unit was the result of public outcry about the lack of professionalism and the lack of respect for human rights among police officers. This prompted the then Inspector General of Police, Silous Nyangulu, to come up with the initiative of establishing such a unit.⁷²

3.6.1 Composition of the PPSU

The PPSU is headed by the Assistant Commissioner of Police (Legal) who is also the Director of the Unit. The Assistant Commissioner of Police reports to the Commissioner of Police who in turn reports to the Inspector General of Police. The current director of the PPSU is Mr Punza who is deputized by Mr Chongo and Mr Limbwangu. The unit has another office located at Woodlands Police Station.

3.6.2 Functions and Powers of the PPSU

An interview with an officer of the PPSU revealed that the mandate of the PPSU is twofold. Firstly, it assists and advises the police on all legal matters and secondly, it assists and advises the public on any legal matters that they may seek help on.⁷³ In carrying out this mandate, the unit is guided by the Police Act, the Service Instructions and the Service Standing Orders.

⁷² Mataliro J. **The Impact of Human Rights Education on Law Enforcement Officers: An Evaluation of the Effect of Human Rights Education on Zambia Police.** University of Zambia LLB Obligatory Essay (2005). pp 55-56

⁷³ An interview carried out by the author with Mr Limbwangu on 30th October 2007 at PPSU, Force Headquarters, Lusaka

The PPSU generally does not handle cases as of first instance but receives them after investigations have been commenced. It is at this point that the unit monitors police conduct so as to maintain high levels of professionalism by giving advice to prosecutors on matters such as trial procedure. The unit also receives complaints from different institutions and at times summons erring police officers and hands them over to the PPCA.

The PPSU has power to recommend to the Inspector General of Police what action is to be taken against any implicated officer(s) and it operates under the direct authority of the Senior Police Prosecutions Officer.

3.7 SUCCESSES OF THE POLICE PROFESSIONAL STANDARDS UNIT

The unit has dealt with a number of cases since it started its operations. A total of 157 complaints were received in 2003 out of which 6 were disposed of. In the following year, the unit dealt with 11 complaints out of the 87 it received. In 2004, approximately 104 complaints were received.⁷⁴

It is interesting to note that out of these numbers, it has recommended the disciplining of over three officers. In April 2004 for instance, the Unit successfully got witness statements from the alleged police perpetrators in a matter involving Felix Mengo, Kalengo Kalowani and Stuart Chulu. The trio were arrested and allegedly tortured by police at Lusaka Central Police Station. According to medical reports, Felix Mengo had swollen feet, wounds on his right leg and arms, and had difficulty urinating. Kalengo

⁷⁴ Mataliro J. *ibid.* pp 55-56

Kalowani reportedly had infected wounds on both his forearms, bruises on his buttocks and a swollen head.⁷⁵

3.8 LIMITATIONS OF THE POLICE PROFESSIONAL STANDARDS UNIT

The unit being a government department suffers from the same problems of financing that is common to most government departments. A comparison may be drawn with professional standards departments in other jurisdictions such the Ugandan Police Intelligence and Professional Standards Unit which in 2002 received four HP Compaq computers and one HP Laserjet printer to help track human rights abuses and complaints of misconduct. The fourth computer it received has been used as a server to permit file sharing by the staff and to store personnel records. The computers are well maintained by an outside vendor.⁷⁶

Unlike the PPCA, the PPSU does not have the backing of substantive statutory provisions and does not oversee the work of the entire police force as an independent watch dog *strictu sensu*. The PPSU is simply an internal unit within the police force that is a product of the powers vested in the Inspector General to establish internal departments that are deemed necessary at a particular time.

⁷⁵ www.amnesty.org.htm, last visited on 10th October 2007.

⁷⁶ www.state.govlast, last visited on 10th October 2007.

Furthermore, the unit is limited in its staffing. Currently, there are only four members of staff that are supposed to handle all matters that pertain to legal professional standards in the entire police service. Evidently, this is a far cry from the ideal situation where each province is supposed to have a professional standards office to help in efficient case management.⁷⁷

The PPSU has a lot of work to do in terms of public awareness campaigns. Its operations are so unknown that even within the same buildings where it is located, there are some police officers who are oblivious to its existence. The success of such awareness campaigns is closely linked to the funding that the unit receives and going by the budgetary allocations from the Central Treasury for defence and security, such activities are unlikely to take place in the immediate future.

CONCLUSION

In summary, it may be observed that the Police Public Complaints Authority and the Police Professional Standards Unit are still in their infancy stages of fulfilling their mandate of entrenching good governance and promoting respect for human rights among police officers. The PPCA appears to enjoy greater statutory powers and funding in comparison to the PPSU. Needless to say, the structural, functional and statutory limitations of the five police watchdog institutions looked at in chapter two are also found in the operations of the PPCA and the PPSU. They may be summarized as the lack of security of tenure of members, insufficient financing, poor infrastructure, insufficient

⁷⁷ For instance Luapula Province recorded 141 complaints in 1 week during the month of November 2006 of which only 2 were disposed of.

staff and external interference. The few successes that the PPCA and the PPSU have scored are overshadowed by the many problems that they face and there is an urgent need to support the work they are doing by alleviating some of the problems highlighted in this chapter.

CHAPTER FOUR

4.0 POLICE PUBLIC RELATIONS, THE IMPACT OF HUMAN RIGHTS TRAINING ON THE ZAMBIAN POLICE SERVICE AND POLICE BRUTALITY IN ZAMBIA

4.1 INTRODUCTION

This chapter explores police public relations in Zambia, the impact of human rights training on the Zambian Police Service and police brutality. The first part of this chapter looks at the role of the police, the status of police public relations in Zambia and then highlights the factors that have led to the negative public view of the police. The second part evaluates the impact of human rights training on the Zambian Police Service while the third part considers the prevalence of police brutality in Zambia.

4.2 POLICE PUBLIC RELATIONS

4.2.1 The Role of the Police and Benefits of Good Police Public Relations

The enforcement of the law and the maintenance of order in society must be targeted at benefiting the public. The police have a difficult task of balancing between acting as a coercive force over the community and delivering a good quality service that is acceptable to the public.⁷⁸

In order for the police to effectively carry out their role, there are certain traits that a police officer needs to possess. The Northern Rhodesia Police Handbook describes a

⁷⁸ 'Police and Public Disorder in the United Kingdom' in **Comparative International Criminal Justice Systems: Policing, Judiciary and Corrections**. (1996) p. 43

good police officer as one who is alert, observant, firm and good humored. He must be distant but friendly, fair and scrupulously impartial in dealing with the public.⁷⁹

The symbiotic relationship between the police and the community is cardinal for effective crime prevention in the country. The basis of success of the police service therefore lies in their ability to build up a healthy public perception within the community and not one that portrays them to be an authoritarian force that only targets perpetrators of crimes.

It goes without saying that good police public relationships carry with them certain benefits. It enables members of the community to come forward and report crime. This is a direct result of the confidence that is built within the community by the police service as they begin to show their humane side. Consequently, community policing projects are easier to set up and score more successes because the common enemy becomes crime rather than citizens.

Attesting to this fact, then Minister of Home Affairs Doctor Patrick Machungwa in proposing the set up of neighborhood watch associations noted that such associations are necessary to enable the easy identification and discussion of crime within the communities themselves. The need for community involvement is made even more critical by the fact that the perpetrators of crime reside within these communities.⁸⁰

⁷⁹ 'Police Force Instructions' in **The Northern Rhodesia Police Handbook** (1959) p. 21

⁸⁰ Parliamentary Debates of the Eighth National Assembly, p. 783

Closer ties between the police and the community increases awareness in the community about the services offered by the police service over and above that of crime prevention. Once the veil of police bureaucracy is lifted, the public can then begin to appreciate the practical difficulties under which the police perform their duties and thus the expectations of the public become more realistic. Currently in Zambia, it is quite illogical to expect a good police delivery system when motivation in form of good salaries and conditions of service is not forthcoming.⁸¹

4.2.2 Police Public Relations in Zambia Today

It was observed earlier that public antipathy towards the police is still high among the Zambian community. It would not be an inaccurate description of the emotions of the Zambian public towards the Zambian Police Service as one just waiting to erupt at any mishap of the police. It is disheartening and indeed retrogressive to crime prevention to have a situation where the police service is still viewed as a violator of human rights.

A good example of this situation was recently seen in the riots of Lusaka's Chaisa compound where a police officer is alleged to have been in a group of armed bandits who killed a local resident. This enraged the residents who then rioted and attempted to burn down the police post.⁸²

Having observed the view among the public towards the police, it is important to highlight what could have led to this situation.

⁸¹ As rightly pointed out even by the government in the Fifth National Development Plan p. 267

⁸² Post Newspaper, November 27, 2007

4.2.3 Factors That Have Led to the Negative Public View of the Police

Nakamba⁸³ has beautifully summarized the factors that have led to public antipathy towards the Zambia Police Service. She asserts as the first factor that policing in Zambia still labours under the legacy of the colonial era where the police was used by the BSA Company as a repressive force to keep the indigenous black population in check. Right as far back as the strike by African miners in 1935 up to the Government of Kenneth Kaunda, the general feeling in the community was that police was only available when an offence was committed.⁸⁴

Nakamba continues by arguing that political interference of the police force is repugnant to the tenets of a democratic creed. She argues that the Zambia Police Service has never enjoyed such freedom from the Executive arm of the government. For instance in the case of **Arthur Wina and Six Others v The Attorney General**⁸⁵ the Movement for Multi Party Democracy (MMD) had on two separate occasions requested permits to hold meetings in Lusaka and Ndola which were both refused. Testimony showed that the Lusaka permit was denied because the Commanding Officer said that he had been acting on the instructions of higher authorities.

Thirdly, criminal involvement acts as a barricade to good police public relations. This ultimately causes the public to lose confidence in the police service because it appears as

⁸³ Nakamba N. **Prospects For ideal Police-Public Relations: The Role of the Police Public Complaints Authority**. University of Zambia Obligatory Essay (2004) pp. 16-28

⁸⁴ *ibid* pp. 16-17

⁸⁵ 1990/HP/1511

though crime is encouraged among police officials and that transparency is likewise overlooked.

Furthermore, the low educational caliber of some law enforcement officers has affected the adoption and appreciation of new and better approaches to law enforcement requirements. Coupled with poor conditions of service and lack of adequate residential accommodation, these factors have contributed to the seemingly growing incidences of corruption, bribery and abuse of people's human rights.⁸⁶

4.3 THE IMPACT OF HUMAN RIGHTS TRAINING ON THE ZAMBIAN POLICE SERVICE

Mataliro⁸⁷ candidly states that:

“The levels of human rights abuse by the police are still rife. There are still more reports of extra-judicial killings, suppression of freedom of speech and personal liberty. Torture is still practiced by the police...there has been of course some improvement in certain areas but at most there is still rampant abuse.”

What truth then lies in Mataliro's assertions? In order to assess the impact of human rights training on the police force, the barometer that is adopted in this research paper is the assessment of the performance indicators contained in the Zambian government's Fifth National Development Plan on public safety and to contrast them with reported cases of police abuses in the media.

⁸⁶ Fifth National Development Plan 2006-2010 p. 267

⁸⁷ Mataliro J. **The Impact of Human Rights Education on Law Enforcement Officers: An Evaluation of the Effect of Human Rights Education on Zambia Police.** University of Zambia Obligatory Essay (2005) p. 46

According to the Fifth National Development Plan, the Zambian government aims to effectively develop human resources for the efficient performance of the public safety sector. Among the strategies that are intended to achieve this objective is the development and implementation of a human rights training program.⁸⁸

It is interesting to note that this training program, established around the mid 1990's, has not been effective as regards the right to life. Law enforcement officers across Zambia extrajudicially execute criminal suspects unconvicted by any court of law in violation of the right to life as guaranteed in Article 12 of the Zambian Constitution as well as in the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights. Zambia is a party to both these international human rights treaties.

The extrajudicial killings committed at the hands of the police service have been and continue to be rampant. In the year 1995, it is reported that the police were responsible for 30 extra judicial killings⁸⁹ while in 1996 more than 12 were reportedly shot down allegedly trying to escape. The police in 1998 shot dead about 30 people⁹⁰ and about 15 cases in 1999 in Lusaka alone were reported.

In addition, the Zambian government aims to apply science and technology in the investigation of crime which should culminate in increased efficiency and effectiveness

⁸⁸ *ibid* p. 269

⁸⁹ www.web.amnesty.org, last visited on 5th November 2007.

⁹⁰ Inter African Network for Human Rights and Development (AFRONET) Zambia Human Rights Report (1998), now defunct.

in public policing. This predominantly affects the right to property and the right to privacy of an individual.⁹¹

Mataliro opines that during the period from 1994 to 2005, the incidences of the abuse of the right to privacy have reduced, especially in the tree areas concerning unjustified searches, seizures of property and the mounting of roadblocks.⁹²

However, as regards the protection of the freedom of assembly and association⁹³ very little impact of the above strategy of government of increasing efficiency and effectiveness in public policing has been achieved. The landmark case of **Christine Mulundika and Seven Others v The Attorney General**⁹⁴ was viewed as the beginning of a new era in Zambia's history as regards freedom of assembly and association. This was not to be so as the government swiftly implemented new measures through Amendment Act Number 1 of 1996 which in effect negated the perceived achievements of the Supreme Court ruling in that case.

This factor is further seen in a recent press statement on the manner in which doctors were arrested by the police. Chairperson⁹⁵ of the Human Rights Commission, Mrs Pixie Yangailo, reminded the police that the only time they have authority to deprive someone of his or her liberty is when there is a reasonable suspicion that they have committed or

⁹¹ These rights are protected by Articles 16 (1) and 17 (1), Cap 1 of the Laws of Zambia

⁹² *ibid.* 31

⁹³ Article 21 (1)

⁹⁴ (1995-1997) ZR 20 SC

⁹⁵ ZNBC Radio 2 main news, 20th – 22nd June 2007

about to commit an offence and that being annoyed with someone or having a disagreement about an issue does not justify deprivation of liberty.

The fifth national development plan also aims to streamline and implement an effective investigations and prosecutions management system. The Zambian government has thus embarked on a strategy of increasing the knowledge base of police officers as regards the right to individual liberty.⁹⁶ This right is also protected under international instruments and ensures that a person is not deprived of his personal liberty except as may be authorized by law.⁹⁷

Individual liberty has been unlawfully transgressed by the police on a number of occasions. A case in point is **Banda v the People**⁹⁸ in which the plaintiff sued the respondent for damages for false imprisonment under an order expressed to be made under Regulation 33 (6) of the Preservation of Public Security Regulations, during which period she was held in custody for nine days. No grounds for her detention were furnished either during her detention or after her release.

A more recent case is one in which the Kitwe High Court awarded Alfred Simbeye of Solwezi fourty million kwacha as compensation for unlawful detention at Maheba camp police post on charges of murder.⁹⁹

⁹⁶ FNDP p.269

⁹⁷ Article 13 (1) of Bill of Rights. Cap 1 of the Laws of Zambia

⁹⁸ **Banda v The People (1978) ZR 163**

⁹⁹ For the full story, please see the Legal Resource Foundation News newsletter , Number 100 of September 2007, pp. 1, 4

4.4 POLICE BRUTALITY IN ZAMBIA

It is an evident fact that there is political meddling in the way in which police officers in Zambia carry out their duties. Increasingly, ordinary people have become the victims not only of unlawful shootings but also of torture and ill-treatment. Such deaths and maimings have usually gone unreported by the media and uninvestigated by police authorities. Commonly, paramilitary police use teargas and batons to break up peaceful public meetings and marches held by opposition political parties and non-governmental organizations.¹⁰⁰

Nakamba has observed that the Zambia Police Service is notorious for the overzealous use of force on citizens aimed at intimidating rather than maintaining public order. This is prevalent in places of detention such as police cells.¹⁰¹ In order to ascertain the accuracy of Nakamba's statements, reports of police actions shall be used as the benchmark for determining the prevalence of police brutality in Zambia.

It is quite ironic that not long after the introduction of human rights training programs in the Zambia Police Service in 1994, the aftermath to the 1997 coup attempt witnessed the torture of several of the coup suspects including Major Musonda Kangwa, Major Bilex Mutale, Captain Stephen Lungu and Captain Jackson Chiti of the Zambia Army, along with the president of the opposition Zambia Democratic Congress Party, Dean

¹⁰⁰ For more insight on this, please see the article 'Applying the law fairly or fatally? Police Violation of Human Rights in Zambia', www.amnesty.org.htm, last visited on 5th November 2007.

¹⁰¹ Nakamba N. **Prospects For Ideal Police-Public relations: The Role of the Police Public Complaints Authority**. University of Zambia. Obligatory Essay (2004) p. 24

Mung'omba. One saddening revelation to the Torture Commission¹⁰² by Berrington Mukoma¹⁰³ revealed how police smeared human excreta on his mouth after repeatedly hitting his manhood with a ruler.

The following year on 11 February 1998, in Limalunga village near Mongu in the Western Province, police shot and killed Milupi Sitwala and shot Kalumiana Muyangwa Libuku through the stomach during an altercation with a police constable at Limalunga Police Post. Consequently, angry villagers vandalized the police post, breaking windows and started a fire. Officers then arrived from Mongu Police Post and during beatings of the villagers, broke the left arm of one villager Josias Imasiku Mushala and bayoneted him in the left foot three times.¹⁰⁴

One would have expected the reported incidences of police brutality to reduce following the increased human rights movement in the twenty first century. Alas this was not to be. Police brutality towards suspects in police cells is becoming too frequent. According to the Sunday Post of November 25 2007 for instance, a man in a Mongu police cell is reported to have died by hanging himself with a shoelace, a story that is highly suspect.

¹⁰² Headed by Justice Japhet Banda mandated to determine allegations of torture against the 1997 coup suspects

¹⁰³ A former Zambia Army major

¹⁰⁴ As evidenced in a letter from Dr. P.S.K Tshileta, Acting Executive Director, Lewanika Hospital Board to Department of Surgery, University Teaching Hospital, 19th March 1999, ref. no. LGH/101/7/16

Gilbert Wandu¹⁰⁵ argues that human rights bodies in Zambia should not go to sleep over cases where people are killed in police cells, something that is now being considered normal. Life is so precious and no one is entitled to take it away, not even when one is in police cells. He calls upon the Inspector General of Police to bring these police killings, especially in police cells, to an end because there is a better way in which the police can extract information from suspects in the cells than through the use of excessive force which has claimed a number of lives.

CONCLUSION

The Police Reform Program is a commendable initiative, particularly the introduction of human rights training. In this day and age of human rights advocacy, it is inevitable for the agencies that are the repositories of human rights protection to be abreast with international developments in policing. Needless to say, one can not precisely place a finger on the positive impacts of human rights training on the Zambian police service. Although the service has recorded a few successes in the protection of the right to privacy, it still remains an anathema to the Zambian public at large and as a consequence, police public relations in Zambia have continued to deteriorate while reported cases of police brutality have been on the increase.

¹⁰⁵ Post Newspaper, November 27, 2007

CHAPTER FIVE

5.0 CONCLUSIONS AND RECOMMENDATIONS

5.1 CONCLUSIONS

This research has shown that the role of the police is to enforce laws for the good of the community as a whole. In order for the police service to effectively perform their duties, police officers need to have certain traits and qualities. Unfortunately, history has shown that there is a need to 'police the police' not only to ensure that they fulfill their mandate but to also safeguard the interests of the members of the community they are supposed to serve.

In chapter one, it was observed that watchdog institutions play a key role in keeping the police in check. In doing so they encourage a culture of good governance and respect for human rights. Unfortunately, although police watchdogs have been in existence for some time, police officers have not been held accountable for their actions on many occasions.

The essay began by evaluating the work of the Legal Resource Foundation. Through its newsletter campaigns, it has managed to find a place in the hearts of a good number of police officers. It has also assisted in representing clients that are in need of legal representation such as the time it represented the 1997 coup suspects. It has been shown that the foundation needs to be funded on a longer term basis beyond the short term donor funding that it receives.

The essay went on to evaluate the work of the Anti Corruption Commission. Although the commission has scored several successes in investigating government officials as regards corrupt practices, it is yet to be seen whether this will extend to members of the police service. The Board of the commission is recruited on a temporal basis and coupled with staffing problems and the potentially conflicting roles of the Director of Public Prosecution and the Director of the Anti Corruption Commission, the few successes of the commission seem to be at par, if not overshadowed, with its limitations. It has also been shown that the majority of Zambians have not had an opportunity to participate in the prevention of corruption because of hitches in the legal and regulatory framework.

Chapter two outlined the role of the judiciary and found that it has shown independence and autonomy in a number of landmark cases it has handed down. A serious setback however is insufficient equipment, funding and the lack of skilled manpower. The chapter proceeded to outline the work of the Commission for Investigations. This Commission has wide powers of investigation but alas has to submit its reports to the President. It holds its sessions in camera, is understaffed and lacks transport facilities. Funding remains a serious problem and there is no right of representation by a legal practitioner. Additionally, certain officials enjoy immunity from inquiry.

Chapter three looked at the Police Public Complaints Authority and the Police Professional Standards Unit. It was observed that the PPCA and the PPSU are still trying to achieve notable successes in entrenching good governance and promoting human rights of individuals among police officers. The notable successes of the PPCA include

the downward trend in the number of complaints received, the number of provincial visits in which public hearings are held and its ability to coerce appearances from police officers. The PPSU on the other hand has also begun to handle more cases but not comparatively as much as the PPCA. Both watchdog institutions suffer from understaffing, poor infrastructure, insufficient funding and external interference.

Police watchdog institutions consequently have an effect on police public relations. A vivid observation that can be made from the entire research is that the current police public relations reveal great degrees of public antipathy. What one would have thought would be achieved through the training of the Zambian police service in human rights has not materialized going by media reports.

In chapter four, several factors were identified as being the cause of poor police public relations. Among them were political interference, criminal involvement and low educational standards within the ranks of the police service. The chapter concluded by asserting that the positive impact of human rights training of the Zambian police service is yet to be seen.

Closely tied to police public relations is the prevalence of police brutality, a subject that was also covered in chapter four. Reported incidents of police brutality are on the increase and do not reflect the intended objectives of the Zambian government in its Fifth National Development Plan which is to effectively develop human resources for the

efficient performance of the public safety sector. Reported incidents of police brutality continue to run counter to this mission statement.

5.2 RECOMMENDATIONS

Having drawn the above conclusions, the following recommendations are submitted:

1. Parliamentary scrutiny of police actions must be stiffened. This government organ must formulate legislative instruments that will protect the position of the Inspector General of Police.
2. Non-Governmental watchdog institutions such as the Legal Resource Foundation need legal protections through Acts of Parliament such as the proposed Non-Governmental Organisation Bill. This will insulate them from interference by the government. This proposed legislation should also cater for matters of funding so as to mitigate financial constraints.
3. The Board members of the Anti Corruption Commission should be recruited on a permanent and pensionable basis. The Commission ought to emphasise on capacity building, specialised training and retraining of its staff to enable it detect corrupt practices within the police service.
4. Provisions in the Constitution of Zambia and the Human Rights Commission Act must be reviewed to give the Commission more powers to issue binding orders. This legislative review must particularly proscribe the powers of the president to appoint commissioners.

5. It is recommended that the government makes it a priority to invest heavily in the judiciary so as to alleviate problems of remuneration of staff, outdated equipment and insufficient transportation.
6. Although the Commission for Investigations has recently received funding, the government can go further by reviewing the Commission for Investigations Act. The provisions relating to the holding of sessions in camera, the right of legal representation and the exemption of the Executive from investigation must be revisited.
7. As regards the Police Public Complaints Authority, urgent financing is required to make its work effective. This will solve the acute problems of staffing, inadequate transportation and database management that the Authority is currently facing.
8. The Police Public Complaints Authority needs to decentralise its operations so as to reach the provincial centers and eventually all the districts around the country.
9. The Police Professional Standards Unit should be expanded to cover the entire police service and should open up offices in all the provinces. To achieve this, more staff needs to be recruited. The Unit also needs to carry out massive awareness campaigns beginning with the Police Force headquarters itself where it is currently located.
10. The Police Professional Standards Unit should source for funding both locally and from donors to enhance its capacity to effectively raise the professional standards of police investigations.

11. To improve the culture of human rights within the police service, legislative review is vital. The National Constitutional Conference should work towards bringing the Bill of Rights up to international standards by expanding the category of rights and limiting the number of derogations. The Public Order Act should be subject to the Bill of Rights and should not criminalise an assembly held in breach of sections 5 (4) and (5).
12. A system of giving medals to honour officers that distinguish themselves in the observance of human rights should be put in place within the police service as an incentive to make human rights training within the Zambian police service effective.
13. Conditions of service for police officers must urgently be improved to dissipate frustrations of police officers. This includes improved housing, medical schemes, education allowances for officers and their families to mention but a few.
14. An impact assessment mechanism that can monitor and evaluate the achievements of the Police Reform Programme should be put in place. The results should be publicised to the general public to enhance accountability. Stiffer punishments for erring officers who perpetuate police brutality must also be provided for in the police service reforms.

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