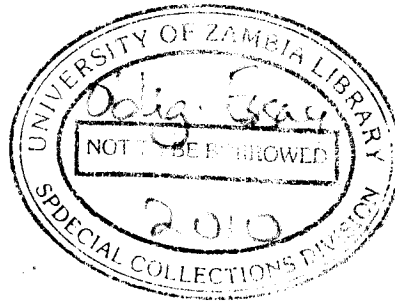


**NATIONAL PROTECTIVE MECHANISMS IN ZAMBIA: THE CASE OF THE
POLICE PUBLIC COMPLAINTS' AUTHORITY.**



By

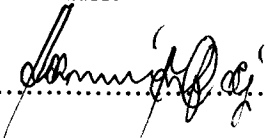
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Being a Directed Research essay submitted to the University of Zambia Law Faculty in
Partial fulfillment of the requirements for the Award of the Bachelor of Laws (LLB) Degree.

DECLARATION

I, MWENYA GLORY CHIPOYA, do hereby declare that this Directed Research Essay is my authentic work and to the best of my knowledge, information and belief, no similar piece of work has previously been produced at the University of Zambia or any other Institution for the award of Bachelor of Laws Degree. All other works in this essay have been duly acknowledged. No part of this work may be reproduced or copied in any manner without the prior authorization in writing of the author.


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.....30/04/10.....

Date

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DEDICATION

“My life, my whole life is a tribute to Justice!”

-The Harvard Law Review

This is dedicated to the two people I first fell in love with, that is my mom Hildah and my late dad Mwenya Dominic Chipoya for the great gift of all that I am and I will be which today I offer as my greatest gift to God and a tribute to them and mankind. Kale balika, nakunkula!!

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CHAPTER 1

1.0 Introduction.

Human rights are basic rights and freedoms to which all humans are entitled.¹ The doctrine of human rights aims to identify the necessary positive and negative prerequisites for a universal minimal standard of justice, tolerance and human dignity that can be considered the public moral norms owed by and to individuals by the mere virtue of their humanity. Such prerequisites can exist as shared norms of actual human moralities, as justified moral norms or moral rights supported by strong reasons, as legal rights at a national level, or as a legal rights within international law.²

Human rights advocates seek the strong protection of human rights through their effective realisation in each of these ways. The claim of Human rights is therefore that they are universal, in that they are possessed by all by virtue of the fact that they are human, and independent in that their existence as moral standards of justification and criticism is independent whether or not they are recognized by a particular national or international legal system or government.³ The general idea of Human rights has widespread acceptance, and it has been argued that the doctrine of human rights has become the dominant moral doctrine for regulating and evaluating the moral status of the contemporary geo-political order.⁴

At the international level human rights are protected by various instruments which bind the state parties when they ratify and domesticate the provisions contained therein. These instruments include the Universal Declaration of Human Rights, the International Covenant

¹ J. Nickel. *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights.* (1999), p. 521

² M. Freeman. *Human rights: an interdisciplinary approach.* New York: Wiley-Blackwell. (2002), p. 17.

³ *ibid* 18

⁴ P. Miller. and L. Arnhart. *Thomistic Natural Law as Darwinian Natural Right.* Cambridge: Cambridge University Press. (2001), p.1

on Civil and Political Rights, the Convention Against Torture, the Convention on the Elimination of All forms of Discrimination Against Women and other instruments.

These instruments demonstrate the importance that is attached to human rights standards and are reflective of the commitments State Parties make towards protection and promotion of human rights. Indeed, the Charter of the United Nations which has been signed by virtually all sovereign states recognises the existence of human rights and calls for their promotion and protection. Examples of rights and freedoms which have come to be commonly thought of as human rights include civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law; and economic, social and cultural rights, including the right to participate in culture, the right to be treated with respect and dignity, the right to food, the right to work, and the right to education.

2.0 NATIONAL HUMAN RIGHTS PROTECTIVE MECHANISMS IN ZAMBIA: A SYNOPSIS

The role of national Governments in the realisation of human rights is particularly important. This is because human rights involve relationships among individuals, and between individuals and the State. Therefore, at the national level, rights should best be protected through adequate legislation, an independent and impartial judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment of democratic institutions. The Republic of Zambia is signatory and party to a number of international and regional human rights instruments. In order to effectively protect human rights the Zambian Constitution⁵ guarantees them in the Bill of Rights⁶ and it gives locus standi to anyone who is

⁵The Constitution, Chapter 1 of the Laws of Zambia

⁶ *ibid*, Part III

of the opinion that their rights are being, are about to or are likely to be violated.⁷ The Constitutional provisions are indicative of the sanctity attached to human rights.⁸ This is just one among the many mechanisms for the protection and promotion of human rights within the nation.

Mechanisms for human rights protection can thus, and do, take a variety of forms both within Zambia, other States and across the region. These forms include justice systems which encompass courts and the judiciary, specific human rights institutions such as national Human Rights Commissions, or Executive and Parliamentary systems such as human rights promotion or education functions within a Government department. Where established, the nature and scope of functions carried out by national human rights institutions is guided by a set of international accreditation standards known as the "Paris Principles".⁹ These are a consequence of the 1991 first United Nations international workshop of National Human Rights Institutions which was held in Paris. The institutions present drafted and adopted international minimum standards for effective National Human Rights institutions which were to operate within the borders of a particular nation.

The principles espouse that States are required to put measures in place to prevent violations against human rights defenders. If there are allegations of violations, they must carry out prompt and impartial investigations and provide reparations to the victims. This includes the adoption of laws and administrative procedures which ensure that the human rights of everyone, including human rights defenders, are guaranteed. In spite of these obligations, human rights defenders and the general populace is frequently

⁷ Article 28(1) of Cap 1 of the Laws of Zambia

⁸ C. Anyangwe. Introduction to International Humanitarian Law. Lusaka: UNZA Press. (2006), p 12

⁹ E. Durie. Converging Currents: Custom and Human Rights in the Pacific .Sydney: New Zealand Law Commission, (2006),p38

the subject of government suppression or inaction when they face human rights violations or threats to their human rights.

In order to fulfill these obligations, some States including Zambia have created national Human Rights Protective Mechanisms such as National Human Rights Commissions, Police Complaints Authorities and the office of the Ombudsman.¹⁰ The objective of National Human Rights Protective Mechanisms is to ensure sustainable and effective respect for human rights in a country. Put succinctly, a national protection system consists mainly of legal frameworks, institutions, procedures and actors designed to ensure that international human rights norms and standards are promoted, respected, protected and fulfilled.

The National Protective Mechanisms greatly contribute to the protection of human rights within a nation by advocating for more responsive policies to the demands of present human rights standards, investigating into allegation of human rights abuses and proposing possible solutions to abuses. In order to effectively perform their functions National Protective Mechanisms or National Human Rights Institutions, often referred to as NHRIs, are expected to act independently of the government and must be given sufficient resources to prevent dependency on state finances or other control.

In Zambia the Paris principles were made effective by the Constitutional Amendment¹¹ which created the Human Rights Commission as one of the National Protective Mechanisms of human rights following the recommendations by the Bruce Munyama Commission of inquiry. The Human Rights Commission is thus a creation of the Constitution of Zambia¹² and is also provided for under the Human Rights Commission Act.¹³ Its functions are among

¹⁰ *ibid*,p38

¹¹ Amendment Act No 18 of 1996

¹² Article 125(1),Chapter 1 of the Laws of Zambia

¹³ Chapter 48 of the Laws of Zambia

others, to investigate human rights violations, maladministration of justice and to propose effective measures to prevent human rights abuses.¹⁴ It is also mandated to make recommendations to redress existing problems and to inspect prisons, places of detention or such related facilities, to assess the conditions of persons held therein and the facilities' compliance to human rights standards.

The other Protective Mechanism in Zambia is the Commission for Investigations. The office of the Investigator General is provided for by the Constitution¹⁵ while the Commission is established under the Commission for Investigation Act.¹⁶ The Commission is empowered by law to inquire into the conduct of any person in the service of the republic, which may include but not limited to local authorities, statutory or constitutional Commissions and institutions established under or by an Act of Parliament or in which the government holds a majority of shares or where it exercises financial or administrative control.¹⁷ It should be indicated that the Commission enjoys wide powers of investigation and provides a mechanism which allows any aggrieved individual to lodge an oral or written complaint. The other institution is the Judicial Complaints Authority which deals with complaints and allegations against administrative and judicial officers respectively, whose actions infringe on the rights of litigants.

Finally, there is the Police Public Complaints' Authority which is the core of this research. The Authority is mandated to investigate and discipline unprofessional conduct in the Police Service. This is especially so if such conduct results in the injury or death of the victim. The Police Public Complaints' Authority has wide powers of investigation and provides a faster

¹⁴ s.6 of Human Rights Commission Act, Chapter 48 of the Laws of Zambia

¹⁵ Article 90 of Chapter 1 of the Laws of Zambia

¹⁶ Chapter 39 of the Laws of Zambia

¹⁷ S.K.C. Mumba.Ombudsman in Zambia: The First Decade.(1984). Seminar paper presented at the University of Zambia School of Law,2nd February.

mechanism of handling complaints relating to police misconduct. It is opined that the Authority has been incapacitated by insufficient funding which inevitably determines the degree of autonomy by which it should ordinarily work.¹⁸ The research has endeavoured to highlight certain legislative and administrative factors which put the effectiveness of the Police Public Complaints' Authority in question and which contribute to its failure to properly discharge its functions.

4.0 Statement of the Problem

The police watchdog institutions have been considered not to score highly in ensuring police accountability and professionalism. The efforts of some institutions such as the Human Rights Commission and others have helped in ameliorating the standards but sadly they have not resulted in the reduction of reported incidents of police abuses of human rights and other unconventional conduct. In order to mitigate the challenges faced by the earlier watchdog institutions, it was intended that the establishment of the Police Public Complaints Authority would strengthen the police monitoring of professional standards systems.

The Authority was thus established to primarily investigate police unprofessional conduct.¹⁹ Though some breakthroughs have been recorded, questions still beg to be answered on the role of and effectiveness of the Authority in receiving and acting on reports of police misconduct, especially that which results in serious injury and death of victims. In fact it has been argued that the Authority is not performing accordingly. This is primarily because even though the Authority is established, serious human rights abuses perpetrated by the police are still rife in Zambia.

¹⁸ *ibid*

¹⁹ Lwabelwa, W. The Efficacy of Police Watchdog Institutions. Obligatory Essay. (2004), p 47

The Authority has also not produced good results because of various reasons which are usually never taken into consideration. Compounding this problem is the ineffective police human rights training programme which has been hampered not only by the scarcity of financial resources but also insufficient, relevant skilled human resource. This results in the police abusing their authority with impunity and ultimately citizen's rights are trampled on at the police's whims. This is a sad state of affairs because it is indicative of elements of neglect of this sector by the government.

The increase in police brutality, impunity, and arbitrary discharge of their functions, unwarranted shooting and killing of innocent people is indicative of a discipline structure which does not perform as intended. This is a problem which raises the question as to who should in turn protect the citizenry if the actual institution (the police) is not doing so. But perhaps more fundamental is the question as to how effective is the institution which is charged with the function of protecting citizens' rights by checking the conduct of police officers.

It is generally accepted that the practical task of protecting and promoting human rights is primarily a national one, for which each State must be responsible. The Republic of Zambia is a growing democracy but the increase in human rights abuses by government agencies (in this case the police) has raised concerns on what the causal factors are and what has been the response of the government institutions that are charged with the responsibility of overseeing the conduct of the officers in their jurisdiction. The unresponsive nature or loud silence of the Police Public Complaints Authority and other National Protective institutions in the face of abuses perpetrated by the police raises concern from human rights sensitive individuals²⁰. There is need to focus on the important and even the indispensable role of a viable and

²⁰ Human Rights Report. Country Reports on Human Rights Practices of Zambia (2008)

effective police service watchdog institution in attaining high levels of protection of human rights standards.

5.0 Objectives of the Study.

- a. To critically analyse the role played by an effective and professional Police service in upholding the rule of law and basic tenets of good governance and democratic practices
- b. To highlight the institutions' structures, functions and mandate and establish how the Authority operates and whether these have had an impact on its effective operations.
- c. To propose the relevant legislative and administrative framework capable of achieving the full protection of civil and political rights and support coordinated networking with other law and human rights enforcement institutions.

6.0 Significance and Justification of the Study

The study is important and comes timely when the issues of human rights violations by law enforcement agencies have become rife. The research does not only seek to identify but more importantly, it isolates the challenges faced by the Authority and by critically analysing the impact of these challenges on the protection and promotion of human rights, it situates their ultimate consequence on good governance and the rule of law. To this extent the research is a modern tribute to the everyday desires and hopes of a people for good governance mechanisms, democratic institutions and the respect for the worth of every human being. The research is a contribution to a radical but progressive legal framework in the protection and promotion of human rights.

7.0 Methodology

This research has been done mainly by analysing relevant literature on the institution. Published and where strictly necessary unpublished works have been consulted. Direct interviews with officers at the Police Public Complaints' Authority have been conducted and accordingly noted and have been incorporated in the research depending on the response's relevance to the subject. The research has also considered some of the Authority's materials and cases it has dealt with.

8.0 Outline of Chapters

Chapter 1

This chapter gives an introduction to the research and in general terms give the synopsis of the research. It also deals with the basic aspects of the research. These include the statement of the problem, objectives the research questions, significance of the study, the methodology and the chapter lay out.

Chapter 2

AUTHORITY'S ESTABLISHMENT, FUNCTIONS AND MANDATE AND ITS ROLE IN HUMAN RIGHTS PROTECTION AND PROMOTION.

This chapter discusses the relevant law which creates the Police Public Complaints' Authority. It highlights the organisational structure, functions and mandates of the Authority. Secondly, it highlights some of the rights which are frequently violated by the police and provides reasons as to why this is so. The research has finally considered the Authority's challenges and limitations in disciplining erring officers.

Chapter 3

THE RULE OF LAW AS A CONSEQUENCE OF EFFECTIVE HUMAN RIGHTS PROTECTION AND PROMOTION.

This chapter discusses the role of the Authority in promoting human rights and how the failure to do so impacts on the rule of law. The chapter gives an appraisal of the Authority's function in upholding the rule of law. The research outlines the meaning of rule of law and what aspects of that have been upheld and what has not in the Authority's discharge of function. Reference has been made to how some jurisdictions in the Commonwealth (Ghana and India) have conceived and upheld the rule of law and an assessment of whether this is obtaining in Zambia is made in this Chapter.

Chapter 4

THE POLICE PUBLIC COMPLAINTS AUTHORITY AS AN INSTRUMENT OF GOOD GOVERNANCE.

This Chapter focusses on what good governance is and how important it is to a country. It has also highlighted the genesis of the principles of good governance. The chapter gives a clear role of the Police Service in good governance. The chapter also attempts to lucidly argue that the various challenges faced by the Police Public Complaints' Authority are linked with the government's policies and politics.

Chapter 5

RECOMMENDATION AND POSSIBLE AREAS OF REFORM.

This chapter gives recommendations and possible areas of reform in the administration, mandate and functions of the Authority. It has also advanced arguments for better protection of human rights given the political, social and economic context of Zambia.

9.0 Conclusions.

This Chapter has dealt with the basic aspects of the research conducted and given a prelude to the subject. It has also highlighted the salient features of the subsequent Chapters.

Chapter 2

AUTHORITY'S ESTABLISHMENT, FUNCTIONS AND MANDATE AND ITS ROLE IN HUMAN RIGHTS PROTECTION AND PROMOTION.

1.0 Introduction

The question of holding police accountable for their actions and attempts at policing oversight has preoccupied societies since ancient times. Thus, the Roman satirical poet Decimus Junius Juvenalis once asked: "Who will guard the guardians?"²¹ The general purpose of policing oversight in an ideal democratic society is to ensure that police are accountable for the performance of their tasks. This is especially so in a democratic dispensation where rights and freedoms of all human beings are guaranteed and should be ideally respected.

All the international instruments to which Zambia is a State party and the Constitution²² guarantee a number of rights (such as the rights to liberty and fair trial, the right to privacy, freedom of assembly, association and movement, the prohibition of arbitrary arrest and detention, the prohibition of torture, and the right to life which are not only affected by the lawful exercise of police powers, but also effectively place limitations on the exercise of police powers. Consequently, State parties have assumed legal obligations not only to respect the rights protected under these instruments but also to investigate all allegations of torture and ill-treatment by the police within their territories using the established institution such as the Police Public Complaints' Authority and Human Rights Commissions and others.²³

²¹ L. Colleen. Complaints against the police: The politics of reform. Annandale: Hawkins Press,(1999),p 66

²² Chapter 1 of the Laws of Zambia

²³ Goldsmith and Lewis (eds), Civilian oversight of policing: governance, democracy and human rights. Portland: Hart Publishers. (2000).p 76

Conducting state oversight of the police using the National Human Rights Protective Mechanisms is one way in which these states can fulfil this international obligation.

2.0 THE POLICE SERVICE: ESTABLISHMENT, FUNCTION AND DUTIES

The Zambia Police Service which falls under the Ministry of Home Affairs is established by the Constitution²⁴ and the Zambia Police Act²⁵. According to s.3 (1) of this Act the Service is headed by the Inspector General of Police who is responsible for the command, superintendence, direction and control of the institution.

The functions and duties of the police are primarily ensuring security, order and safety of citizens. This is clear from the Zambia Police Act which provides that every police officer shall exercise such powers and perform such duties as are by law conferred or imposed upon him. It further provides that a police officer shall obey all lawful directions in respect of the execution of his office, which he may from time to time receive from police officers superior in rank to him.²⁶

It also provides that it shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances, to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient grounds exist.²⁷ In order to maintain an orderly and peaceful society, every police officer is deemed to be on duty at all times and may at any time be detailed for duty in any part of Zambia.²⁸ These functions are susceptible to abuse. The increased levels of Police brutality, uncontrollable

²⁴ Article 103 of Chapter 1 of the Laws of Zambia

²⁵ Chapter 107 of the Laws of Zambia

²⁶ S.14(1) of the Police Service Act, Chapter 104 of the Laws of Zambia

²⁷ Ibid, s.s(3)

²⁸ S.14(2) of the Police Service Act, Chapter 104 of the Laws of Zambia

trigger-happy conduct and the ultimate violation of citizens rights raised concern in the late 1990's and sparked debates as to what the true role of the Police Service is in a democratic society like Zambia. The law establishing the Service was succinct and yet there was an unavoidable imbalance between the provisions of the law as regards the proper conduct of the officers in discharging their functions on the one hand and what truly obtained on the ground regard being had to human rights violations.

3.0 HUMAN RIGHTS PROTECTION BY THE POLICE SERVICE.

The police are charged with the responsibility of maintaining order, security and peace in the nation. It could be argued that this function encompasses providing an environment which ensures that every individual's human rights are not violated or threatened. The maintenance of internal security is a pre-requisite for the sustenance of a stable government and the enjoyment of human rights. The continuity of stability depends, to a large extent, on the effectiveness of the internal security institutions that exist in the country. Thus, the importance of the police in society and human rights protection cannot be over emphasised.

The environment within which the Ministry of Home Affairs (and specifically the Police Service) discharges its functions has been undergoing drastic changed since 1991.²⁹ Politically, the change could be attributed to a shift in the norms and values of a one-party system characterised by considerable powers of the State over the people, to multi-party democracy that aims at ensuring the people's enjoyment of basic human rights and freedoms. The Zambia Police Service has therefore, been re-oriented and re-trained into a community based service. The Government has implemented continuing reforms that aim at enhancing

²⁹ Government of the Republic of Zambia.Fifth National Development Plan 2006-2010. Government Printers. (2006). P 267

professionalism, accountability and respect for human rights.³⁰ All police recruits and officer cadets are trained in human rights before they complete their police entrance training (pass out). Similarly, the government has established a Community Services Division which contributes to the protection and maintenance of human rights and the promotion of sound police and public relations. This Division has a Victim Support Unit which offers counselling to families of victims of crime and educates the general public on their rights. The Unit has ensured that there are officers specifically performing its functions at every Police Station. The establishment of this Division has resulted in the improvement of relations between the Police and the general public.

Though these reforms are still in their infancy, a lot still remains to be done in re-orienting the police from a police 'force' to a police 'service' that upholds the human rights of citizens. Evidence of police torture has been revealed in the past and an effort is being made to correct such weaknesses that compromise government policies on democracy and the respect for human rights. The developments could be argued to be in conformity with the Constitutional provisions inter alia, that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual³¹ and that a person is presumed innocent until found guilty by a competent court³².

As regards human rights violations, it is argued that there are broadly three contexts or instances during which police officers commit such violations: (a) during investigations of alleged crime (which also covers the arrest of suspects), (b) during interrogations of suspects;

³⁰ Ibid

³¹ Article 11 of the Constitution, Chapter 1 of the Laws of Zambia

³² Article 18 (2) a of the Constitution, Chapter 1 of the Laws of Zambia

and (c) in the policing of social and political activities of a nation.³³ The Police Service as a law enforcement agency is provided with the power and authority to arrest and detain suspects in the course of investigations for alleged criminal conduct. It has been acknowledged that lack of appropriate equipment for human rights-friendly investigative technologies such as finger printing facilities, leave law enforcement officers with little option but to resort to antiquated methods of investigation.³⁴

For instance, in the case of **Mofya v The Attorney General**³⁵, the appellant was unlawfully arrested and imprisoned. He was subjected to torture and consequently, he suffered swollen arms, body abrasions, swelling on the head. He suffered these wounds after he was whipped while suspended on a swing. The court awarded damages to the plaintiff. Even though principally, damages are meant to ameliorate the position of the victim and perhaps this was done in this case, the case is also indicative of police brutality and that relevant authorities need to intervene.

Furthermore, it is argued that once a suspect has been apprehended the police usually conceal the whereabouts of the suspect from family members and sometimes lawyers. The suspect is then subjected to a “confession-oriented” investigation in which the police seek the information they need by torturing the suspect and forcing an admission of the commission of the offence.³⁶ This borders on unprofessional discharge of the police’s mandate and violates Article 15 of the Constitution because thorough investigations should be conducted rather than subjecting suspects to an inquiry which presumes them to be guilty until proven

³³ A. Mwila. Police Brutality: Is the Establishment of the Police Public Complaints’ Authority a Solution? Obligatory Essay. (2006),p 21

³⁴ Government of the Republic of Zambia.Fifth National Development Plan 2006-2010. Government Printers. (2006). P 267 (1995-1997)ZR 22

³⁶ A. Mwila. Police Brutality: Is the Establishment of the Police Public Complaints’ Authority a Solution? Obligatory Essay. (2006),p 27

innocent.³⁷ Another instance when the police abuse human rights is when a suspect continues to elude the law and the police fail to arrest him. Amnesty International has pointed out that in such instances the police put unwarranted pressure on the suspect's family by detaining some family members like women and children so that the suspect could turn himself in.³⁸ Furthermore, the Country Report on Human Rights has highlighted that when female suspects are detained police officers occasionally demand for sex from them as a condition for their release. It also highlights that police officers rape women and young girls while they are in custody.³⁹ For instance, in December 2007 a 14 year old girl filed a civil suit against the Attorney General and a police officer, one Sitali Ikowa, alleging that the later impregnated her and infected her with HIV during her May to August 2007 detention at Prospect Police Station in Kabwe. According to the claim filed before the Kabwe High Court, Ikowa threatened and raped the girl on numerous occasions.

In terms of the political life of the citizenry and the violation of their rights to freely associate and assemble, Mwila has argued that this usually happens during political gatherings. Those opposed or at least not in tune with the political ideology of the ruling party are usually greeted with violence either by the police themselves or by the inability of the police to arrest a violent situation sparked by cadres from the ruling party. Other instances also include incidences of students' unrest at the University of Zambia Great East Road Campus. On 23rd May, 2008 two students were allegedly shot at by police officers during an internal demonstration. One student was allegedly shot in the chest and the other in the legs.⁴⁰ The incident was reported to Police Headquarters but apparently the report which was given

³⁷ M. Ndulo. *The Law of Evidence in Zambia*. Lusaka: Multimedia. (1986), p 57

³⁸ *Policing to Protect Human Rights: A Survey of Police Practice in Countries of the Southern African Community, 1997-2002*. Amnesty International Publications.(2002),p20

³⁹ Zambia. *Country Reports on Human Rights Practices*. 2008

⁴⁰ *The Post newspapers, 25th May,2008*

by the Service spokesperson was not conclusive as it pointed out categorically that it was not possible to identify the particular officer(s) who shot the students because there were too many officers on the scene. Furthermore, correspondence from the Students' Union to authorities within the Service was met with silence. This inability to identify the culprits of such conduct within the Service could contribute indirectly to the trigger happy attitude among officers since they know they can not be identified.

This is further compounded by the fact that Police superiors encourage police officers to use their weapons when apprehending suspects.⁴¹ In the recent past police use of force and civilian shootings by off-duty officers could be attributed to such encouragement from superior authorities.⁴² It should be categorically stated that the police command and central government are constantly working on improving this situation as is evident from the policy reforms and strategic plan so far implemented.

The former Deputy Minister for Home Affairs Grace Njapau once told Parliament that the government had put in place measures to reduce brutality and abuse of inmates by the police, by inter alia ensuring that such police officers are punished.⁴³ This has been done and examples abound such as the Matero shooting of 26th October, 2006 in which the reserve constable who shot and killed a person while quelling a riot in Matero has since been arrested and charged for murder. In the N'gombe shooting of 8th September, 2006 the officer who was involved in the said shooting has since been arrested and is waiting to appear in court for two counts of murder and one count of attempted murder.

⁴¹ Zambia. Country Reports on Human Rights Practices. 2008

⁴² Ibid,

⁴³ www.state.gov/g/drl/irf/rpt.

4.0 THE POLICE PUBLIC COMPLAINTS' AUTHORITY

4.1. Introduction

Having stated the above state of affairs, this section now considers the establishment, composition, functions and manner of proceedings of the Police Public Complaints' Authority, an intra-institutional watchdog organisation to check Police officers' conduct. This is one way in which the government is trying to remedy the situation and be responsive to the challenges outlined above. The Police Public Complaints' Authority was established in order to bridge the gap between the functions of police officers and how that function was to conform to human rights standards.

Introducing the Zambia Police (Amendment) Bill in Parliament, the Minister of Home Affairs at the time, Dr. Peter Machungwa, explained that the Bill was intended to improve the fight against crime through the involvement of the community and also to 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 a culture of governance and respect for human rights that this Bill seeks to establish an Independent Police Public Complaints' Authority."⁴⁴

4.2 Establishment of the Authority.

The increase in police misconduct and the consequent reduced respect for human rights provided the decisive impetus for the establishment of the Police Public Complaints' Authority. Thus in 1999 the Zambia Police Act⁴⁵ established the Police Public Complaints Authority as an institution charged with the responsibility of overseeing police functions and

⁴⁴ Parliamentary Debates of the Eighth National Assembly. p 781-782

⁴⁵ s.57B Chapter 107 As repealed and amended by Act No.14 of 1999

in effect as a National Protective Mechanism to address human rights abuses by police officers.

4.3 Composition of the Authority

The Authority is composed of the following officers: the Chairperson, the Vice Chairperson, and three other members.⁴⁶ The Chairperson is a person who has held, or is qualified to hold the office of a Judge of the High Court.⁴⁷ Subject to the other provisions of the Act members of the Authority hold office for a period of three years and may be reappointed for a further like period by the Minister of Home Affairs. The members of the Authority enjoy immunity from any civil or criminal proceedings for things done in the lawful exercise of the functions under the Act.

The members are however obliged to adhere to a strict code of conduct and the Minister may remove a member who fails to perform the duties of his office, who is guilty of dishonesty or the member is absent without reasonable excuse from three consecutive meetings of the Authority of which the member has had notice.⁴⁸ In instances where the office of a member falls vacant before the expiry of the term of office, 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.⁴⁹ The Authority's management and administrative functions and other matters referred to him are discharged by the Secretary who is appointed by the Minister.

⁴⁶ s. 57C (1) of the Act

⁴⁷ s.57C (2) of the Act

⁴⁸ s.5C (5)

⁴⁹ s.57C(6)

4.4 Functions of the Authority.

The functions of the Authority are clearly spelled out in s.57G (1) of the Zambia Police (Amendment Act), No 14 of 1999 which provides that it shall be the responsibility of the Authority to receive all complaints against police actions; to investigate all complaints against police actions which result in serious injury or death of a person; and 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 the Anti-Corruption Commission or any other relevant body or authority.

Where the Authority directs the Inspector-General, the Anti-Corruption Commission, relevant body, or authority under subsection (1) the Inspector-General, Anti-Corruption Commission, relevant body or authority shall give effect to such directions.⁵⁰ The Act gives locus standi to such persons as are either directly or otherwise affected by illegal conducts of the police to move the Authority which in turn would investigate such unlawful conduct. This is clear from the provisions of s.57H (1) of the Act which provides that the Authority shall have powers to investigate all complaints referred to it under this Part by an aggrieved person directly affected by police action; an association acting in the interests of its members; and a person, acting on behalf of an aggrieved person, body or organisation. In terms of who it can summon, the Authority has extensive power to order any person to attend its sessions.

It also has the power to issue such orders or summons as are necessary in order to carry out thorough investigation by compelling individuals to give evidence, answer questions relevant to the investigations and to produce such documents as will do justice.⁵¹ In order to properly

⁵⁰ s.57G(2)

⁵¹ s.57 H(2)

achieve the desired goal of justice the members of the Authority are required to disclose any interests in a case under investigation and a determination will be made as to whether or not the member or such person who has made such disclosure should attend the meeting.⁵²

5.0 THE ROLE OF THE POLICE PUBLIC COMPLAINTS AUTHORITY IN HUMAN RIGHTS PROTECTION

Any institution is governed by its mandate and code of conduct, both of which will be affected by the reasons for its establishment. The Police Public Complaints Authority too, is an institution established for specific reasons, which then shape the behaviour and attitude of those within it and those it is mandated to oversee.⁵³ By the law establishing the Authority's function of receiving and investigating complaints relating to human rights violations, it situates the Authority as an important player in human rights protection.

The Authority has a crucial role to play in human rights protection because it is at the core of ensuring that the police who swear to uphold the Constitution perform their function in a diligent, professional and effective manner. As was explained by the then Minister of Home Affairs in his introductory statement to the Zambia Police (Amendment) Bill to the National Assembly, the establishment of the Authority was to plant a culture of governance and respect for human rights. The role of the Authority is thus to ensure that police officers are alive to human rights standards as they discharge their functions and to discipline erroneous conduct. By insisting on the respect for human rights and ensuring that police officers abide by professional conduct the Authority retains a status of being a protective mechanism and

⁵² s.57N of the Act

⁵³ B. Vaughan. (2005), A New System of Police Accountability: the Garda Síochána Act 2005. *Irish Criminal Law Journal* 15(4).

contributes immensely to the promotion of human rights.⁵⁴ These rights include the right to life, the right to a fair trial, freedom of assembly and others.

6.0 Conclusion.

The Chapter has highlighted the establishment of the Authority and illuminated the work and functions of the Authority which are provided for by the 1999 Amendment Act. The Chapter has discussed the legal framework of the mandate of the Authority and has also pointed out the position of the Authority in discharging its mandate in as far as human rights protection is concerned. It is the opinion of this Chapter that the Amendment Act which creates the Authority is progressive and contains important provisions which not only create a cardinal institution in the promotion and protection of human rights in the country but also provides the institution with powers to discipline erring police officers. The law provides for an independent Authority and this is important if the promotion and protection of rights is to be done in an impartial manner. This also ensures that justice is done by removing any external influences.

⁵⁴ W. Luwabelwa. The Efficacy of Police Watchdog Institutions. Obligatory Essay. (2008),p 44

Chapter 3

THE RULE OF LAW AS A CONSEQUENCE OF EFFECTIVE HUMAN RIGHTS PROTECTION AND PROMOTION.

1.0 Introduction

The term rule of law is an ancient ideal, and was discussed by Ancient Greek philosophers such as Plato and Aristotle around 350 BC. Plato once wrote that, "where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a State."⁵⁵ Likewise, Aristotle endorsed the rule of law, writing that law should govern, and that those in power should be servants of the laws.⁵⁶ He argued that it is more proper that law should govern than any one of the citizens.

His postulation was to the effect that it is important to place the supreme power of ruling in some particular persons who should be appointed to be only guardians, and the servants of the laws. Another early conception of the rule of law can be found in the Bible⁵⁷. This is with reference to the Median kingdom where the Bible states in Daniel 6:12 that the thing stands fast, according to the law of the Medes and Persians, which cannot be revoked. This means that not even the king could arbitrarily alter a law he had previously enacted. Two of the first modern authors to give the principle discussion and theoretical foundations were Samuel Rutherford in the book **Lex Rex** published in 1644 and John Locke in his **Second Treatise of Government** published in 1690. Later, the principle was further discussed by Montesquieu in

⁵⁵ Cooper, John et al. Complete Works By Plato. Yorkshire: Hackett Publishing, (1997), p1402

⁵⁶ Ibid, p 1403

⁵⁷ The Bible is a collection of religious books containing hymns, psalms, letters and historical accounts in the Christian religion

The Spirit of the Laws of 1748.⁵⁸ In 1776, the notion that no one is above the law was popular during the founding of the United States, for example Thomas Paine wrote in his pamphlet **Common Sense** that in America, the law is king.⁵⁹ For as in absolute governments the King is law, so in free countries the law *ought* to be king; and there ought to be no other. In 1780, John Adams enshrined this principle in the Massachusetts Constitution by seeking to establish a government of laws and not of men.⁶⁰

The supremacy of law is by no means an exclusively western notion. In the Chinese philosophical school of Legalism in the 3rd century BCE, Han Fei Zi articulated three principles of law, of which the first is Fa (literally law or principle).⁶¹ This states that laws, rather than rulers, run the state, and further that laws be written and publicised to the general populace. Thus, as early as 350 BC mankind had acknowledged the importance of placing premium on the supremacy and the respect of the law.

2.0 UNDERSTANDING THE RULE OF LAW AS A CONCEPT.

The rule of law in its present sense owes a great deal to the late Professor AV Dicey. Professor Dicey's writings about the rule of law are of enduring significance. Among modern legal theorists, most views on this subject fall into three general categories: the formal, the substantive and the functional approaches.⁶²

2.1 The Formal Approach to the Concept of Rule of Law

Formalists hold that the law must be prospective, well-known, and have characteristics of generality, equality, and certainty. Other than that, the formal view contains no

⁵⁸ B. Tamanaha. *On the Rule of Law*, London: Cambridge University Press. (2004).p 47

⁵⁹ J.Lieberman. *A Practical Companion to the Constitution*, California: University of California Press. (2005).p 436

⁶⁰ *Massachusetts Constitution*, The First Part, Art. XXX (1780).

⁶¹ C.Weeramantry. *Justice without Frontiers*. Martinus: Nijhoff Publishers (1997).p 132

⁶² M. Stephenson. *Rule of Law as a Goal of Development Policy*. World Bank Research. Washington: Butterworth (2008),p 89

requirements as to the content of the law.⁶³ This approach advocates for laws that protect democracy and individual rights and also recognizes the existence of rule of law in countries that do not necessarily have such laws protecting democracy or individual rights.

2.2 The Substantive and Functional Approaches.

The substantive interpretation holds that the rule of law intrinsically protects some or all individual rights. In addition to the formal and substantive interpretations of the term rule of law, another leading interpretation is the functional approach, which is consistent with the traditional English meaning that contrasts the rule of law with the rule of man.⁶⁴ According to this view, a society in which government officers have a great deal of discretion has a low degree of rule of law, whereas a society in which government officers have little discretion has a high degree of rule of law.⁶⁵

The rule of law in this regard can be argued to be somewhat at odds with flexibility, even when situations or circumstances dictate that flexibility may be preferable. From the above exposition and arguments it can be construed that most legal scholars believe that the rule of law has purely formal characteristics. This means that the law must be publicly declared, with prospective application, and possess the characteristics of generality, equality and certainty. Ordinarily, the rule of law, also invariably entails supremacy of law, meaning that the law is above everyone and it applies to everyone without distinction or discrimination. Whether governor or governed, rulers or ruled, no one is above the law. No one is exempted from the law, and no one can be granted

⁶³ S. Snowiss. Judicial Review and the Law of the Constitution, Boston: Yale University Press (1990),p 42

⁶⁴ *Ibid*,p 47

⁶⁵ Kaufman, Daniel et al. "Governance Matters VI: Governance Indicators for 1996-2006, World Bank Policy Research Working Paper No. 4280". Yorkshire: Butterwoths (2007),p 39

exemption to the application of the law.⁶⁶ Within legal theory, the formal and substantive approaches to the rule of law are seen as the two basic alternatives. Clearly, there are divergent views on what the rule of law is. However, it can be asserted that rather than trying to define the concept, it is better to use the rule of law as a shorthand term to explain the principles and values which underpin the law, rather than a precise concept. It could be construed as a general legal maxim according to which decisions should be made by applying known principles or laws.

3.0 THE CONCEPT AND RESPECT OF RULE OF LAW IN THE COMMONWEALTH : THE CASE OF INDIA

3.1. Introduction

The Republic of India has been held to be one of the best examples of democracy in the Commonwealth.⁶⁷ This has provided the justification for its consideration in this research as it could be used as a yardstick for other jurisdiction within the commonwealth. The social and economic progress achieved by the deepening of democracy in the Indian society has been shaped by her efforts to successfully protect the rule of law. This has been achieved by a combination of factors and various institutions working for the common good.

3.2 Institutions of Justice and the Protection of the Rule of Law in India.

Since independence, various attempts to enforce and institutionalise the rule of law in the Indian society have been successful. Despite the fact that those six decades of governance may not be long enough to assess the situation, India has scored tremendously in as far as upholding the rule of law and checking abuse of power is concerned. It is opined by some

⁶⁶ Per Chief Justice Coke in *Re Proclamations*(1610) 77 ER 1352

⁶⁷ Campbell, F. David. *The Basic Concept for the Democracy Ranking of the Quality of Democracy*. Vienna: Democracy Ranking. (2008).p 14

scholars that the normative framework of constitutional governance is established through the Constitution of India and the various efficient institutions established under it.⁶⁸ This has deeply embedded the values of constitutionalism in the Indian society.

3.2.1 The Indian Judiciary and the Justice System.

Robinson asserts that the Indian judiciary is well regarded domestically and internationally for its progressive role in interpreting various provisions of the Constitution with a view to promoting the rule of law and social justice.⁶⁹ Examples of successful judicial intervention to uphold the rule of law and ensure justice include expanding the interpretation of the fundamental rights enshrined in the Constitution and overcoming restrictions based on rules relating to locus standi. Others are the courts' and the police's ingenuity in creating new avenues for seeking remedies for human rights violations through public interest litigation pleas and promoting genuine judicial interventions in the areas of child labour, clean and healthy environment and women's rights. Other institutions in the justice system are also well equipped and function efficiently so as to be responsive to the legal needs of society.

3.2.2 Legal Education and the Role of Lawyers:

Law schools have played an important role in shaping the role and function of law in societies which have established the rule of law as the basic framework for governance. The academics in law schools have shaped the understanding of law and legal processes along with imparting legal education with a view to ensuring excellence in promoting legal knowledge and advocacy skills. It helps students with legal training to occupy positions of responsibility in government and outside government and to engage in policy-making.⁷⁰

⁶⁸ B. Upendra . *Asian Discourses of Rule of Law*, London . Routledge (2004),p337

⁶⁹ S. Robinson. "For Activist Judges, Try India", *Time Magazine* (2006-11-08).p 65

⁷⁰ S. Palekar. *Comparative Politics and Government*. London: PHI Learning. (2009),p 66

Apparently, the role of law schools in helping the legal system establish a rule of law society may not be obvious but its importance should not be underestimated. This is because of the ability of law schools to promote new and innovative ideas in shaping the minds of lawyers in preparing themselves to solve the problems of the country and the legal system at large. Connected to the above is the fact that lawyers in India have diligently performed their responsibility to recognise the problems of the legal system such as the problem of bridging the gap between the law in the books and the law as it is practised.

3.2.3 The Police Service

Enforcement of the rule of law and efforts to protect the rule of law ought to be shaped by a number of factors that will improve the capacity of the legal system to respond to social ills. One factor is the indispensable role of the police in ensuring that there is law and order by firmly insisting on the respect for the law. The police officers in India are efficient partly because of adherence to a strict code of conduct and adequate training programmes. Their conduct in some instances has however been below expectation. The Asian Human Rights Commission⁷¹ and its Howrah-based partner organisation, Masum, have together documented and reported on how these officers are operating as little more than mercenaries.⁷²

4.0 THE CONCEPT OF RULE OF LAW IN ZAMBIA.

After the above exposition, this section investigates and illuminates on how the concept of rule of law is conceived and applied in Zambia. According to the formal approach of the concept of rule of law, law must be prospective, well-known, and have characteristics of

⁷¹ The Asian Human Rights Commission is a regional non-governmental organisation monitoring and lobbying human rights issues in Asia. The Hong Kong-based group was founded in 1984

⁷² S.Palekar. Comparative Politics and Government. London: PHI Learning. (2009),p 69

generality, equality, and certainty.⁷³ The Republic of Zambia being a democratic and constitutional dispensation embraces both the formal and functional approaches of the rule for law. This is evident from the various institutions and laws that promote and oversee the respect of the rule of law and other tenets of a democratic society.

4.1 The Constitutional Provisions.

One aspect of the rule of law holds that the law should be applied generally and equally. This is provided for in the Constitution where the law states that the Constitution shall bind all persons in the Republic of Zambia and all Legislative, Executive and Judicial organs of the State at all levels.⁷⁴ The formal approach of the concept of rule of law advocates for laws that protect democracy and individual rights. The Constitution guarantees and protects the various civil and political rights of the individual⁷⁵ and provides for a mechanism for any individual who alleges that their rights have, are or are likely to be violated to move the High Court for Zambia to seek redress.⁷⁶

Other provisions relating to securing of the protection of the law in the Republican Constitution also satisfy this aspect of the rule of law. Specifically, Article 18(8) of the Constitution provides that a person shall not be convicted of a criminal offence unless that offence is defined and the penalty is prescribed by a written law. Furthermore, the concept of rule of law advocates for a situation where the law must be publicly declared, with prospective application. This is achieved and secured by Article 18(4) which provides that a person shall not be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence.

⁷³ S.Snowiss. Judicial Review and the Law of the Constitution, Boston: Yale University Press (1990),p 42

⁷⁴ Article 1(4) of Chapter 1 of the Laws of Zambia

⁷⁵ The Bill of Rights,Part III of the Constitution, Chapter 1 of the Laws of Zambia

⁷⁶ Article 28(1) of the Constitution, Chapter 1 of the Laws of Zambia

This helps people be aware and direct their minds towards the provisions of the law and eliminates the caprices and whims of overzealous law enforcement officers who may bring up charges and offences against an individual when such offences are not provided for by law. The above is important in maintaining the rule of law in the country but it should be put on record that perhaps the most important provision in the Constitution for the purposes of this research is Article 1(3). This Article provides to the effect that the Constitution is supreme and that any other law which is inconsistent with the Constitution shall, to the extent of inconsistency be null and void.

4.2 The Zambian Courts' Application of the Rule of Law

The celebrated case of **Marbury v. Madison**⁷⁷ established the role of the courts in ensuring that the rule of law is upheld by the performance of their function of interpreting the Constitution and other laws. In this case Marshal, CJ (as he then was), stated that it is emphatically in the province and duty of the Judicial Department (the Judiciary) to say what the law is.

Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. The Zambian courts have affirmed Chief Justice Marshal's decision in promoting a culture of rule of law in their decisions. This, as one Lord Justice observed, is because the court's functions oblige it to pay the utmost attention to the principles characterising a democratic society which include upholding the rule of law and protecting individual liberties.⁷⁸

⁷⁷ 5 U.S. (1 Cranch) 137 (1803).

⁷⁸Per Ngulube, CJ stated, dicta, in *Christine Mulundika and 7 Others v The People* (1995) ZR (SC)

In fact one could argue that the Courts have been tenacious in promoting the rule of law. In **Re Thomas Mumba**⁷⁹, the court held that in countries like Zambia where there is a written Constitution, the Constitution is the supreme law, any other laws are made because the Constitution provides for their being made; and are therefore subject to it. Thus, any law which is inconsistent with the Constitution or violates the rights protected therein shall be declared null and void. In this case, the High Court declared s. 53 (1) of the Corrupt Practices Act unconstitutional, null and void because an accused person charged under the Act could not be compelled to give evidence on oath if he elected to make an unsworn statement. Furthermore, the Supreme Court in the case of **Christine Mulundika and 7 others v the People**,⁸⁰ when it declared the provisions of s.5(4) of the Public Order Act to be unconstitutional as it violated the right of an individual to freedom of assembly and association was emphatic on what constitutes rule of law in Zambia.

For courts to make such brave and bold decisions there is need to cloth them with the necessary resources or facilities and independence provided for by law. The independence of the Judiciary is provided for in Article 91(2) of the Constitution. The officers of this branch of government are only subject to the law and therefore they are autonomous.⁸¹ Furthermore, the Judiciary should work in a conducive environment and not be under-resourced in terms of manpower, finances or skills. It should not be subjected to political interference either but should be supported by an efficient bureaucracy and systems in the justice system such as an efficient and disciplined Police Service, skilled prosecutors and a well-staffed and equipped Prison Service. In this regard all the players in the justice system should play an important role in ensuring the rule of law is respected.

⁷⁹ (1984) Z.R. 38 (H.C.)

⁸⁰ (1995) ZR (SC)

⁸¹ Article 91(3) of the Constitution, Chapter 1 of the Laws of Zambia

5.0 THE POLICE SERVICE'S AND THE AUTHORITY'S ROLE IN UPHOLDING THE RULE OF LAW IN ZAMBIA.

5.1 Introduction

With the background set on what the ideal rule of law is and a discussion from India the focus of this part is to inquire into the role of the police and the Police Public Complaints' Authority in upholding the rule of law in Zambia. It advocates for closer networking of the various players in the administration of justice and enforcement of the rule of law.

5.2 The Police Service

Police, especially those involved in the operations and daily interaction with the general public have an important role to play in the lives of the citizenry by ensuring respect for the law. They must prevent breach of peace in order to uphold Zambia's democracy and the rule of law. As has been indicated by this research, the Police as a law enforcement agency are provided with the power and authority to arrest and to facilitate an atmosphere of peace and security within the territorial boundaries of the country.

In fact s.5 of the Zambia Police Act⁸² provides that the Zambia Police Service shall be employed in and throughout Zambia for preserving the peace, for the prevention and detection of crime, and for the apprehension of offenders against the peace. The law places premium on the respect of the law and that any contravention of the law should be arrested. Essentially this places the police at the core of the task of upholding the rule of law.⁸³ In order to perform this function effectively the necessary conditions such as independence of the institution of the Police, motivation and modern facilities need to be present. Sadly in Zambia a peculiar feature of all Police stations and Posts is that the police operate under extremely

⁸² Chapter 107 of the Laws of Zambia

⁸³ B. Upendra. Asian Discourses of Rule of Law, London . Rutledge (2004),p337

difficult circumstances. For instance, there has been an improvement in the area of transportation but the Human Rights Commission notes that there is still a need to go further and provide the police with even more viable vehicles and other equipment for effective dispensation of their duties.⁸⁴

5.3 The Police Public Complaints Authority

The Police Public Complaints' Authority was set up as a National Protective Mechanism to primarily investigate and ultimately instigate the process for disciplinary action for any police misconduct which results in the serious physical injury or death of the victim. The Police Public Complaints' Authority's role is critical in upholding the rule of law because it is mandated to check the conduct of the very personnel tasked to uphold the rule of law.

The Zambia Police Act mandates the Authority 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 the Anti-Corruption Commission or any other relevant body or authority.⁸⁵ Furthermore, s.57 (2) provides that where the Authority directs the Inspector-General, the Anti-Corruption Commission, relevant body or authority under subsection (1) the Inspector-General, Anti-Corruption Commission, relevant body or authority shall give effect to such directions.⁸⁶

These provisions make the Authority be at the centre of the law enforcement web. It can recommend, propose and in some prescribed instances direct the relevant authorities who invariably give effect to its directions in taking a particular course of action. Thus the Authority is important in the promotion of the rule of law because the law situates it at a crucial position in the promotion of law and order.

⁸⁴ Human Rights Commission of Zambia. Chairperson's statement on 2009 human rights situation in Zambia. Lusaka: Government Printers. (2009). P 4

⁸⁵ s.57G(1) c(i),(ii) and (iii) of the Zambia Police Act, Chapter 107 of the Laws of Zambia

⁸⁶ As repealed and replaced by Act No.14 of 1999

Having been set up to enforce the law, it necessarily follows that the Police Service is mandated to uphold the rule of law. Bowes has argued that if the rule of law and the conduct of police are to improve, opposition to misconduct must be continuous and intensified through public complaints channelled through responsive established institution.⁸⁷ However, the task of upholding the rule of law should not just be left to the Police Public Complaints' Authority. It is an individual as well as a collective societal responsibility. The people are as responsible for the promotion of rule of law as institutions which are by law mandated to uphold and promote it. For instance, lawyers and legal scholars should play a part in ensuring that the law is used to achieve various social objectives. In fact s.4 of the Law Association of Zambia Act⁸⁸ provides that the lawyer should participate in seeking the advancement of the rule of law and the rights of the individual. This is a classic example of how all should contribute in their own way to upholding the rule of law.

6.0 Conclusion

This Chapter has highlighted a number of crucial issues ranging from defining the concept and outlining the parameters of rule of law. It has also illuminated on some commonwealth jurisdictions' conception of the rule of law. It has narrowed down the discussion to Zambia and discussed the courts' attitude towards rule of law. It has also explored the role of the Police Public Complaints Authority in promoting rule of law and attempted to advance the proposition that in order to effectively do this it needs to network with other institutions. It is the conclusion of this Chapter that the Police Public Complaints Authority occupies a crucial position in as far as upholding the rule of law is concerned. Furthermore, the Authority will only discharge its functions effectively if it is supported by efficient law enforcement agencies and an attitude among the people which sees the law as an instrument to serve them.

⁸⁷ S.Bowes. *Police and Civil Liberties*. London: Lawrence and Westhart. (1966). p 230

⁸⁸ Chapter 30 of the Laws of Zambia

Chapter 4

THE POLICE PUBLIC COMPLAINTS AUTHORITY AS AN INSTRUMENT OF GOOD GOVERNANCE.

1.0 Introduction

Governance describes the process of decision-making and the process by which decisions are implemented (or not implemented). The term “governance” can apply to corporate, international, national, local governance or to the interactions between other sectors of society. Governance therefore, cuts across the entire spectrum of both Government and non-Government delivery systems.⁸⁹ Good governance is an indeterminate term used in development literature to describe how public institutions conduct public affairs and manage public resources in order to guarantee the realization of human rights.

2.0 THE CONCEPT OF GOOD GOVERNANCE

Good governance is currently a popular phrase in deliberations at national and international discourse. In view of the different issues, the problems the idea raises, and its impact on the various formations and sub-systems of administration, good governance as a concept continues to spark debates and discussions all over the world including Zambia. Ordinarily, due to its fluid nature it defies precise definition though attempts have been made at defining it. This fluidity could be attributed to the fact that good governance is directly linked to the dynamic social needs of the governed from time to time.⁹⁰ One academic definition contends that good governance involves the interactions among structures, processes and traditions that determine how power is exercised, how decisions are taken, and how citizens or other

⁸⁹ Ministry of Finance and National Planning. *Fifth National Development Plan 2006 – 2010*. Lusaka: Government Printers, p276

⁹⁰ D. Woodhouse. *The Pursuit of Good Administration, Civil Servants and Judges*. Oxford: Clarendon Press (1997), p 23

stakeholders have their say.⁹¹ In his Editorial for the Indian Journal of Public Administration Chaturvedi extensively argues that Good governance is not a finished product. It is a dynamic concept which encompasses fast-changing political, social and economic milieu, along with international environment and conditions of operational governance.⁹² He opines that this necessitates the need for periodical, rethinking on and even re-modelling of the concept and institutions of governance.

Another conception of good governance is held by multilateral and international institutions for a myriad of reasons. These institutions define and apportion varying characteristics to the concept. For instance, the United Nations emphasizes reform through human development and political institutional reform. According to the International Monetary Fund the United Nations hold that good governance has eight characteristics. It holds that good governance is: consensus oriented, participatory, follows the rule of law, effective and efficient, accountable, transparent, responsive and equitable and inclusive.⁹³ The International Monetary Fund (IMF) on the other hand, declared in 1996 that, "promoting good governance in all its aspects, including ensuring the rule of law, improving the efficiency and accountability of the public sector, and tackling corruption, as essential elements of a framework within which economies can prosper is of utmost importance."⁹⁴

Good governance is important in myriad ways. The United Nations High Commission for Human Rights recognizes that transparent, responsible, accountable and participatory government which is responsive to the needs and aspirations of the people is vital in the

⁹¹ Plumptre and Graham. *Good Governance: International and Aboriginal Perspectives*. Melbourne: Sweet and Maxwell (1993). p361

⁹² T.N.Chaturvedi: The Indian Journal of Public Administration, July-September 1998, Vol. XLIV No. 3, p. XI.

⁹³ The International Monetary Fund. *The IMF's Approach to Promoting Good Governance and Combating Corruption — A Guide*. Washington: Butterworths. (1996). P 23

⁹⁴ *Ibid*, p 32

development of society. It argues that this is the foundation on which good governance rests and that such a foundation is a sine qua non for the promotion of human rights, including the right to development.⁹⁵ It further emphasises that the strengthening of good governance at the national level, including through the building of effective and accountable institutions for promoting growth and sustainable human development, is a continuous process for all Governments, regardless of the level of development of the countries concerned. In this regard, the importance of good governance cannot be over emphasised. Good governance therefore ensures that there is a conducive environment, at both the national and the international levels, for the full enjoyment of all human rights and sustainable development.

3.0 GOOD GOVERNANCE IN ZAMBIA

3.1. Introduction

Despite the definition of the concept being fluid, it is generally accepted that the definition of good governance and its attributes could mean eight major characteristics. These are that good governance is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It ensures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making.⁹⁶ This can be illuminated by the following pictorial representation:

⁹⁵ Commission on Human Rights resolution 2003/65

⁹⁶ S. Claire. Making Government Work for Poor People's Choices, The Human Development Magazine. Washington: United Nations Development Program. (March 2000).p5

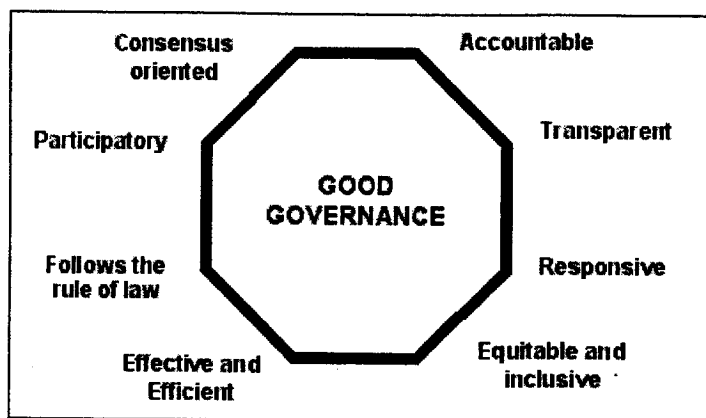


Figure 1: Characteristics of good governance⁹⁷

In the Zambian context the term ‘good governance’ was first defined in the National Capacity Building Programme for Good Governance in Zambia (NCBPGGZ), approved by Cabinet in 2000.⁹⁸ The Poverty Reduction Strategy Paper (PRSP) built on this definition and went on to emphasise mutually reinforcing relationship between bad governance and deepening levels of poverty. It is argued on the one hand that bad governance imposes a burden on the poor and throws them deeper into poverty. Equally, poverty constrains the poor from participating in national development, leading to weak governance of institutions. Good governance, on the other hand, is associated with larger growth rates and incomes for the poor.⁹⁹

In this regard good governance is argued to be referring to the objectives and responsibilities before the state. It also refers to the manner of operation of the organizations, systems and political structures designed to realize such objectives like developing infrastructure and putting in place institutions which will work towards effecting such objectives. Though the above has shown that good governance is conceptually elusive to define, in the Zambian

⁹⁷ Ibid,p7

⁹⁸ Government of the Republic of Zambia. Governance National Capacity Building Programme for Good Governance in Zambia.Lusaka:Government Printers.(1999).p 99

⁹⁹ Ibid,p100

context the term can be opined to signify the interaction between the various institutions of government and the manner of their management. It also means the decision making processes that ultimately impact on the development potential of the country.¹⁰⁰ The Government has, based on the above, undertaken a number of activities in the areas of constitutionalism, human rights, transparency and accountability, administration of justice and democratisation

3.2. THE ROLE OF THE POLICE IN GOOD GOVERNANCE IN ZAMBIA: A HISTORICAL SYNOPSIS

3.2.1 At and Post Independence Era

At independence the makers of the Constitution and the freedom fighters were aware of the role the police and District Administration played during the national struggle for independence and their record of repression of the national movement. Curiously, at the time of independence there was no demand for a new police system for the country.¹⁰¹ This period was characterised with the police force promoting peace and security within the territorial boundaries occupied by the state.

The force was also responsible for criminal justice in as far as arresting suspects, investigations and performing prison and rehabilitation functions were concerned. Sadly this period was also marked by human rights violations by the police when interrogating suspects or even when dealing with assemblies which were perceived to be attacking the government then. Numerous attempts and calls were made to reform the force by a cross section of society but nothing much changed. This resulted in litigation to international bodies by people who suffered under the police regime of the time. It would appear that the founding

¹⁰⁰ D. Adama. *Corruption in Africa: Legal, Political, Economic and Other Implications*. Lagos: Heinemann.(2000).p 43

¹⁰¹ Ministry of Finance and National Planning. *Fifth National Development Plan 2006 – 2010*. Lusaka: Government Printers,p277

fathers laid emphasis on continuity and change rather than on any violent departure from the past and demolishing the existing administrative structure. Perhaps over-awed by the carnage that accompanied the partition of the new country, no serious effort was attempted to dismantle the existing organization at any level and to supplant it with another, more attuned to the aims and aspirations of the new society.¹⁰²

3.2.2 The Multi-Party Era

After the attainment of a new political ideology of multi-partism in 1991 and the adoption of the Constitution, greater awareness of civil liberties and rights of the people guaranteed by the Constitution changed the attitude of the public towards the police. They expected a different approach by the police towards the maintenance of law and order and anticipated them to play a new role in a progressive and enlightened democracy. It therefore became a matter of increasing importance to examine the method of functioning of the police. This was for purposes of reorientation to enable them to function as defenders of the rule of law, custodians of human rights and guardians of the people in a new era.

Over the years, the state in Zambia has been held to have traversed much new ground and transformed itself from the faint outlines of a welfare state to a caring, intervening State, which does not remain a neutral, disinterested arbiter in the struggles in society, but stands along with the weaker sections, the marginalized and those by the peripherals. However, its success story cannot be overrated and a close inquiry into the mechanics of government and specifically the role of the police on such important aspects of the people's lives as opposition political affiliation and security leaves a great deal to be desired. However, it could be argued that this is an indication of challenges the country has had to overcome as it transformed itself to a modern nation state with strong commitment to the values of social

¹⁰² *ibid*

justice and development.¹⁰³The police system is an important player in good governance. This Service is very cardinal because no development nor the distribution of that development possible without order. Police officers are generally charged with the apprehension of criminals, the maintenance of public order, and the prevention and detection of crime through the power to arrest and imprison suspects.¹⁰⁴ Other duties relate to keeping the peace, law enforcement, protection of persons and property, and the investigation of crimes. Officers are expected to respond to a variety of situations that may arise while they are on duty while adhering to rules and guidelines. From this premise the role of the police is to contribute to the development and maintenance of institutions and a society anchored on the respect of the rule of law, peace and security.

With this realisation the multi-party era considered the Police Service as an important player in governance. Armed with the might of the state and empowered to use force against ordinary citizens in circumscribed circumstances, the police in its special role of performing a service for the good of citizens with the citizen's money was made to be answerable not only for its wrongdoings but also for its performance. This was done in order to make the police contribute to democracy and good governance by adhering to set standards. Besides, the police, like any other corporate organisation and any ordinary citizen, is above all accountable to the law. In the recent past, as society has sought to make this powerful institution obedient to law and efficient in performance of its mandate, there has been a proliferation of accountability mechanisms like the traditional internal complaints and disciplinary system. The Police Public Complaints' Authority falls in this category. The Authority is intended to eradicate a system which had inherited the functional attributes of the

¹⁰³ Stamp, S. *Socrates to Satre and Beyond*. Boston: McGraw-Hill. (2003), p86

¹⁰⁴ Charles C. *Challenges in Police Reform: Promoting Effectiveness and Accountability*. New York: International Peace Academy (2003), p. 4

colonial and post independence police regimes. This is because of the mandate of the Authority to discipline erring officers especially when they violate human rights.

4.0 THE POLICE PUBLIC COMPLAINTS AUTHORITY AS AN INSTRUMENT OF GOOD GOVERNANCE: A CRITIQUE

It is held that the term *governance*, as generally used, encompasses all aspects of the way a country, corporation, or other entity is governed. It includes the economic-policy and institutional interactions that fall within the mandate of a government. Relevant factors with regard to those policies are: their effectiveness; their transparency, and thus the accountability of policy makers; and the extent to which they meet internationally accepted standards and good practices. The collapse of the Soviet Union in 1989 ignited many African countries to join the wind of change which demanded for an end to military rulers, civilian dictatorial rulers and one party state.

The citizens demanded for the re-introduction of multi-party politics. However even after countries like Zambia, Malawi, Nigeria and Zimbabwe introduced multi-party politics, a set of problems continued to persist in Africa. This state of affairs continued and began weakening institutions of governance. Btagototti opines that it was at this point that donors coined a new term to refer to what was lacking in the developing countries. Thus it was argued that what was lacking was “good governance’ and donors defined conditions which were supposed to be present before disbursing aid. Good governance was thus introduced as a necessary requirement for aid and good standing in multilateral relations.¹⁰⁵In Zambia soon after the disputed 1996 general elections, the donor community pressurised the government to show commitment to good governance as a condition for balance of payment support during the Paris Club meeting held in 1998. At the instigation of these donors the government

¹⁰⁵P.U.I. Btagototti. Global Governance. Mandural: S. Chandi.(1966).p388

produced a 175 paged detailed document entitled Governance: National Capacity Building Programme for Good Governance in Zambia.¹⁰⁶ The document did not define the term good governance but gave a breakdown on how government intended to improve the entire government structures from the civil service under the Public Service Reform Programme, the Anti-Corruption Commission, the Judiciary, the Legislature and the Police Service and others.¹⁰⁷ It was during this period that the Police Public Complaints' Authority was set up as a protective mechanism but also as instrument of good governance.

Some scholars have opined that good governance cannot be separated from democracy and human rights.¹⁰⁸ It respects human dignity, justice, equity, participation and accountability. In this regard the institutions charged with the various responsibilities should perform accordingly. From the above premise and based on the National Capacity Building Programme for Good Governance in Zambia it could be opined that the police like any other government entity occupy an important position in the governance process. The fifth National Development Plan lists the Police Public Complaints Authority as one of the institutions of good governance.¹⁰⁹ In fact government has placed premium on constitutionalism, human rights, transparency and accountability, administration of justice and democratisation as the core areas of good governance in Zambia.¹¹⁰ It indicates that there is an inevitable link between human rights protection and good governance.

The Police Public Complaints' Authority (PPCA) functions as an instrument of good governance by ensuring that the intentions of the government as expressed by ratifying and being signatory to the various human rights instruments is given effect. In this regard if the

¹⁰⁶ World Bank, *Sub-Saharan Africa: From Crisis to Sustainable Growth*, (Washington DC, The World Bank, 1989), pp60-61

¹⁰⁷ Government of the Republic of Zambia. *Governance: National Capacity Building Programme for Good Governance in Zambia*. Lusaka: Government Printers. (1999). p108

¹⁰⁸ O.A.Okafor. 'The Search for Good Governance: The Nigerian Experience', *African Journal of Public Administration and Management*, Vol.XXII, No.2, December 2000, p.53

¹⁰⁹ Ministry of Finance and National Planning. *Fifth National Development Plan*. Lusaka: Government Printers (2002), p 274

¹¹⁰ *Ibid*, p 275

nation as represented by the government wishes to eliminate all forms of torture and has ratified and is a state party to the Convention against Torture, it follows that the government will put up policies to give effect to such intentions. It could be argued that this involves setting up and ensuring that the mechanisms of human rights protection function. The role of the police is to promote and defend peace, order and security in the country.

By checking how the police exercise this function the Authority performs its functions as an indispensable instrument of good governance. Furthermore, by recommending to the appropriate authorities that disciplinary action be meted out on an erring officer, the Authority contributes immensely to good governance by weeding out inimical elements from the governance system and encouraging the rule of law. Therefore, the Authority occupies a position which intertwines with such important concepts as rule of law, protection of fundamental human rights and good governance in a democratic society.

Having established that there is a link between governance, human rights and the respect for the rule of law, it could be opined that governments, including the Zambian government should work through constitutional structures and honour their international obligations in order to be responsive to the demands of good governance. The need to respect the law and achieve justice is issues that are within the mandate of the Authority. However the Authority can only do so much with the available human and administrative resources. The following presents an illustration of the factors that may affect the Authority in discharging its crucial role in society.

4.1 Administrative and Logistical Problems.

Currently, the Authority consists of the Chairperson, his Vice, the Secretary and the other members.¹¹¹ Given Zambia's population, the levels of human rights abuses and the magnitude of the mandate of the Authority, the Authority is clearly understaffed and this can negatively affect how it discharges its functions. The Parliamentary Committee on Legal Affairs, Governance, Gender and Human Right observed that the work of the Police Public Complaints Authority (PPCA) was hampered by the lack of the full implementation of the Authority's mandate. The Committee revealed that the Authority was not operating effectively due to the fact that it did not have enough human resource.¹¹² The fact may make the Authority fail to avail every case before it its merited attention.

4.2 Other Constraints.

The Authority is only situated in Lusaka and yet complaints about Police human rights abuses are committed in the whole country. Connected to the above is the fact that the institution is not well known.¹¹³ Furthermore, the independence and impartiality of the Authority may be negatively affected by the legislative framework regulating the financial aspects of the Authority. The Minister of Home Affairs not only appoints the officers of the Authority but also determines their remuneration and allowances.¹¹⁴ This kind of scenario may negatively affect the independence of the institution and the role it plays in good governance because it makes the Authority susceptible to external interferences especially if it is dealing with cases involving officers close to higher authorities.

¹¹¹ s. 57C (1) of the Act

¹¹² The Post newspapers, 20th November, 2008

¹¹³ Mwila, A. Police Brutality: Is the Establishment of the Police Public Complaints' Authority a Solution? Obligatory Essay. (2006), p 22

¹¹⁴ s.57F of The Zambia Police(Amendment) Act No 14 of 1999

1.0 Conclusion to the Chapter.

This Chapter has provided an attempt to define the term good governance. It has discussed the major traits of the concept which command wide acceptance. The chapter has also indicated the principles of good governance. It has also pinpointed and discussed the importance of good governance to a country like Zambia where issues of human rights and principles of rule of law are supposed to be held in high esteem. It is the opinion of this chapter that though the concept of good governance cannot be precisely defined, the government should attempt to ensure that the general traits of the concept are respected. Furthermore, institutions of good governance under which the Police Public Complaints' Authority falls should be constantly reformed and supported with the necessary human, technological and political resources. This will not only ensure that they perform accordingly but also that they will be responsive to the ever dynamic attributes of the concept.

Chapter 5

CONCLUSION AND RECOMMENDATIONS

1.0 GENERAL CONCLUSION

From the main the text general conclusion which can be drawn is that the PPCA is an important institution in promoting and protecting human rights in Zambia. This is because the law situates it at a crucial position in as far as democratic tenets and governance issues are concerned. The Authority is however not able to fully discharge its mandate as a result of various challenges it is faced with. These include inadequate human resources (staff) to carry out the mandate and inadequate funding. This is compounded by the lack of appropriate mechanisms such as political will to enable it discharge its functions as was recognised by the Parliamentary Committee on Legal Affairs, Governance, Gender and Human Right as indicated in Chapter 4. These need to be addressed accordingly.

2.0 RECOMMENDATIONS

Having examined the effectiveness and efficiency of the Police Public Complaints' Authority, and based on the general conclusions that though the PPCA occupies an important position in cross-cutting issues, it is faced with a number of challenges which affects its performance, the following are now proposed for purposes of reform. The recommendations are divided into two; the short term and the long term so that those areas which need urgent attention can be addressed with the urgency they deserve and the long term can be addressed progressively.

2.1.1 Short Term Recommendations

This paper has shown that the Authority is not well known and its functions not fully appreciated. It is proposed that in order for the citizenry to identify itself with the Authority and in so doing make it easier for people to report human rights violation, the Authority needs to be well known. In this regard the PPCA should engage in more sensitisation programmes and advertisements both in the print and electronic media. The PPCA can reach the populace by conducting radio programmes in the major tribes of the country. It can also carry out advertisements and discussion programmes on its functions and mandate. This will not only make the populace know the functions of the Authority but also enlighten them on its role in their lives.

Furthermore, it has been shown that in order for the Authority to carry out its mandate to uphold the rule of law, it needs to network with other law enforcement agencies. This is already provided for by law. However, there is need to effect this provision by enlightening police officers and other law enforcement agencies on their role in helping the Authority discharge its functions. This can be done by encouraging working relationship that aim at achieving the cause of justice by ensuring that one law enforcement agency performs an incidental task to that of the other. This will ensure that though the Authority is autonomous it will be supported by an adequately trained and informed network of law enforcement agencies and thereby helping discharge its mandate.

It was also shown that the PPCA is not adequately staffed. This makes the Authority unable to attend to many complaints in the country. It is thus proposed that as a matter of urgency the Authority should be adequately staffed in order to meet the demands of a growing population and a converse rise in human rights violation by the police. Connected to the above, the Authority should be given the mandate to employ independent investigators so as

to ensure that there is impartiality in the investigation process. This will also ensure that the complainants do not feel that there is some bias in the process.

2.1.2 Long Term Recommendations

Firstly, it has been shown that the Police Public Complaints Authority is not located in most parts of the country. In fact its offices are only in Lusaka and it only carries out periodic sessions in the other parts of country. It is proposed that the government should ensure that the Authority's offices are located in all provincial towns. When this is done it will enable the PPCA to attend to human rights violation complaints from the remote parts of the country. It will also make the Authority easily accessible by the citizenry who at present may not afford to come to Lusaka to register a complaint let alone follow it up to its final conclusion because of the financial costs involved.

Secondly, it was indicated that the PPCA is not adequately funded. It is proposed that the PPCA needs to be provided with the necessary and adequate financial, administrative and technical resources. When this is done it will reduce the administrative woes faced by the Authority such as lack of transport. This will also enable the Authority to meet the demands of its functions such as addressing the issue of sensitisation programmes and discussion programmes on its functions.

3.0 Conclusion

The PPCA occupies an important role in cross-cutting democratic and governance issues. It is contended that currently the PPCA is not performing accordingly because of the various challenges it is faced with. Its functions and mandate will improve and be efficient if it is supported by the above recommendations. If it is supported with the necessary human, technological and financial resources the Authority can be an efficient National Protective

Mechanism for human rights and a productive instrument of good governance and democracy.

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