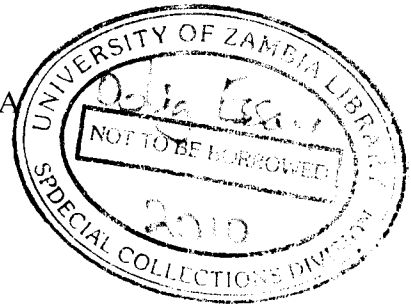


Title Page

AN APPRAISAL OF THE MANDATE OF THE POLICE PUBLIC COMPLAINTS
AUTHORITY (PPCA)

By

TIZYO MARY BULAKA



A dissertation Submitted to the University of Zambia in partial fulfillment of the Bachelor of
Laws Degree (LL.B).

THE UNIVERSITY OF ZAMBIA

LUSAKA

2010

Declaration

I hereby declare that this dissertation represents my own work and that it has not previously been submitted for a degree at the University of Zambia or another University

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Signature of Examiner

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Date of Approval

Abstract

The Police Public Complaints Authority (PPCA) is a national protection mechanism for human rights in Zambia. It was established in 1997 to investigate complaints against actions of the members of the Zambia Police Service (ZPS) that result in human rights violations. However, the PPCA has failed to fully implement its mandate in the past eight years. As a result, it has failed to put sufficient checks and balances on the members of the ZPS. Such has been attributed to various factors such as the legal, economic, political, administrative and historical factors. These have been held to have hampered the PPCA from fully implementing its mandate. Consequently, it has been held to be ineffective and inefficient. Thereby, there has been a continued increase in the human rights violations by the members of the ZPS. This calls for concerted efforts to improve the authority as an institution of good governance and rule of law. Much can be learnt from the developments at the Independent Complaints Directorate (ICD) as there are significant differences between the PPCA and the ICD. The ICD seems to have more muscle than the PPCA. Hence, there is need to bring out the essential features in that jurisdiction. Therefore, the Mung'omba Draft Constitution and the Fifth National Development Plan (FNDP) if adopted will have a positive impact on the mandate of the PPCA as it will eliminate some of the factors that are hampering the PPCA such as the legal, economic and administrative factors. Thus, one expects a PPCA that will be able to respond to the changing needs of Society.

Acknowledgement

I wish to thank my family for the encouragement and inspiration. The author also wishes to thank the Almighty God for the strength, perseverance and patience throughout this process. I must also record a significant and ending debt to Ms. Misoze Lwatula, who made many perspective and helpful comments on the dissertation (although of course, I must again absolve her from responsibilities for any errors, omissions, confusions or infelicities which may remain.

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Abbreviations

ACC	Admission Commission
DPP	Director of Public Prosecutions
FNDP	National Development Plan
HRC	Human Rights Commission
ICD	Internal Complaints Directorate
IG	Inspector General of Police
LRF	Law Resources Foundation
MOHA	Ministry of Home Affairs
NGO	Non-governmental Organisation
PPCA	Police Complaints Authority
SAPS	South African Police Service
UTH	University of the Witwatersrand Teaching Hospital
WB	White Paper
ZANIS	News and Information Services
ZIMT	Zimbabwe Independent Monitoring Team
ZPS	Zimbabwe Police Service

Chapter One

The Mandate of the PPCA

1.0 Introduction

The police are the most public manifestation of government authority. They have the legal power to use lethal force when necessary. They represent the front line in combating crime and enforcing laws, which makes holding them accountable more important. The good operation of the police is a governance issue. Thus, it is imperative to check that, the police are conforming to their professional standards as well as protecting the public from police misconduct.¹

The police have from way back acted with impunity and arbitrarily. There are various studies that have been conducted about police public relations from 1984 to 2007. These studies were primarily concerned with the operations of the ZPS, the role of the ZPS, the causes of police misconduct and the impact of police action on fundamental rights and freedoms.

In 1984, Sibasiku's study discussed the importance of holding the police accountable and the need to create a complaints authority in order to check the actions of the members of the ZPS. The Human rights violations by the police at that time were estimated at 90 percent.² It was reasonably foreseeable that the establishment of a special independent mechanism will reduce the number of human rights violations by the police. It would also create an informed ZPS and improve their conduct. Subsequently, 13 years later, the political detainees of the military coup alleged that they were tortured and pressure was exerted on the government to ensure that the police were put in check. Hence, in 1997, the PPCA was established to address the critical increase of human rights violations by the members of the ZPS.³

¹ J. Moonde (Investigator), in an Interview at the Human Rights Commission (HRC). Lusaka, 27 September 2009.

² M. Sibasiku, Policing the Police; In Research of Public Control over the Police, (1984). p. 31

³ Police Public Complaints Authority (PPCA), Annual Report. Lusaka, (2002). p. 1

Despite the establishment of the PPCA, Zambia's human rights record especially violations by the members of the ZPS, remained poor. The human rights problems included unlawful killings, torture of criminal suspects, arbitrary arrest and prolonged detention, arbitrary interference with privacy and corruption. These actions infringed on the right to life, liberty, privacy, property and freedom against torture, other cruel, inhuman and degrading treatment or punishment.⁴

Consequently, in 2004, Nakamba's study outlined the avenues available for police accountability. The study endorsed the PPCA as one of the avenues for police accountability in Zambia. The PPCA was seen as an important mechanism for ensuring that the members of the ZPS do not infringe upon the individual rights and freedoms as guaranteed under the Constitution and other international instruments such as the International Covenant on Civil and Political Rights (ICCPR).⁵

In 2004, the PPCA sought assistance from the ICD in order to improve its mandate having realised that the human rights problems had continued to quadruple. Immediate efforts were required as this began affecting the country economically. Aid was tied to Zambia's human rights record. The international community endorsed the PPCA as an institution of good governance, rule of law and as an important avenue for police accountability. The government should only ensure that it is fully implemented for it to work effectively and efficiently.⁶

In 2005, the Mung'omba Draft Constitution clausured the PPCA as one of the investigative commissions. Moreover, the principle of decentralisation under the FNDDP was adopted as part of the restructuring program at the PPCA. These have not yet been implemented. Will they bring changes that will improve the PPCA as a national protection mechanism in Zambia?

⁴ Ibid, p. 2

⁵ N. Nakamba. Prospects for Ideal Police Public Relations; The Role of the PPCA, (2004). 36

⁶ Human Rights Commission (HRC), National Report on the Periodic Universal Review. Lusaka, (2008). p. 15

Instead of the human rights violations reducing, the percentage quadrupled to 95 percent. In 2006, Mwila's study questioned the ability of the PPCA in putting sufficient checks and balances on the members of the ZPS. It endorsed that, the monitoring system was ineffective. There were too many inadequacies at the PPCA that contributed to the failures of the institution. Hence, the PPCA was not a solution to improving the human rights situation in Zambia. The study revealed that, the work of the PPCA was hampered by the lack of the full implementation of its mandate.⁷

It is observed that, the common ground for the studies undertaken is that, the critical increase in the human rights violations by the police is due to insufficient police accountability. In 2008, it was again revealed that there was a critical increase of human rights violations by the police despite the efforts undertaken to identify the cause of human rights violations in Zambia. This situation should have been gradually abetted following the establishment of the PPCA.⁸

Is the PPCA ineffective and inefficient such that it has failed to put checks and balances on the actions of the police? It was pointed out that the PPCA had failed in its mandate because it had failed to fully implement its mandate. The few reported complaints were pending before the authority. There was a backlog of complaints.⁹ On the other hand, imagine the chaos outside the authority. Therefore, what is the mandate of the PPCA midst this chaos?

One question to be asked is whether the PPCA should take the blame for the human rights violations by the police. To ascertain this, there is need to define the mandate of the PPCA. The evaluation will show the extent of the mandate. Is it broad or is it narrow? What is the correlation between the mandate of the PPCA and the human rights violations? It is also imperative to remove the veil and look at the impediments at the PPCA.

⁷ A. Mwila, *Police Brutality; Is the Establishment of the PPCA a Solution?* (2006). p. 34

⁸ Human Rights Commission (HRC), *State of Human Rights Report in Zambia*. Lusaka, (2008). p. 6

⁹ C. Mundia (Chairperson), in an interview at the Police Public Complaints Authority. Lusaka, 22 December 2009.

1.2 Statement of Problem

There has been a marked increase of human rights violations by the members of the ZPS. The PPCA was specifically established to investigate violations of human rights by the police in Zambia.¹⁰ On the other hand, the civil societies such as the Legal Resources Foundation (LRF) pursue such claims but their first priority is to seek compensation on behalf of the victim. Hence the government has continued to suffer financially by the numerous compensation cases.¹¹

Despite the establishment of the PPCA, the individual rights and freedoms have been continually violated by the members of the ZPS. The monitoring system has been declared ineffective as it has failed to provide sufficient checks and balances on the actions of the members of the ZPS. The police have been left to use their legal power arbitrarily and have continuously acted with impunity. The value of the individual rights and freedoms has been reduced as the police have continued to trample on the aforementioned.¹²

The authority has failed to fully implementing its mandate. Thereby, the police have been left to act with impunity and one ends up thinking that a police officer can do no wrong within the normal course of duty. The authority received 1895 cases of human rights violations between 2002 and 2008. This was evident in the subjection of individuals to prolonged inhuman and degrading treatment, arbitrary arrest, unlawful killings and unlawful detentions.¹³ One observes that, these actions infringed on the right to life, liberty, property, privacy and freedom against torture, other cruel, inhuman and degrading treatment or punishment.

However, only 143 complaints were finalised and 1716 complaints remained pending.

Consequently, there has been a backlog of cases at the authority due to the fact that the authority

¹⁰ Human Rights Commission (HRC), State of Human Rights Report in Zambia. Lusaka, (2007). p. 2

¹¹ Ibid, p. 15

¹² Human Rights Commission (HRC), National Report on the Periodic Universal Review. Lusaka, (2008). p. 15

¹³ Human Rights Commission (HRC), State of Human Rights Report in Zambia. Lusaka, (2007). p. 28

Declaration

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LRF	Law Reform Commission
MOHA	Ministry of Home Affairs
NGO	Non-Governmental Organisation
PPCA	Police Complaints Authority
SAPS	South African Police Service
UTH	University of the Witwatersrand Teaching Hospital
WB	Water Board
ZANIS	News and Information Services
ZIMT	Independent Monitoring Team
ZPS	Post Office Service

Chapter One

The Mandate of the PPCA

1.0 Introduction

The police are the most public manifestation of government authority. They have the legal power to use lethal force when necessary. They represent the front line in combating crime and enforcing laws, which makes holding them accountable more important. The good operation of the police is a governance issue. Thus, it is imperative to check that, the police are conforming to their professional standards as well as protecting the public from police misconduct.¹

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⁴ Ibid, p. 2

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It is observed that, the common ground for the studies undertaken is that, the critical increase in the human rights violations by the police is due to insufficient police accountability. In 2008, it was again revealed that there was a critical increase of human rights violations by the police despite the efforts undertaken to identify the cause of human rights violations in Zambia. This situation should have been gradually abetted following the establishment of the PPCA.⁸

Is the PPCA ineffective and inefficient such that it has failed to put checks and balances on the actions of the police? It was pointed out that the PPCA had failed in its mandate because it had failed to fully implement its mandate. The few reported complaints were pending before the authority. There was a backlog of complaints.⁹ On the other hand, imagine the chaos outside the authority. Therefore, what is the mandate of the PPCA midst this chaos?

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⁷ A. Mwila, *Police Brutality; Is the Establishment of the PPCA a Solution?* (2006). p. 34

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The authority has failed to fully implementing its mandate. Thereby, the police have been left to act with impunity and one ends up thinking that a police officer can do no wrong within the normal course of duty. The authority received 1895 cases of human rights violations between 2002 and 2008. This was evident in the subjection of individuals to prolonged inhuman and degrading treatment, arbitrary arrest, unlawful killings and unlawful detentions.¹³ One observes that, these actions infringed on the right to life, liberty, property, privacy and freedom against torture, other cruel, inhuman and degrading treatment or punishment.

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¹⁰ Human Rights Commission (HRC), State of Human Rights Report in Zambia. Lusaka, (2007). p. 2

¹¹ Ibid, p. 15

¹² Human Rights Commission (HRC), National Report on the Periodic Universal Review. Lusaka, (2008). p. 15

¹³ Human Rights Commission (HRC), State of Human Rights Report in Zambia. Lusaka, (2007). p. 28

has failed to conclude the complaints within its mandate.¹⁴ Thereby, the offenders were left at large and putting other citizens at the risk of the latter's brutal conduct. In the light of the human rights violations by the members of the ZPS, what then is the mandate of the authority? Since the PPCA has a role in protecting human rights in Zambia, it is imperative to define the confines of the mandate of the PPCA. It is also necessary to find out the factors hampering the PPCA from fully implementing its mandate.

1.3 Objectives of the Study

The specific objectives of this study are:

1. To define the mandate of the PPCA.
2. To compare the PPCA with the ICD.
3. To determine the effect of the Mung'omba Draft Constitution and the FNDP on the mandate of the PPCA.
4. To identify the factors hampering the full implementation of the mandate of the PPCA.

1.4 Research Questions;

1. What is the mandate of the PPCA?
2. What are the differences between the PPCA and the ICD?
3. What is meant by full implementation of mandate?
4. Is the PPCA effective and efficient?
5. What factors are hampering the PPCA in implementing its mandate?

¹⁴ Ibid, (2008). p. 2

6. What is the effect of the Mung'omba Draft Constitution and the FNDP on the mandate of the PPCA?

1.5 Significance of the study

The theoretical importance of this study is that, the authority has a significant role to play in the light of the human rights violations by the police in Zambia. In 1998, at the Paris Meeting, a good human rights record was a condition, upon which funding would be extended to Zambia.¹⁵ Therefore, there is need to determine the mandate of the PPCA and to ensure that the authority operates effectively and efficiently in order to serve the interests of society.

The Practical importance of this study is that, the authority is an important institution of good governance and rule of law. Thus, there is need to identify the impediments at the authority so as to recommend changes that may improve the authority as a national protection mechanism for human rights in Zambia.

1.6 Definitions of Concepts

- Authority means the Police Public Complaints Authority (PPCA).
- Directorate means the Independent Complaints Directorate (ICD).
- Draft Constitution means the Mung'omba Draft Constitution.
- Effective means being capable of producing the intended result or having a striking effect.
- Efficiency means the ability to accomplish the desired purpose.

¹⁵ Human Rights Commission (HRC), National Report on the Periodic Universal Review. Lusaka, (2008). p. 31

- High Court means the High Court for Zambia.
- Locus standi means the legal standing before an institution or formal court of law.
- Mandamus means an order granted by the formal courts compelling an authority to perform a particular act.
- Monitor means the act of observing human rights.
- Promote means the act of publicising human rights through various activities and reports.
- Protect means safeguarding human rights.
- Strict Sensu means not in the strict sense.
- Ultra Vires means contrary or inconsistent with the Law.

1.7 The Mandate of the PPCA

In 1997, 82 people were arrested and charged with treason or misprision of treason for participating in the military coup of October 28, 1997. The detainees alleged that, they were tortured. Thereafter, initial evidence of torture was established by the HRC of Zambia.¹⁶

In 1998, Zambia presented her case to the consultative group of bilateral and multilateral donors for financial assistance at the Paris Meeting. Amnesty International, Zambia Independent Monitoring Team (ZIMT) and Afronet petitioned the donors to tie aid to Zambia's human rights record.¹⁷ A week later the government announced that a special complaints tribunal would be established to receive complaints about offences especially against the operations of the ZPS.¹⁸

¹⁶ C. Mundia, Historical Background of the PPCA. Zambia News and Information Services (ZANIS), 20 May 1998.

¹⁷ Ibid, 20 May 1998.

¹⁸ C. Mundia, Historical Background of the PPCA. Zambia News and Information Services (ZANIS), 20 May 1998.

In 1999, the Zambia Police Service Act was adjusted by amendment number 14 of 1999. They included part XA, which provided a framework for the operations, functions, membership and procedures of the PPCA.¹⁹ Section 57B establishes an authority called the PPCA.²⁰ The authority began operations in 2002. It is located at Kent Building along Haile Sellaise Avenue in Lusaka.²¹

The authority is mandated to protect human rights, in particular civil and political rights in Zambia. It has the power to investigate actions that amount to serious injury or death in police custody or as a result of police actions.²² Serious injury is defined as a fracture, damage to an internal organ, laceration or unlawful carnal knowledge.²³ This definition is limited as it only envisages the freedom against torture and the right to life.

Firstly, article 15 of the Constitution prohibits torture and other cruel, inhuman and degrading treatment or punishment in absolute terms. The Constitution does not define torture.²⁴ However, Zambia has acceded to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. Article 1 defines torture as any act, by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person.²⁵

For example, Festus Nsofu was detained about September 2007 at Kalikiliki Police Post in Lusaka. He was severely beaten on his feet, legs, arms and body using a plank. He bled profusely from the wounds but instead of being allowed to receive medical attention, he was put in a cell and ordered to mop his blood. He sustained severe injuries resulting in his legs being broken.²⁶

¹⁹ Zambia Police Service Act, Cap. 107

²⁰ Ibid.

²¹ Police Public Complaints Authority (PPCA), Annual Report. Lusaka, (2005). p. 2

²² Zambia Police Service Act, Cap. 107, s. 57G (1)

²³ Ibid, 57A

²⁴ The Constitution of Zambia, Cap. 1

²⁵ Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 10 December 1984.

²⁶ Festus Nsofu v The Attorney General, State of Human Rights Report in Zambia. Lusaka, (2008). p. 89

This satisfies the definition of serious injury and in most cases the authority has assumed jurisdiction to investigate such complaints.

Secondly, the right to life is protected under article 12 of the Constitution. A person cannot be deprived of his or her life unless under the circumstances specified in the Constitution. For example, a person can be deprived of the right to life in exercise of a criminal punishment such as the death penalty.²⁷ Nevertheless, under international law, this right is non-derogable.²⁸ However, Zambia has not signed the Second Optional Protocol, which abolishes the imposition of the death penalty.²⁹

The police have continued to subject individuals to unlawful killings. For example, Gregory Kalezhi was killed in mysterious circumstances by the police. To date, there is no autopsy report to outline the details of the incident, though it is known that Kalezhi was unarmed when he was shot. It was argued that, he was deprived of his right to life. It did not fall under the exceptions permitted under the Constitution.³⁰ The authority certainly has jurisdiction of such cases.

However, it is observed that, the authority does investigate complaints that do not involve serious injury or death. One example is the right to liberty guaranteed under article 13 of the Constitution. A person cannot be arbitrarily deprived of his personal liberty. However, a person can be deprived for example, in the execution of a sentence or order of the court.³¹

The members of the ZPS have continued to subject individuals to prolonged detention and arbitrary arrest, which is an infringement of the right to liberty.³² For example, Monde Naluli was detained for three days at Kabwe Central Police Station as punishment for her child going

²⁷ The Constitution of Zambia, Cap,1

²⁸ International Covenant on Civil and Political Rights, 16 December 1966.

²⁹ Second Optional Protocol to the International Covenant on Civil and Political Rights, 15 December 1989, art. 1

³⁰ Gregory Kalezhi v The Attorney General, State of Human Rights Report in Zambia. Lusaka, (2008). p. 88

³¹ The Constitution of Zambia, Cap. 1

³² Human Rights Commission (HRC), State of Human Rights Report in Zambia. Lusaka, (2008). p. 28

missing. It was argued that, this arrest was arbitrary and amounted to unlawful detention. It was contrary to the exceptions given under the Constitution.³³ However, though this does not amount to death or serious injury, the PPCA has assumed jurisdiction over such cases.

Therefore, what is the basis of the mandate of the authority to receive complaints that do not amount to serious injury or death? The mischief at the time the PPCA was established was torture and unlawful killings. However, as human rights have developed, the police have continued to encroach on other areas of human rights such as the right to property, privacy or liberty. Thus, it has throughout the years assumed jurisdiction to protect civil and political rights in Zambia so long as the ZPS is involved.³⁴

According to section 57 H (1), an aggrieved person directly affected by police action or an association acting in the interest of its members or a person acting on behalf of the aggrieved person or body may lodge in a complaint with the authority or the principle officer of a district or the officer in charge of the police station or post or the Inspector General of Police (IG).³⁵ It is observed that, this is a broad concept of *locus standi* as it also covers class interest litigation, where individuals can bring an action as a class through one representative body.

A person, who does not fall in this class, has no *locus standi* before the authority. A person will not have standing if the complaint is lodged after two years of the occurrence of the incidence that gave rise to the complaint.³⁶ This provision does not provide exceptions when the victim can complain out of time. Therefore, a cause of action may be limited by time.

When the investigations are concluded, the authority then submits its finding, recommendations and directions to the Director of Public Prosecution (DPP), IG, the Anti Corruption Commission

³³ Monde Naluli v The Attorney General, State of Human Rights Report in Zambia. Lusaka, (2008). p. 87

³⁴ Police Public Complaints Authority (PPCA), Annual Report. Lusaka, (2008). p. 4

³⁵ Zambia Police Service Act, Cap. 107.

³⁶ *Ibid*, s. 57I

(ACC) or other relevant bodies or authorities for consideration of possible criminal prosecution, disciplinary action or other administrative actions respectively.³⁷ Where the authority directs the IG, ACC or relevant authorities, the latter must give effect to the directions of the former.³⁸

In the Media Case, the Supreme Court adopted the literal interpretation of the word recommendation. Recommendation entails that the relevant authority has the privilege to accept or reject. He or she is not duty bound to follow the recommendation. In the case of a direction, the relevant authority has no privilege to accept or reject the direction.³⁹ Thus, the PPCA cannot seek an order of *mandamus* compelling the relevant authority to implement the recommendation. However, it can seek *mandamus* to compel the relevant authority to follow the direction.

1.7 Methodology

This study commenced with desk research. The study reviewed legislation, various institutional reports and legal commentaries. The interviews and observations were also conducted. All the research objectives have been achieved and the research questions have been answered. The Analysis is largely based on the observations drawn from primary and secondary data.

1.8 Limitations of the Study

Firstly, the authority has a poor database. There were inconsistencies between the statistics contained in the registers and those in the annual reports. Some registers such as the 2007 and 2008 were missing. Consequently, the statistics set out in the annual reports were used for the purpose of this study as that is what was presented to the Parliament of Zambia.

³⁷ Zambia Police Service Act, Cap. 107, s. 57G (1)

³⁸ Ibid, s. 57G (2)

³⁹ SCZ No. 28 of 2008.

Lastly, the members of the authority were hard to find since they only come in session. Their contact details are held in confidence. Thus, not many interviews were conducted. The problems posed a clog on the researcher as the data might not have been obtained at the appropriate time.

1.9 Chapter Outline

Chapter two discusses the similarities and differences between the PPCA and the ICD. It brings out the developments in the ICD that are not present in the PPCA. This is done in order that the PPCA can learn and take advantage of some of the developments at the ICD.

Chapter three discusses the effect of the Mung’omba Draft Constitution and the principle of decentralisation under the FNDP on the mandate of the PPCA. The aim is to determine whether or not the Draft Constitution and the principle of decentralisation has a significant impact and may contribute to the effectiveness and efficiency of the PPCA.

Chapter four analyses the factors that are hampering the PPCA from fully implementing its mandate between 2002 and 2008. It discusses the theoretical and practical reasons why the PPCA has failed to fully implement its mandate during that period.

Chapter five gives a summary of the whole study with reference to the research findings and contributions. It also provides the recommendations for future work.

2.0 Conclusion

In conclusion, this is an introductory chapter. It has laid foundation for the subsequent chapters. The thrust of this study is the mandate of the PPCA, which has been set out in this chapter. The chapter outline shows the correlation between this chapter and the subsequent chapters. The subsequent chapters will be analysed with reference to this chapter.

Chapter Two

A Comparative Study of the PPCA and the ICD

2.0 Introduction

The main objective of this chapter is to compare and contrast the PPCA and the ICD. It begins with the background of the ICD. It also discusses the structure and the mandate of the ICD for purposes of comparing the two institutions. The aim is to bring out the developments in that jurisdiction so as to benefit and improve the PPCA.

2.1 Background of the ICD

In 1993, South Africa adopted an Interim Constitution, which provided for the establishment of an independent mechanism with the object of ensuring that complaints in respect of offences and misconduct allegedly committed by the members of the South African Police Service (SAPS) are investigated.⁴⁰ Thereafter, in 1995, South Africa enacted the South African Police Service Act, which provides a framework for the ICD.⁴¹ The ICD began operations in April 1997.⁴² It is structured at both the national and provincial level.⁴³ It has a central office in Pretoria and in each of the nine provinces that is; Mpumalanga, Gauteng, Eastern Cape, North West, Western Cape, Limpopo, Northern Cape, Free State and KwaZulu Natal there is a provincial office.⁴⁴

2.2 Structure of the ICD

The head of the directorate is an executive director, who is nominated by the Minister of Safety and Security in consultation with the parliamentary committee. The director serves for a period

⁴⁰ South Africa- Interim Constitution, Act 200 of 1993, s. 222. This is now provided for under section 222 of the 1996 Constitution.

⁴¹ Act No. 68 of 1996, s. 51 (1a)

⁴² Independent Complaints Directorate (ICD), Annual Report. Pretoria, (1997/1998). p. 1

⁴³ South African Police Service, Act No. 68 of 1996, s. 51 (1a)

⁴⁴ Independent Complaints Directorate (ICD), Annual Report. Pretoria, (2007/2008). p. 1

not exceeding five years, which is subject to reappointment for a further like period.⁴⁵ The ICD also has the personnel, which consist of persons appointed by the director in consultation with the Minister of Safety and Security subject to the laws governing the public service.⁴⁶

It also has the program manager for investigations, information management, research and the chief financial officer. It also has the senior manager for information systems, legal services and human resource management respectively. In addition, every provincial structure has a provincial head.⁴⁷ Currently, the directorate has 270 investigators. The investigators are distributed throughout the nine provinces of South Africa.⁴⁸

2.3 The Mandate of the ICD

The ICD is mandated to protect human rights, particularly civil and political rights in South Africa. It must ensure that the complaints in respect of offences and misconduct allegedly committed by members of the SAPS are investigated in an effective and efficient manner.⁴⁹ It protects the public from the members of the SAPS, who are acting with impunity and arbitrarily. Consequently, it helps the victim claim his or her remedy against any member of the SAPS outside the formal courts. The punishment of the offender is in the interest of society and the individual is directly redressed by the award of compensation.⁵⁰

The complaints are classified into five categories. The class I complaints allege that, the death occurred, while the person was in police custody or as a result of police action. This encapsulates that, there has been an infringement with the right to life. The class II complaints allege that, a member of the SAPS committed arson or assault with intent to cause grievous bodily harm. The

⁴⁵ South African Police Service, Act No. 68 of 1996, s. 51 (1)

⁴⁶ South African Police Service, Act No. 68 of 1996, s. 52 (1-2)

⁴⁷ Independent Complaints Directorate (ICD), Annual Report. Pretoria, (2007/2008). p. ii

⁴⁸ Ibid, p. 5

⁴⁹ 1996.

⁵⁰ Independent Complaints Directorate (ICD), Annual Report. Lusaka, (2007/2008). p. 6

serious injury must have been caused while a person was still in police custody or as a result of police action. This encapsulates that, there is an infringement with the freedom from torture.⁵¹

The class III complaints allege that a member of the SAPS committed forgery, fraud, indecent assault, perjury, public violence, malicious damage to property, participant in a criminal syndicate, possession of stolen property, rape, robbery, corruption, sodomy, theft, torture, inciting conspiracy or an attempt to commit any of the mentioned offences. This encapsulates that, there has been an infringement with the right to property, liberty or privacy or freedom from torture. The class IV and V complaints are those that are outside the scope of the ICD.⁵²

Consequently, the ICD has policy guidelines in order to avoid duplication of services and to ensure the effective and efficient use of the limited resources available to the ICD. Firstly, the complaints, which should more properly be dealt with by another process or where an appropriate remedy exists, are not accepted. This includes complaints already being dealt with by another institution.

Secondly, the complaints, which occurred prior to the opening of the institution, are not accepted. Thirdly, the ICD does not accept complaints relating to incidents, which occurred more than a year prior to them being reported.⁵³ Hence, the cause of action may be barred by time.

Fourthly, complaints relating to the effectiveness of or the services provided by the SAPS or the management style or abilities of any member or to the primary conduct of persons other than members of the SAPS are not accepted.⁵⁴

Furthermore, the allegations, in which a critical factual gap exists or those of a frivolous or vexatious or tactical nature are not accepted. Lastly, the complaints closely associated with the

⁵¹ A. Mackenzie, Classes of Complaints. www.icd.gov.zm, 29 November 2009.

⁵² Ibid, 29 November 2009.

⁵³ A. Mackenzie, Classes of Complaints. www.icd.gov.zm, 29 November 2009.

⁵⁴ Ibid, 29 November 2009.

pending of criminal proceedings or, which do not impact upon any member of the public or in which there is no compelling public interests requiring the intervention of the ICD are not accepted.⁵⁵

One observes that, the standing of the complaint before the directorate is limited in these circumstances but this does not stop the victim from petitioning before the formal courts or any other institution. Moreover, any person, victim, witness or representative; non-governmental organisation (NGO) and community based organisation may lodge in the complaint.⁵⁶ The *locus standi* is not limited to an individual. It also encapsulates class interest litigation.

Thereafter, the directorate may upon receipt of the complaint investigate any misconduct or offence committed by any member of the SAPS or any death in police custody or as a result of police action. It may, where necessary refer such complaint to the commissioner of police.⁵⁷

The investigations of complaints in respect of deaths in police custody and deaths (class I), where there is no police involvement must be finalised within 30 working days. Those in respect of deaths in police custody and deaths (class I), where there is police involvement and class III complaints must be finalised within 120 working days.⁵⁸ Therefore, the directorate can be compelled to complete its investigations within the prescribed time if it does not do so. This is important because the complaints will be concluded in good time and the remedies will be effective to all the interested parties.

Thereon, the director submits the results of the investigations to the Attorney General for his or her decision.⁵⁹ Thereafter, the director also makes recommendations to the commissioner

⁵⁵ A., Mackenzie, Classes of Complaints. www.icd.gov.zm, 29 November 2009.

⁵⁶ Ibid, 29 November 2009.

⁵⁷ South African Police Service, Act No. 68 of 1996, s. 53 (2a-b)

⁵⁸ Independent Complaints Directorate (ICD), Annual Report. Pretoria, (2007/2008). p. 15

⁵⁹ South African Police Service, Act No. 68 of 1996, s. 53 (g)

concerned, to the Minister of Safety and Security or a member of the executive council, which he or she deems necessary regarding any matter of the investigations by the directorate.⁶⁰ It is observed that, the recommendation is not binding on those authorities.

The ICD is also mandated to promote and monitor human rights in South Africa. Hence, it undertakes activities, which are intended to observe, advance and ensure that human rights are guaranteed, observed, fulfilled and respected.⁶¹ It merely educates, sensitises and calls for concerted efforts from the state to repair the human rights condition in the country. For instance in 2004, it organised an all Africa conference, where all institutions such as the PPCA were invited. The directorate was merely speaking out in order to lobby African governments to improve the human rights conditions in their respective countries.⁶²

2.4 Similarities between the PPCA and the ICD

Several similarities have been observed between the PPCA and the ICD. Firstly, they are both human rights watchdog institutions. They are critical institutions of good governance, rule of law and constitutionalism as the guarantee of human rights is a vital issue of the aforementioned. Thus, they put checks and balances on the actions of the police so that the latter should not act with impunity or arbitrarily. Their mandate is in the interest of society as they lobby for a society that guarantees, observes, respects and fulfills human rights.⁶³

Secondly, both institutions have a public service purpose. They sustain the interaction between the police and the public so that the latter does not live in fear and intimidation of the former.

⁶⁰ Ibid, s. 53 (h)
⁶¹ Independent Complaints Directorate (ICD), Annual Report. Pretoria, (2007/2008). p. 2
⁶² A. Mackenzie, Classes of Complaints. www.icd.gov.zm, 29 November 2009.
⁶³ J. Moonde (Investigator), in an Interview at the Human Rights Commission (HRC). Lusaka, 27 September 2009.

Thus, the service rendered by both institutions is free. It is for any individual in that society, whose rights and freedoms have been impaired.⁶⁴

Thirdly, both institutions operate within the legal framework governing the police service of their respective countries. Therefore, the PPCA is governed by part XA of the Zambia Police Service Act,⁶⁵ whereas the ICD is governed under chapter 10 of the South African Police Service Act.⁶⁶

Fourthly, both institutions are autonomous and are separate from the organs of the state (executive, legislature and judiciary). They have a separate legal personality or existence from the members of the institution and other agencies of the state. They can sue and be sued. The members of the institutions do not act in their personal capacity. They act as an institution.⁶⁷

Fifthly, it is observed that, both institutions are mandated to protect human rights in their respective countries. These include the right to life, property, privacy, liberty freedom from slavery and servitude and freedom from torture, cruel, inhuman and degrading treatment just to mention a few. These are civil and political rights enshrined in the Constitutions, conventions and other international instruments.

The rights of the victims are enforced outside the formal court system. Enforcement entails that, in the event that the human rights are infringed an effective remedy or an award should be rendered to the victim. They ensure that the violation in question is exposed so that the victim has recourse or legal action against the police officer in question.⁶⁸

⁶⁴ Ibid.

⁶⁵ Cap. 107

⁶⁶ Act No. 68 of 1996

⁶⁷ J. Moonde (Investigator), in an Interview at the Human Rights Commission (HRC). Lusaka 27 September 2009.

⁶⁸ Ibid.

In addition, it is observed that, both institutions have the power to make recommendations. The nature of recommendations connotes privilege. Thus, the relevant bodies have the privilege to accept or reject those recommendations and have no duty to effect the recommendations.

2.5 Differences between the PPCA and the ICD

The PPCA differs from the ICD in a lot of ways. Firstly, the PPCA is not constitutionally recognised, whereas the ICD is constitutionally recognised. Its basis is found under section 222 of the South African Constitution.⁶⁹

Nonetheless, the Mung'omba Draft Constitution, which is currently under discussion, has incorporated the PPCA as one of the Public Service Commissions in Zambia.⁷⁰ Therefore, if that provision is adopted at the current National Constitution Conference (NCC), the PPCA will be constitutionally entrenched.

Secondly, the functions of the ICD are funded by money appropriated by parliament.⁷¹ The executive director is the accounting officer charged with the responsibility of accounting for all the money appropriated by parliament for the performance of the functions of the directorate.⁷² By contrast, the Zambia Police Service Act is silent on the issue of appropriation. The PPCA receives funding through the Ministry of Home Affairs (MOHA).⁷³

Thirdly, the PPCA only has one central office in Lusaka.⁷⁴ Therefore, accessibility is a problem and it is very costly in terms of travelling and time. However, it usually employs the aid of the officer in charge of a police station or post or the IG to help the former with the receipt of the

⁶⁹ 1996

⁷⁰ Mung'omba Constitution Review Commission, Mung'omba Draft Constitution. (2005), Part XIV

⁷¹ South African Police Service Act, No. 68 of 1996, s. 52 (3)

⁷² Ibid, s. 52 (4)

⁷³ Police Public Complaints Authority (PPCA), Annual Report. Lusaka, (2008). p. 3

⁷⁴ Ibid, p. 1

complaints.⁷⁵ This portrays the ZPS as though it is part and parcel of the authority. Confusion will eventually emerge between the PPCA and the ZPS.

By contrast, the ICD has both a national and provincial structure. The SAPS has no role in the receipt of complaints as it will be deemed as an interference with the Mandate of the ICD under section 50 (2) of the South African Police Service Act.⁷⁶ The complaints are directly reported to the ICD either by visiting the national office or the provincial office or calling the toll free line, which is 24 hours effective.⁷⁷ In addition, the ICD has a website. Therefore, the issue of accessibility is not a controversy and the burden of costs on the victim is highly reduced.

Fourthly, the ICD has established various departments to deal with several issues. It has departments for investigations, research, information systems, legal services, finance and administration.⁷⁸ By contrast, the PPCA has no such departments. It is still undergoing a restructuring program since 2002.⁷⁹ When such departments will be introduced, no one knows.

Fifthly, the ICD has more man power than the PPCA. The latter only has five members to carry out its mandate.⁸⁰ By contrast, the former has about 270 investigators, provincial heads, the executive director and departmental heads.⁸¹ This is because the personnel of the directorate are specifically provided for under section 53 (b) of the South African Police Service Act,⁸² whereas the Zambia Police Service Act makes no provision for personnel for the PPCA. In addition, the members of the PPCA are part time,⁸³ whereas the personnel and all members of the ICD are full

⁷⁵ Zambia Police Service Act, Cap. 107

⁷⁶ Act No. 68 of 1996

⁷⁷ www.icd.gov.zm, 29 November 2009.

⁷⁸ Independent Complaints Directorate (ICD), Annual Report. Pretoria, (2007/2008). p. iii

⁷⁹ Police Public Complaints Authority (ICD), Annual Report. Lusaka, (2008). p. 2

⁸⁰ Ibid, p.1

⁸¹ Independent Complaints Directorate (ICD), Annual Report. Pretoria, (2007/2008). P. iii

⁸² Act No. 68 of 1996.

⁸³ Zambia Police Service Act, Cap. 107, s. 57C

time.⁸⁴ This is observed from the fact that, there is no tenure of office for the personnel of the ICD except in respect of the director. They serve permanently.

Sixthly, the PPCA has a limited mandate of protecting human rights. It is not mandated to promote and monitor human rights as that has been left as the reserve of the HRC of Zambia.⁸⁵

By contrast, the ICD is mandated to promote and monitor human rights. It undertakes various activities to ensure that civil and political rights are guaranteed, observed, respected and fulfilled. It has the mandate to organise workshops, conferences with the purpose of educating and sensitising the people on human rights.

Furthermore, the PPCA does not have a specific categorisation of complaints. The Act merely states that, the authority may investigate any complaint that alleges serious injury or death in police custody or as a result of police action.⁸⁶ According to this, most complaints will be outside the scope of the PPCA. So how does the authority assume jurisdiction of complaints that do not amount to serious injury or death? One can challenge the legality of this. This requires judicial scrutiny.

By contrast, the ICD has categorised complaints into classes that is, five categories of complaints.⁸⁷ This is in furtherance of the attribute that the law must be simple. Even the common man is able to understand his or her complaint because it is broken down into something that an ordinary person can understand. It eliminates any conflicts in powers especially, where there are other human rights institutions in the country such as the HRC.

Moreover, the ICD makes this even clearer by having policy guidelines to avoid any duplication of services and to make effective use of the limited resources available. Thus, it is clear as to

⁸⁴ South African Police Service, Act No. 68 of 1996, s.53 (b)

⁸⁵ Zambia Police Service Act, Cap. 107, s.57H

⁸⁶ Ibid, s.57A

⁸⁷ www.icd.gov.zm, 22 November 2009.

what type of complaints the ICD deals with and what it does not deal with. It avoids duplicating the works of the HRC in South Africa and other human rights agencies. By contrast, the PPCA has no policy guidelines. The danger is that it may be duplicating efforts of the HRC in Zambia.

The ICD also has a strategic plan and a time frame, within which to complete investigations, how many number of cases should be disposed and how to monitor their implementation. For example, the investigations for the class I complaints, which involve police action, must be completed within 120 working days.⁸⁸ By contrast, the PPCA has no strategic plan and no time frame, within which to complete the investigations. The PPCA sits when the chairperson determines. It usually sits sessionally.⁸⁹

In addition, the ICD receives more complaints than the PPCA. For example in the year 2007/2008, it received 5830 complaints and finalised at least 2571 complaints⁹⁰ whereas the PPCA only received 211 complaints and only finalised nine.⁹¹ This entails that, there are more complaints of human rights violations in South Africa than Zambia. In Zambia, there may be a danger of concealed human rights violations by the police.

2.6 Conclusion

In conclusion, this chapter considered the similarities and distinctions between PPCA and the ICD. They are both institutions of good governance, rule of law and constitutionalism as they put checks and balances on the actions of the members of the ZPS and the SAPS respectively. Objectively, they undertake to protect human rights. One of the major differences is that the ICD has constitutional recognition and the mandate to promote and monitor human rights in South Africa, whereas the PPCA does not.

⁸⁸ Independent Complaint Directorate (ICD), Annual Report. Pretoria, (2007/2008). p. 15

⁸⁹ Zambia Police Service Act, Cap. 107

⁹⁰ Independent Complaints Directorate (ICD), Annual Report. Pretoria, (2007/2008). p. 81

⁹¹ Police Public Complaints Authority (PPCA), Annual Report. Lusaka, (2008). p. 2

Chapter Three

The Effect of the Mung'omba Draft Constitution and FNDP on the Mandate of the PPCA.

3.0 Introduction

The main objective of this chapter is to determine whether articles 277 to 281 of the Mung'omba Draft Constitution⁹² and the principle of decentralisation under the FNDP has a positive effect on the mandate of the PPCA as a national protection mechanism for human rights in Zambia. This chapter begins with the discussion of articles 277 to 281 of the Draft Constitution.⁹³ This chapter also discusses the principle of 'decentralisation' under the FNDP.

3.1 The Mung'omba Draft Constitution

It is observed that, the PPCA has no constitutional recognition. Among other Commissions, article 277 of the Draft Constitution establishes the PPCA as an investigative commission.⁹⁴ Thus, parliament is charged with the responsibility of enacting the Police Public Complaints Commission Act, which shall provide for the functions, compositions, tenure of office, procedures, operations, administration, finances and financial management of the commission.⁹⁵

The members of the commission shall not be less than three but not more than seven. They shall be appointed by the president subject to ratification by the National Assembly. The commission shall have the power to appoint its own staff and a chief executive officer.⁹⁶

According to article 280 (2), the commission has the power to initiate its own investigations on the information available to it. The commission may refer matters within its powers to the appropriate state organ or institution for action. It may receive complaints from any person or

⁹² Mung'omba Constitution Review Commission, Mung'omba Draft Constitution, (2005).

⁹³ Ibid.

⁹⁴ Mung'omba Constitution Review Commission, Mung'omba Draft Constitution, (2005). art. 277

⁹⁵ Ibid, art. 278

⁹⁶ Mung'omba Constitution Review Commission, Mung'omba Draft Constitution, (2005). art. 280 (1)

group of persons on matters within its own powers. The commission shall submit annual reports to the National Assembly on its activities and any other report as approved by an Act of Parliament.⁹⁷

In the performance of its functions, the commission shall not be subject to the control or direction of any person or authority. The commission shall be provided with adequate funding to enable it to effectively carry out its mandate.⁹⁸

Firstly, it is observed that, the Draft Constitution if adopted shall transform the PPCA into a commission established under the Constitution. Therefore, its rights and obligations will be as per the Constitution. The legal framework is important because it gives the PPCA actual and ostensible authority to carry out its mandate. It has actual authority to protect human rights. Thereby, it has ostensible authority to do an act that falls within the scope of its mandate.⁹⁹ One may argue that, the act of promoting and monitoring human rights is incidental and inevitable for the protection of human rights. Thus, on this premise the authority may assume the jurisdiction to promote and monitor human rights in Zambia.

Therefore, if the authority exceeds its mandate (by acting outside the ambits of the actual and ostensible authority), it is acting illegally. Consequently, as a constitutional institution, the *ultra vires* principle will apply. Then, a person can go to court and ask the court to review the decision of the authority and the courts will have the power to declare that decision of no effect.¹⁰⁰

Secondly, it is observed that, save articles 280 (2) and 281,¹⁰¹ the provisions are definitive as opposed to instructive. They shall if adopted, have little impact on the mandate of the PPCA.

⁹⁷ Mung'omba Constitution Review Commission, Mung'omba Draft Constitution, (2005).

⁹⁸ *Ibid*, art. 281 (1-3)

⁹⁹ Zambia Police Service Act, Cap. 107, s. 57G

¹⁰⁰ C. Mundia (Chairperson), in an Interview at the Police Public Complaints Authority (PPCA). Lusaka, 22 December 2009.

¹⁰¹ Mung'omba Constitution Review Commission, Mung'omba Draft Constitution, (2005).

They shall amount to a mere legal warrant authorising the PPCA to carry out its mandate. The Law is a means of achieving an end and not an end itself. Therefore, the law can bring about the desired results if it is instructive and not only definitive. By instructive, it means that it not only defines the parameters but also outlines the variables that are necessary to achieve that objective. By definitive, it means it is merely a warrant that defines the parameters.¹⁰²

Usually there is a difference between the black letter law and the law in action (practice). The Black letter law arms an institution with the power to investigate, enforce or protect human rights.¹⁰³ However, there is usually a problem when it comes to undertaking that power. The people understand what the law is when they see what the law does. There is a move towards interpreting the effectiveness and efficiency of the law if it is actionable.¹⁰⁴

Thus, it is observed that, the Draft Constitution is suggesting changes that will affect the legal framework as opposed to the law in action. Therefore, it will not be able to reconcile the differences between the black letter law and the law in action.

However, one observes that, the Draft Constitution is attempting to correct a historical past of the PPCA. The PPCA is misplaced under the Zambia Police Service Act.¹⁰⁵ It is portrayed as a mechanism of the ZPS yet it is a separate institution with greater autonomy. Hence, the Draft Constitution if adopted shall establish the PPCA that is outside the ambits of the ZPS.

Nonetheless, the Draft Constitution also has a significant impact on the mandate of the PPCA.

Firstly, article 281 which provides that, the commission shall be adequately funded, has a significant effect on the mandate of the PPCA.¹⁰⁶ In order to bring about the desired results and enhance its competence, the PPCA needs adequate funding. It is observed that, the scope of

¹⁰² I. Macleod, Legal Theory, 4th edition. (London: Palgrave Macmillan, 2007). p. 1

¹⁰³ Zambia Police Service Act, Cap. 107, s. 57B

¹⁰⁴ J. Moonde (Investigator), in an Interview at Human Rights Commission (HRC). Lusaka, 19 September 2009.

¹⁰⁵ Cap. 107

¹⁰⁶ Mung'omba Constitution Review Commission, Mung'omba Draft Constitution, (2005).

human rights is vast and sophisticated. The level of technology and skill matters. Human rights are at the heart and lips of every state. The nature of protection is significant. Protecting human rights is not cheap. It has a high expenditure. It is a campaign as vast as the HIV/IDS campaign. It affects every institution of society such as the family, school, church, hospital or work place.

In order to produce the desired results in this field, huge sums of money are required to carry out human rights campaigns, conferences, workshops and investigations. Expertise is needed. The Investigations and research departments are needed. Proper administration is required. Such requires adequate, prompt and effective funding. The aim is to promote a continuous process of human rights so as to respond to the changing needs of society. Thus, it will be able to contribute its skill to the protection of human rights in Zambia.

Secondly, article 280 also has a positive impact on the mandate of the PPCA.¹⁰⁷ At present, the PPCA does not move on its own motion. The concerned victim or representative of the victim has to move the authority so that it can investigate that complaint. Therefore, there are so many human rights violations that have remained unreported. The effect of article 280 (2) is to mandate the authority to move on its own motion. As a result, more human rights violations will be exposed and investigated. There is a possibility that the authority will have more complaints in its hands than it has faced in the last eight years.

Lastly, It is possible under article 280 (2) for the PPCA to promote and monitor human rights in Zambia.¹⁰⁸ It provides that, the authority can submit a report on any matter as mandated by an Act of Parliament. This is an open ended provision. So long as there is a statute for example, empowering the PPCA to monitor domestic violence in Zambia, it will be deemed as having the mandate to do so. Thus, monitoring and promoting human rights is not only through activities

¹⁰⁷ Ibid.

¹⁰⁸ Mung'omba Constitution Review Commission, Mung'omba Draft Constitution, (2005).

such as workshops and conferences, it can also be through reports or various research papers on the notion of human rights. Under this article, there is a possibility of redefining and expanding the mandate of the PPCA.

3.2 The principle of decentralisation (The FNDP)

The FNDP was adopted in 2005 by the Ministry of Finance. It is a developmental program for the year 2006 to 2010. It is broadly based on wealth and job creation through citizenry participation and technological advancement. One fundamental principle of the FNDP that is of relevance to the PPCA is the principle of decentralisation.¹⁰⁹

This entails the distribution of responsibilities and powers of administration. Instead of an institution operating in one central office, it opens up other provincial or district offices that will be convenient to the public.¹¹⁰ For example, supposedly health care was centralised at the University Teaching hospital (UTH), it would entail that people from all over the country would have to travel long distances to access health service. Thus, the notion of decentralisation entails the opening up of health services in every province or district so that the public can have access.

Decentralisation has a direct and positive impact on the mandate of the PPCA. Firstly, if the PPCA is decentralised by this year, the result is that there will be a structure at each provincial level. That structure will require experts. Those experts will operate at all levels of the PPCA structures. Consequently, there will be specialisation. Each office will operate according to its competence and will take less time on the work within its mandate.

The Personnel does not need to put their minds to the number of cases at their disposal. Regard should be had to providing an expedient and equitable service to the public. The decentralisation

¹⁰⁹ Ministry of Finance, Fifth National Development Plan (FNDP). Lusaka, (2006-2010). p. ii

¹¹⁰ *Ibid.* p. ii

of the PPCA will entail the establishment of vast personnel. This will bring about the division of responsibilities. Therefore, the quality unlike the quantity of the personnel will have a greater influence. The quality of the personnel is something that comes with decentralisation. The mandate of the PPCA will be distributed in each and every province or district of the country.

By contrast, when work is centralised, the quality of the work is not greatly enhanced. There are dangers of doing unsatisfactory work. Decentralisation requires the best of everyone. One needs to produce the results because he or she is accountable to the institution. In turn, the institution is accountable to the taxpayers because it runs with public funds withdrawn from the treasury.

Secondly, outside the institution, decentralisation is very important to the public. It serves on costs. The People do not have to travel long distances to lodge their complaints. It also serves on time. The time a person would have taken travelling, he or she would have already lodged in a complaint and gone back to his or her personal business.

In addition, decentralisation will also increase the number of complaints received by the authority as people will no longer have an excuse for not reporting their problem. It will also become imperative to stop the public from lodging in complaints with the officer in charge or the IG as there will be an office in each province.¹¹¹ The People may be scared to report with the aforementioned as they may protect the erring police officer but if the authority embraces the concept of decentralisation, there will be no need to make the police part and parcel of the process. Hence, it will build the confidence of the people over the PPCA.

¹¹¹ C. Mundia (Chairperson), in an Interview at the Police Public Complaints Authority (PPCA). Lusaka, 22 December 2009.

3.3 Conclusion

In Conclusion, this chapter began with the discussion of articles 277 to 281 of the Draft Constitution. The chapter also discussed the principle of decentralisation under the FNDDP. It was observed that adequate, prompt and effective funding is important for the PPCA as an institution that protects human rights. The nature of human rights is regarded as an expensive campaign requiring expertise and technology, which is usually expensive. Furthermore, the PPCA established in such a manner will have the mandate to move on its own motion and it will also have the mandate to promote and monitor human rights in Zambia. Moreover, decentralisation has a direct impact as it brings forth specialisation and division of labour. It promotes quality personnel and would be less costly on the public. It is an effective way of capturing human rights violations by the members of the ZPS.

Chapter Four

Factors Hampering the PPCA from Fully Implementing its Mandate.

4.0 Introduction

The main objective of this chapter is to identify and analyse the factors hampering the PPCA from fully implementing its mandate. This chapter begins with a discussion on the implementation of mandate. It also discusses whether or not the PPCA is effective and efficient. This chapter then discusses the factors hampering the PPCA from fully implementing its mandate.

4.1 Implementation

The PPCA is mandated to protect human rights from interference by the members of the ZPS.¹¹² Thus, the authority ought to complete all the work within its hands and ensure that equitable justice is rendered to the interested parties.¹¹³

The authority received a total of 1895 complaints throughout the entire country between 2002 and 2008. These included police brutality, unlawful detention and arbitrary arrest. 35 complaints were referred to other institutions and 143 complaints were finalised. 1716 complaints are pending till to date.¹¹⁴ Therefore, the phrase ‘fully implementing its mandate’ entails the act of concluding complaints and ensuring that the decision is given legal effect.¹¹⁵ From the cited statistics, the authority cannot be said to be fully implementing its mandate. Over a period of eight years, it has failed to complete at least half of those cases. As a result, it cannot be said to be effective and efficient.

¹¹² Zambia Police Service Act, Cap. 107, s. 57G (1)

¹¹³ C. Mundia (Chairperson), in an Interview at the Police Public Complaints Authority (PPCA). Lusaka, 22 December 2009.

¹¹⁴ Police Public Complaints Authority (PPCA), *Annual Report*. Lusaka, (2008). p. 2

¹¹⁵ J. Moonde (Investigator), in an Interview at the Human Rights Commission (HRC). Lusaka, 27 September 2009.

Firstly, it is ineffective because it has no striking effect or it is not exhibiting the capability of producing the intended results. The intended result is that human rights cases brought before the authority must be investigated concluded and implemented.¹¹⁶ Hence, there is nothing effective about 1716 pending complaints. The striking effect is negative as opposed to positive to the heart and the image of the authority. It is a sign that there is an institutional breakdown.

Secondly, the authority is inefficient because its competence or ability to accomplish the desired purpose is negated. When one looks at the 1716 pending complaints over a period of eight years, it is unlikely that one would conclude that the authority has the ability to investigate, conclude complaints and ensure that they are given legal effect.

The life of an institution is not dependent on how many cases it receives but what results it produces. Depending on its performance, the state will determine whether to support it or abet the operations. Consequently, one may argue that the authority has no tooth and is a waste of public funds. Thereby, if it did not exist, no damage would be done to the society because at present it has no striking effect.

On the other hand, one might argue that it is 'better something than nothing.' The fact that the authority is able to investigate and conclude 143 cases is a sign that it has the ability or muscle or competence to bring about the desired results. 'Justice delayed is not justice denied.' It is merely a postponement of redress to a later date. Therefore, when the authority investigates and concludes the complaints, equitable or substantive justice is assured to the interested parties and thereby, meeting the legitimate expectations of the parties.

¹¹⁶ Zambia Police Service Act, Cap 107, s. 57G (1)

However, that should not be an excuse for the shady works that the authority has done so far. The cause of this ineffectiveness and inefficiency must be identified. Thereon, mechanisms should be put in place to remedy the mischief at hand.

4.2 Factors Hampering the PPCA from Fully Implementing its Mandate

These factors are obstacles or hindrances to the authority. They contribute in making the authority ineffective and inefficient. These factors are direct or indirect, internal or external. When a factor is referred to as direct, it has a manifest effect on the authority. Whereas, when a factor is indirect, it has a latent effect on the authority. What determines whether it is a direct or indirect depends on whether it is external or internal. External factors are those that operate from outside the authority. Internal factors are those operating within the authority.¹¹⁷

(a) Historical Factor

This is a direct and internal factor. It should be understood in the context, in which the authority has evolved as an institution of human rights protection in Zambia. In 2002, it received one complaint. In 2003, it received 369 complaints and 82 complaints were finalised. In 2004, the authority received 417 complaints and finalised 14 complaints. In 2005, it received 380 complaints and finalised 14 complaints. In 2006, it received 267 complaints and finalised 16. In 2007, the authority received 250 complaints and finalised eight. Lastly, in 2008, it received 211 complaints and finalised nine. By the end of 2008, the authority had 1716 pending complaints.¹¹⁸

When one looks at the historical development of the authority between 2002 and 2008, it is observed that, the cases were allowed to pile up and cause a backlog in the system. The authority may have had attempted to accomplish these cases but since it had pending cases year in year

¹¹⁷Human Rights Commission (HRC), State of Human Rights Report in Zambia. Lusaka, (2008). p. 12

¹¹⁸ Ibid, p. 2

out, it failed to reconcile the old and the new cases. If these cases were disposed off during the progression of the authority, it would not have failed to fully implement its mandate. Thereby, the failure of the authority has contributed to the increased human rights violations by the members of the ZPS.

Several excuses are usually made when an institution is at its take off stage. There is a conception that 'with time the authority will find its feet and cut ages.'¹¹⁹ However, time has shown that the authority ought to have considered those cases at their time.

Usually human rights violation cases do not become moot over time until justice is rendered. They may only lose value and importance to the victim. If time passes by without due regard to the case, the victim tends to lose hope and abandon the case. The authority then ceases working on the case due to the disappearance of the complainant.¹²⁰ Therefore, in historical time the authority has allowed cases to accumulate in total disregard of the development of the notion of human rights.

In addition, one may also argue that this is initiated because the authority was not created out of the will of the people. When one examines the historical background as outlined in chapter one, it is observed that when the upper class outcry, fast action is undertaken to remedy the problem. When a common man does the same, he or she will struggle to the end of his or her case. The coup detainees in 1997 cried out and government took immediate action to redress them.¹²¹

What is precluding the authority from taking immediate action when a common man complains? One may argue that, the authority would have produced better results if the victims were always from the upper class. For this reason, the PPCA has failed to fully implement its mandate.

¹¹⁹ D. Zimba (Executive Secretary), in an Interview at the Police Public Complaints Authority (PPCA). Lusaka, 22 December 2009.

¹²⁰ C. Mundia (chairperson), in an Interview at the Police Public Complaints Authority (PPCA). Lusaka, 22 December 2009.

¹²¹ Zambia News and Information Services (ZANIS), 20 May 1998.

(b) Legal Factor

This is an indirect and external factor. The law is a means to achieving an end and not an end itself.¹²² Therefore, if the legal machinery fails to affect the authority in a way so as to produce the intended results, it is hindering the works of the authority. When one examines the Zambia Police Service Act, it does not provide a sufficient legal framework, upon which the authority may rely on to implement its mandate.¹²³ For example, it does not make provision for personnel and adequate funding. Yet these are conditions that are essential for the effectiveness and efficiency of the authority.

The authority only operates as the law provides. If it operates in a manner that is outside the ambit of the law, it is acting *ultra vires*. The legal framework is weak and is an impediment to any changes that the authority would want to effect in order that it may meet the changing needs of society. For example, if the authority intended to employ 20 members to adhere to the mandate of the authority, it will be *ultra vires* because the law does not provide so.

At inception the legal framework worked well and could timely address the challenge of the authority. For example in 2003, it finalised 82 complaints. That is the highest number of complaints it ever concluded in comparison to the years that followed.¹²⁴ However, as the discourse of human rights developed and expanded, the law ought to have been reflecting the changing needs of society at each stage.

Part XA of the Zambia Police Service Act is not serving its purpose.¹²⁵ Five members cannot champion human rights due to the level of sophistication of the phenomena. They need support.

This can only be done if the Act did allow for appointment of more than five members and

¹²² I. Macleod. *Legal Theory*, 4th edition. (London: Palgrave Macmillan, 2007). p. 1

¹²³ Cap. 107

¹²⁴ Police Public Complaints Authority (PPCA), *Annual Report*. Lusaka, (2003). p. 2

¹²⁵ Cap. 107

personnel. As it stands, such a move will be *ultra vires*. The legal framework is an obstacle as opposed to an instrument of ensuring that the authority operates effectively and efficiently.

Therefore, the PPCA has failed to fully implement its mandate due to the inadequacies under part XV of the Zambia Police Service Act. The legal framework has failed to respond to the quantum of human rights infringement. Thereby, a backlog was created at the institution.

(c) Administrative factors

These are direct and internal to the authority. They take various forms and essentially centre on conditions that are necessary for the proper running of the authority. These include structural and procedural issues.

(i) Lack of personnel

The authority has no skilled personnel in the area of human rights to discharge its functions.¹²⁶

The authority needs the personnel that understand the nature of human rights and the varying concerns of society. It is more expensive to employ unskilled persons because the authority needs additional funds to educate and equip them with the necessary skill.

Due to the lack of personnel no investigations, research or human resource management departments exist.¹²⁷ The investigations and research departments are important as they could assist the members to investigate the complaints. It is the role of the investigator to gather the evidence on that case. Once the relevant evidence is ascertained, the investigators can then determine whether the case is worth being heard by the authority or not.

In short, there becomes a division of responsibilities. This can be compared to a court system though it is not a court *strict sensu*. For example, in a criminal trial, the prosecution has to gather

¹²⁶ Police Public Complaints Authority (PPCA), Annual Report. Lusaka, (2008). p. 4

¹²⁷ *Ibid*, p. 5

the relevant evidence before it can move the court. Once they have sufficient evidence, they move the court. The court only sits as an arbitrator between the accused and the complainant. It hears the evidence from both parties and then makes its decision.

When one looks at the authority, the members act as prosecutors and arbitrators. They call for the evidence and sit to consider each matter based on the evidence they have gathered. Therefore, they spend a lot of time investigating complaints. When sessional sittings take off and there is no sufficient evidence on the complaint, that case is left out of the complaints to be heard under that session. Once that evidence is ascertained, the members convene to hear the case in the next sessional sitting for that province.¹²⁸ As such, the complaints continue to pile up and the authority has no control over them and eventually a backlog is created. Thus, the PPCA has failed to fully implement its mandate.

(ii) Limited, part time members.

In addition, the members are insufficient to discharge the function of the authority.¹²⁹ It would have been logical for the authority to have more members in the absence of personnel. To make the situation worse, the available members are all part time.¹³⁰ How can the authority, which receives complaints on a daily basis, operate at the convenience of the members? This entails that the members are only available from time to time. Therefore, the works of the authority halts until the members make themselves available.

As a result, a backlog is created in the system. Even if they worked overtime when they resume, they are unlikely to discharge all the complaints. Therefore, the limited, part time members

¹²⁸ C. Mundia (Chairperson), in an Interview at the Police Public Complaints Authority (PPCA). Lusaka, 22 December 2009.

¹²⁹ Police Public complaints Authority (PPCA), Annual Report. Lusaka, (2008). p. 4

¹³⁰ Zambia Police Service Act, Cap. 107, s. 57C (1)

contribute to the backlog of cases because they are only available in session. It is repercussive that there are no personnel. It is even more devastating that the members only come in session.

(iii) Sessional sittings

Sessional sittings have hampered the authority from fully implementing its mandate. The authority usually has one sessional sitting in each of the nine provinces of Zambia. However, there are instances when the authority sits only once for the whole year.¹³¹ For example, if a complaint of police brutality was brought before the authority in April 2002 and the authority sits in Lusaka in March, it entails that the case will be considered in March 2003. If no closure is made when it is considered, the next investigation on that case will be in March 2004.¹³²

Therefore, complaints pile up and cause a backlog in the system. The question of sittings is left to the discretion of the chairman. He determines how the authority will administer its affairs.¹³³ Thereby, he has caused the problem at hand. The rationale for sessional sitting is unexplained. Hence, the PPCA has failed to fully implement its mandate due to sessional sittings. A number of complaints are considered once a year. If no closure is made, the investigation is postponed to the following year causing a backlog in the system.

(d) Economic Factor

This is an indirect and external factor because the authority relies on public funds and donor aid to sustain its operations. Adequate and prompt funding is in fact the major factor that has hampered the authority from fully implementing its mandate. There has been lack of adequate and prompt funding from the government and donors.¹³⁴ For example, the authority only sits

¹³¹ Police Public Complaints Authority (PPCA), Annual Report. Lusaka, (2008). p. 1

¹³² D. Zimba (Executive Secretary), in an Interview at the Police Public Complaints Authority (PPCA). Lusaka, 22 December 2009.

¹³³ Zambia Police Service Act, Cap. 107, s. 57L (1-2)

¹³⁴ Police Public Complaints Authority (PPCA), Annual Report. Lusaka, (2008). p. 4

sessionally and does not in most cases manage to have sessional sittings in each province because of the lack of adequate and prompt funding. For every session, the authority has to pay allowances to the members, provide accommodation, transport and witness expenses. When it cannot meet this expenditure, the sitting in that province will not take off for that year.¹³⁵

Furthermore, the authority cannot have full time members because of inadequate funding. It cannot afford emoluments every month. The members are called upon when there is money to pay them.¹³⁶ When there is no money, the work of the authority comes to a halt. Thus, the work of the authority can remain lying for months without any due consideration.

Moreover, police conduct has deteriorated and infringed on the fundamental rights and freedoms. One area, in which police actions have encroached, is the freedom against torture, cruel, inhuman and degrading treatment or punishment. Under international¹³⁷ and domestic law,¹³⁸ this right is non-derogable whether under normal circumstances or during the state of emergency.

Nonetheless, the police have continued to subject individuals to such treatment.

If Zambia fails to protect the victims and discipline the offenders, serious diplomatic consequences arise. Donors might withhold funding to Zambia (raise sanctions) and international relations may be distorted.¹³⁹ Freedom against torture, cruel, inhuman and degrading treatment or punishment is very expensive to protect, promote and monitor because every infringement requires the state to redress the victims usually in the form of compensation.¹⁴⁰

¹³⁵ Ibid, p. 4

¹³⁶ Police Public Complaints Authority (PPCA), Annual Report. Lusaka, (2008). p. 4

¹³⁷ International Covenant on Civil and Political Rights, 16 December 1966.

¹³⁸ The Constitution of Zambia, Cap. 1, art. 15

¹³⁹ Human Rights Commission (HRC), State of Human Rights Report in Zambia. Lusaka, (2008). p. 41

¹⁴⁰ J. Moonde (Investigator), in an Interview at the Human Rights Commission (HRC). Lusaka, 27 September 2009.

The police have also continued to interfere with the right to liberty. These rights are recognised and protected at both international¹⁴¹ and domestic law.¹⁴² The police have continued to detain persons for more than 48 hours without a lawful cause.¹⁴³

Consequently, the complaints of this nature have not been implemented fully due to the lack of funds to implement the findings of the authority. The authority is then portrayed as though it has no muscle or ability to bring about the desired results. The state has an obligation to protect the victims and punish the offenders. However, due to the large number of compensation cases in this area, the state has been reluctant to compensate the victims.¹⁴⁴

Moreover, the authority is unable to monitor the implementation of these cases due to lack of adequate funds. How can it put pressure on the government when it is economically challenged? How can the authority bite the finger that feeds it? Thus, it is failing to complete its mandate with brevity.

(e) Political Factor

Even with the little work completed, the authority has a problem with ensuring that its findings are implemented. For example, in the year 2006, the authority recommended ten police officers for dismissal. In 2007, 11 police officers were recommended for various disciplinary actions. Similarly, in 2008, 11 police officers were recommended for various disciplinary actions. No action was taken by the IG and no reason was given for rejecting the recommendations.¹⁴⁵

Therefore, the authority has done its part in certain instances but due to some political decisions the IG opts not to effect the recommendations. Hence, making it look as though the authority has

¹⁴¹ International Covenant on Civil and Political Rights, 16 December 1966.

¹⁴² The Constitution of Zambia, Cap. 1, art. 13

¹⁴³ Ibid, art. 13 (2)

¹⁴⁴ Human Rights Commission (HRC), State of Human Rights Report. Lusaka, (2008). p. 75

¹⁴⁵ Police Public Complaints Authority (PPCA), Annual Report. Lusaka, (2008). p. 2

failed in its mandate. Yet the authority is being obstructed from completing its mandate. This is a factor that is beyond the power of the authority. It is an indirect and external factor.

4.4 Conclusion

In conclusion, this chapter began with the discussion on the implementation of mandate. It also discussed whether or not the PPCA is effective and efficient. This chapter also discussed the factors that are hampering the authority from fully implementing its mandate. It divided the factors into five categories; the historical, legal, administrative, economic and political factors. It was observed that, the cited factors affect the heart and image of the authority. They have a negative impact on the authority as an institution of good governance and rule of law. Therefore, these factors have hampered the PPCA from fully implementing its mandate. The consequence of this, is the increased human rights violations by the members of the ZPS

Chapter Five

Conclusions and Recommendations

5.0 Introduction

This chapter provides a summary of the conclusions drawn from the study and the recommendations. It begins with the conclusions of the study. This chapter also provides the recommendations of the study.

5.1 Conclusions

The authority investigates complaints of police misconduct that have resulted in serious injury or death in police custody or as a result of police action.¹⁴⁶ The aim is to determine whether there has been an infringement of the individual rights and freedoms. If so, it recommends the offender to the DPP, IG, ACC or other relevant bodies for prosecution or various disciplinary actions. The relevant bodies have a privilege to accept or reject the recommendation but where the PPCA directs the relevant bodies, the latter are duty bound to ensure that the direction is followed.¹⁴⁷

Thus, the authority is deemed as participating in the protection and enforcement of human rights in Zambia. It is illogical to have 'protected human rights and freedoms' that are not enforceable.¹⁴⁸ The authority only enforces civil and political rights as enshrined in the Constitution¹⁴⁹ and international instruments such as the ICCPR¹⁵⁰ or the Convention against Torture, Other Cruel, inhuman and Degrading Treatment or Punishment.¹⁵¹

Nonetheless, the Police have frequently encroached on the right to liberty, the right to life, property, privacy and freedom against torture, cruel, inhuman and degrading treatment or

¹⁴⁶ Zambia Police Service Act, Cap. 107, s. 57G (1)

¹⁴⁷ Ibid, s. 57G (2)

¹⁴⁸ C. Anyangwe. Introduction to Human Rights. (Lusaka: UNZA Press, 2006). p. 10

¹⁴⁹ Cap. 1, part III

¹⁵⁰ 16 December 1966, arts. (6-12)

¹⁵¹ 10 December 1984, art. 1

punishment. The breakdown in society is due to the fact that, the authority has failed to fully implement its mandate.¹⁵² The authority has failed to complete its work by ensuring that the complaints are investigated, concluded and an effective remedy is rendered. This is due to the fact that out of the 1895 complaints, 1716 complaints were pending.¹⁵³ The public is not assured of protection against the ZPS. They are left to assume that a police officer can do no wrong in the course of duty is right. The ZPS is left as though it has immunity against prosecution.

Furthermore, the authority is ineffective as it has failed to produce the intended results. The intended result is to provide sufficient checks and balances on the conduct of the police. This can only be done if it investigates and concludes complaints within its mandate. Its decisions must serve the interest of society. It matters what punishment it may recommend against the offender.

Moreover, the authority is inefficient as it has failed to exhibit its capability of discharging its mandate fiercely and timely. The few cases that it has concluded have not been implemented. In such a manner, how does the authority serve the interest of society or bring about a balance between the public and the members of the ZPS?

One has argued that it is a waste of public funds to allow the authority to continue operating. However, one cannot overlook the fact that the police have the power to use lethal force and most times they have exercised it arbitrary or with impunity. They have ended up killing or injuring the public. Therefore, they require special attention and checks.

The authority has failed to implement its mandate so as to protect human rights because of several factors such as the historical, legal, administrative, economic and political factors. These may be direct or indirect, internal or external.

¹⁵²J. Moonde, State of Human Rights. Zambia News and Information Services (ZANIS), 26 December 2009.

¹⁵³Police Public Complaints Authority (PPCA), Annual Report. Lusaka, (2008). p. 2

Save the administrative factors, the rest are indirect and external. Firstly, the authority is not responsible for drafting its legal framework. Secondly, it is not responsible for its funding. Finally, it has no power to effect its recommendations against the offender. Nonetheless, it can recommend to the legislature of the shape, which the legal framework should take.

On the other hand, factors are internal and direct because the authority has a hand. For example, the authority is responsible for determining the procedure it will follow for investigations. It determines its sittings and how often it will sit.¹⁵⁴

The economic and legal factors are the major impediments to the mandate of the authority as they induce the administrative and the political factors. The authority does not have personnel because the legal framework does not provide so. It can only do what the law permits.

Furthermore, the authority cannot hear or determine cases on a daily basis because of inadequate funding. Therefore, it is hampered from embracing the changing needs of society.

Moreover, most rights are expensive to repair. The government has faced several compensation claims in respect of the violations on the right to life, liberty and freedom against torture, cruel, inhuman and degrading treatment or punishment. Thus, the government has been reluctant to enforce some of those recommendations due to the large sums of money involved in repairing and restoring the victims to their original positions.¹⁵⁵

Consequently, the authority appears to be toothless and is not serving its purpose in society. The members of the ZPS have been left at large and they have continued to infringe on fundamental rights and freedoms. If it were doing its work, its remedies would serve as a deterrent to future offenders and the offender himself or herself.

¹⁵⁴ Zambia Police Service Act, Cap. 107, s. 57L

¹⁵⁵ J. Moonde, State of Human Rights. Zambia News and Information Services (ZANIS), 26 December 2009.

Nonetheless, one tends to wonder whether the Mung'omba Draft Constitution will have any significant impact on the mandate of the PPCA. The Draft Constitution is attempting to correct the historical past of the PPCA. The government misplaced the authority under the Zambia Police Service Act. Hence, to the ordinary citizen it was appearing as though it was part and parcel of the ZPS yet it is separate and distinct from the aforementioned.¹⁵⁶

Firstly, article 281 has a significant impact on the mandate of the PPCA.¹⁵⁷ It will strengthen the PPCA as a national protection mechanism for human rights in Zambia. Having observed that the nature of human rights requires the necessary expertise and technology, this provision will enable the authority to receive funds by way of appropriation through an Act of Parliament.¹⁵⁸

If funding is adequate, prompt and effective, the authority will be able to acquire the necessary expertise and technology to discharge its mandate. It is likely to contribute its skill as a protection mechanism.

Secondly, article 280 (2) also has a significant impact on the mandate of the authority.¹⁵⁹ The authority will be mandated to move on its own motion. It does not have to wait for the public to complain. It can investigate complaints, which it captures through its own research. Most people do not come out to report the human rights violations. There are a lot of violations that are concealed. Hence, the authority will be able to capture more complaints on its own motion and participate effectively in the protection of human rights in the country.

Moreover, this article is open ended. There shall be nothing that shall stop the authority from promoting and monitoring human rights under an Act of Parliament. If for example, a statute authorises the authority to prepare reports on domestic violence in the country, it will be deemed

¹⁵⁶ D. Zimba (Executive Secretary), in an Interview at the Police Public Complaints Authority (PPCA). Lusaka, 22 December 2009

¹⁵⁷ Mung'omba Constitution Review Commission, Mung'omba Draft Constitution, (2005).

¹⁵⁸ Ibid, art. 280 (2)

¹⁵⁹ Mung'omba Constitution Review Commission, Mung'omba Draft Constitution, (2005).

as having the mandate to do so. One foresees a strengthened, expanded and redefined PPCA that will effectively and efficiently respond to the changing needs in society.

Furthermore, the concept of decentralisation under the FNDP has a significant impact on the mandate of the authority.¹⁶⁰ This entails the establishment of provincial or district offices that will require the appointment of the adequate personnel. This will result in the division of responsibilities as one office will not bear the burden of nine provinces. This will eliminate the backlog of cases at the authority as the complaints will be distributed throughout the district or provincial offices.

In addition, it will require that the officer in charge or IG does not participate in the receipt of complaints meant for the PPCA. It will be a less costly and is likely to encourage the people to lodge in their complaints. The authority will no longer be viewed as part and parcel of the ZPS. The authority is likely to be faced with more complaints than it has faced in the past eight years.

However, it is yet to be seen whether articles 278 to 281 of the Draft Constitution will be adopted and whether they will be translated into something meaningful in practice. For the FNDP, one waits keenly as to whether it will be adopted or not. This is because it is only valid up to this year. Thereafter, one expects a sixth development plan underway, which might introduce different principles reflecting the needs of society at that particular time.

It is also possible for the authority to learn from other jurisdictions. The purpose is to take advantage of the developments in that jurisdiction in order to redefine and expand the mandate of the PPCA and respond to the changing needs in society. Human rights are the world's concern.

The authority could learn from the developments at the ICD.

¹⁶⁰ Ministry of Finance, Fifth National Development Plan (FNDP). Lusaka, (2006-2010). p. ii

There are many differences between the authority and the Directorate. Nonetheless, both are institutions of good governance and rule of law. They are watchdog institutions that provide checks and balances on the actions of the members of the police service in their respective countries. They are both mandated to protect human rights, that is, enforcing those rights against erring police officers. However, the authority unlike the directorate has no mandate to promote and monitor human rights. The authority has a narrow mandate. It cannot be blamed entirely for the increased human rights violations by the police. That is the reserve of the HRC of Zambia.

A straightforward and direct view of the directorate is that it has a large structure compared to the authority. The former has the national and provincial offices. It embraces the principle of decentralisation. It has a director, nine provincial heads and 270 personnel. It has the investigations, research and human resource management.¹⁶¹ By contrast, the PPCA has five members with an executive secretary. It does not have the investigations, research and human resource management.¹⁶² These are some of the advantages that the authority can use in order to fully implement its mandate.

5.2 Recommendations

1. Legal Framework

The authority should be created under the Constitution as an independent and separate body from the ZPS. Firstly, because the Constitution is the supreme law of the land and anything in contravention with it is void to the extent of its inconsistency.¹⁶³ Secondly, every institution of

¹⁶¹Independent Complaints Directorate (ICD), Annual Report. Pretoria, (2007/2008). p. 2

¹⁶²Police Public Complaints Authority (PPCA), Annual Report. Lusaka, (2008). p. 1

¹⁶³ The Constitution of Zambia, Cap. 1, art. 1 (3)

the state is created by the Constitution. Therefore, the Constitution is binding on everyone. For example, the HRC is established under article 125 of the Constitution.¹⁶⁴

Thereby, the Police Public Complaints Commission Act should be enacted to provide for the composition, functions, membership and powers of the PPCA. From the societal point of view, this will ensure that the authority does not appear as though it is a department under the ZPS.

Firstly, the proposed Act should provide for the membership of the authority of not more than eleven and provide for exceptional circumstances, under which the authority can increase the number in order to meet the changing needs of society. This is due to the significance of human rights and the quantum of infringements. The discourse of human rights has become more complex and sophisticated requiring greater expertise and human labour.

Secondly, the proposed Act should provide for the appointment of the personnel by the authority in consultation with the Public Service Commission, responsible for the research, investigations and human resource management. This is to reduce the burden on the members and enhance the effectiveness of the authority.

Thirdly, the proposed Act should also provide for the members to be full time so that complaints can be considered on a daily basis. The sessional arrangement should be abolished so as to reduce on the backlogging of cases and ensure that the complaints are determined in good time. As a result, the remedy will be effective and serve its purpose to society.

Fourthly, the proposed Act should expand the mandate of the authority so that it can be able to promote and monitor human rights *vis a vis* the members of the ZPS. The current monitoring system is ineffective. The ZPS requires special attention so that they are not left at large and put

¹⁶⁴ Ibid.

the general society in apprehension. This function is inherent in the nature of every institution of good governance and rule of law.

Fifthly, the proposed Act should also make the recommendations of the authority binding on the relevant authorities in order to eliminate all political factors or interference. If privilege is left to the relevant bodies, the authority will continue appearing as though it is ineffective and inefficient. The concept of privilege makes the authority appear toothless.

Moreover, its recommendations must be in the interest of society. The main objective is that the authority should provide sufficient checks and balances so that the erring police officers are held accountable for their actions. This depends on whether the recommendation is retributive, deterrent or reformative.

For example, in the case that a police officer has killed an individual in circumstances that are outside his or her course of duty, retribution should be the basis, upon which this erring officer should be held accountable. The reasonable recommendation would be criminal prosecution. The aim is to eliminate the same event from occurring again. It will also serve as a deterrent to other police officers that have not yet committed the crime. In short, the offender should be punished for committing the offence. Disciplinary action in this circumstance will not serve its purpose.

However, it is also important to recommend for the reformation of the police officers so that they may continue participating in the preservation of peace and order in society. There should be a means of ensuring that the ZPS is not made extinct or eliminated in all.

Alternatively, the Proposed Act should provide for an appellate mechanism. Where the interested party is not happy with the decision of the authority, the Act should provide a way for those parties to appeal to the High Court to determine the finality of the matter. This is to eliminate all political factors or privilege on the part of the relevant bodies. If the court pronounces on that

issue, its decision becomes binding on the parties. If it is not respected, the person who does not obey it should be cited for contempt.

In this way, the legal framework will reflect the changing needs of society and will ultimately eliminate the historical, legal, administrative and political factors. This is in line with the assertion that the law is a means to achieving an end and not an end itself.

2. Adequate and Prompt Funding

The authority requires adequate and prompt funding in order to carry out its mandate, pay the members emoluments or other allowances. It requires adequate and prompt funding so that the mandate of the authority can be discharged in good time in order to serve the interests of society. It requires administration, technology and research costs. This is inevitable in order to eliminate the administrative and economic factors. The government must ensure that funding is appropriated through parliament as there is a legitimate expectation that each autonomous institution is independent and separate from the executive, legislature and judiciary.

3. Decentralisation

The authority should open up provincial or district offices to ensure that more citizens are able to access the authority without due hardship in terms of transport costs or time. This will ensure that complaints are disposed off by a wide range of experts and thereby, reducing the burden on the few available members. It will also entail that more human rights violations, which were concealed would be captured in the event that the authority is decentralised.

4. Policy Guidelines

The authority should draft policy guidelines so as to determine what complaints can be heard or not be heard by the authority. This will eliminate any conflicts in responsibilities with other

institutions such as the HRC or other government agencies and ensure the effective and efficient use of the limited resources available to the authority.

One is assured of a more effective and efficient PPCA that would fiercely address the changing needs of society and contribute to the elevation of human rights to a standard that is respected, observed and held in high esteem.

5. Website, Electronic Register and Toll Free Line

The authority should design a website so that all the relevant information and documents are open to the public. This is to ensure that information is easily accessible to the public. This is an inherent attribute of a good legal system. Researchers and other persons outside Lusaka will find it advantageous as it reduces on time and transport costs.

Furthermore, the authority should create an electronic register (database) for easy storage of information. This will eliminate the misplacement or losing of registers. With proper electronic management, there will be no hardships in accessing statistical data or recalling cases that were recorded many years back.

The authority should also consider obtaining a toll free line for easy access of the institution and reduce on the backlogging of citizens at the institution. Another advantage is to eliminate all costs related to travelling. A toll free line entails that the communication is free. Thus, the complainant does not need to spend a penny in order to lodge a complaint. Thereon, it will enhance a good justice system.

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