

3 Policing

POLICING ACTIVITIES

The Zambia Police Service

Accessing information on policing in Zambia turned out to be very difficult, as much of the information is deemed not to be for public consumption. In 2008 Amnesty International³⁷ also reported that it is difficult to gain access to information held by police authorities on criminal cases involving human rights violations by police officers, even for legal representatives of the accused, human rights organisations acting on behalf of victims or their families, and oversight bodies such as the Human Rights Commission. It would alleviate the situation if the Criminal Procedure Code contained a statutory requirement that the police have to fully disclose the relevant documents to the legal representatives of victims.

Policing legislation

The Zambia Police Service is provided for in the Constitution of the Republic of Zambia and the Police Act. Section 103 of the Zambian Constitution of 1991, as amended in 1996, provides for the establishment of policing services.

Article 104 outlines the functions of the Zambia Police Service as follows:

- To protect life and property
- To preserve law and order
- To detect and prevent crime
- To cooperate with the civilian authorities and other security organs established in terms of the Constitution and with the population in general

Comprehensive legislation on the organisation, functioning and discipline of the Zambia Police Force is provided for in the Zambia Police Act, 1965 (Act 43 of 1965). Legislation was amended in 1974, 1985, 1994 and 1999 to provide for the organisation, functions and discipline of the Zambia Police.³⁸ It also provides for establishment of the Zambia Police Reserve, which consists of residents of Zambia who have attained the age of 18 years, have volunteered for service in the Police Reserve, and are considered suitable candidates for enrolment in the force by the Inspector General.

The Zambia Police Act is divided into 12 parts. Part 1 (sections 1–2) contains the preliminary provisions, Part 2 (sections 3–6) deals with composition and administration of the Police Force, Part 3 (sections 7–12) provides for attestation, service and discharge, Part 4 (sections 13–25) regulates the powers, duties and privileges of police officers, Part 5 (sections 26–28) provides for offences by police officers that are tried in criminal courts, Part 6 (sections 29–41) makes provision for discipline, Part 7 (sections 42–45) regulates the disposal of unclaimed property, Part 8 (sections 46–47) deals with employment of police officers on special duty, Part 9 (sections 48–56) provides for special constables, Part 10 (section 57) deals with pensions and gratuities, Part 11 (sections 58–61) deals with general offences, and Part 12 (sections 62–64) contains miscellaneous provisions.

The legislative and constitutional provisions that provide for the Zambia Police Service meet the most basic requirements of the rule of law, which is defined by Carothers as a system in which the laws are public knowledge, are clear, apply to everyone equally, and uphold political and civil liberties.³⁹

However, the rule of law is threatened by emergency legislation. The Preservation of the Public Security Act, 1960 (Act 5 of 1960) gives the President extraordinary powers to detain any individual indefinitely. While the courts can force the police to produce a detainee, they do not have the power to call

Box 4 Legislative provisions**Penal Code (extracts) (1996)**

Penal Code Amendment Act, 2003 (Act 10 of 2003)

Police legislation

Zambia Police Act, 1965 (Act 43 of 1965)

Public Order (Amendment) Act, 1996 (Act 1 of 1996)

Zambia Police (Amendment) Act, 1996 (Act 14 of 1996)

Zambia Security Intelligence Service Act, 1998 (Act 14 of 1998)

Other criminal laws

The Dangerous Drugs Act, 1967 (Act 42 of 1967)

The Dangerous Drugs (Forfeiture of Property) Act, 1989 (Act 7 of 1989)

Mutual Legal Assistance in Criminal Matters Act, 1993 (Act 19 of 1993)

Narcotic Drugs and Psychotropic Substances Act, 1993 (Act 37 of 1993)

Anti-Corruption Commission Act, 1996 (Act 46 of 1996)

into question the activities of the security forces. Safeguards such as the right to challenge a detention no sooner than three months after being taken into custody are also rendered ineffective by the presidential powers.

Personnel numbers

At an institutional level, the rule of law requires a police force that is reasonably fair, competent and efficient. Operational capacity is a key determinant of effective and efficient policing. The Zambia Police Service currently has 13 000 officers. This is less than half the ideal complement of 27 000 officers who could reasonably be expected to provide reasonable policing.⁴⁰

The current recruitment drive is inadequate to meet the projected numbers. For example, in 2004 only 1 779 people were recruited into the police. The situation in the Zambia Police Service also mirrors the country's HIV/AIDS prevalence rate of 16 per cent. Death and illness as a result of opportunistic diseases stemming from HIV/AIDS place added pressure on the police force's human resource capacity.⁴¹

Management and resources

Katantamalundu notes that poor communication in the Zambia Police Service is an impediment to service delivery. The centralised bureaucratic structure

Table 4 Police recruitment rates

	Paramilitary	Police college	Mobile unit	Total
1999	195	402	188	785
2000	459	649	525	1 633
2001	459	–	–	–
2002	–	–	662	662
2004	199	1 381	199	1 779

Source Zambia Police, *Zambia Prisons and Police Service Establishment*, 2005

of the service and the absence of effective communication and information technology limit the effectiveness of the organisation. Communication within the service is hampered by the fact that the officer in charge must first agree to the authenticity of the information before it can be passed to the next level of policing.⁴²

Investigative capacity

A further serious impediment to the delivery of effective and efficient criminal justice is the lack of investigative capacity in most of the agencies. According to the Director of Public Prosecutions some crimes are not prosecuted because of a lack of credible evidence, mainly as a result of poor investigation techniques coupled with a limited forensic capacity.

There is an urgent need to improve investigative capacity. The Police Forensic Laboratory is still under construction and forensic samples are sent to the university teaching hospital or abroad for analysis. These limitations translate into a relatively low prosecution rate. However, cases that do get to court have a relatively high level of successful prosecution.

Victim support units

Reforms such as those embodied in the Zambia Police (Amendment) Act of 1996 have sought to target institutional weaknesses. One of these was the establishment of a victim support unit to address the needs of target groups such as women, children and the aged. Their mandate extends to cultural-related issues such as targeted victims (widows and orphans), especially in land

Table 5 Returns from the police during 2005

Division	Number of offences	Number prosecuted	Prosecution rate (%)	Number of convictions	Conviction rate (%)
Lusaka	22 683	8 811	31,1	7 170	81,4
Copperbelt	41 553	19 714	33,6	15 794	80,0
Southern	12 032	2 279	13,7	1 566	57,4
Eastern	4 299	2 232	37,5	1 497	67,1
Central	6 786	1 922	25,5	1 395	43,6
Western	4 513	2 487	26,8	1 085	72,6
North-Western	3 406	1 258	24,3	1 109	88,2
Luapula	1 751	–		171	
Northern	3 595	652	9,5	532	81,6

Source Zambia Police, *Annual report on crime statistics*, Lusaka: Government of Zambia, 2005.

grabbing and dispossession battles, sexual assaults/rape and domestic violence. The units are organised hierarchically from the station to district and division level, and finally police headquarters. The units have made some notable progress in spearheading a vigorous educational and sensitisation campaign that was aimed at changing the mindset of the police and the public towards vulnerable persons.⁴³

Many civil society organisations such as the YWCA interact with the victim support unit. The YWCA was established in 1957 as a Christian, non-partisan NGO and is dedicated to the empowerment of the community, especially women and children. It acts as a watchdog on public and domestic abuse and victimisation of women and children, informs victims on their rights, and assists them with legal action against the perpetrators of inhumane treatment. Apart from protecting the victims who fall within their scope, the YWCA also undertakes empowerment programmes aimed at minimising the victims' dependency on those who abuse them and deprive them of their individual liberties. They also offer protection for victims and encourage them to take their parents or husbands to court for redress. Consequently, the YWCA is highly regarded in the communities. The outcome of many of the cases they handle is compensation for the aggrieved persons and in extreme cases, divorce.⁴⁴

Other policing agencies

Public order policing

The official objectives of the police paramilitary battalion is to provide a strike force in disturbed areas, guard vital installations, and provide training courses at their own school in the town of Kafue, south of Lusaka. A second paramilitary police force, called the Mobile Unit, is trained and based in Kamfinsa, outside the city of Kitwe. Its duties are defined as the reinforcement of police stations during outbreaks of crime beyond the control of the normal police detachment. Mobile Unit members receive special training in riot control, unlike other officers. Both paramilitary forces have their own command structures, which ultimately report to the police Inspector General.⁵

According to a 2008 Amnesty International report police paramilitary units are often involved in ill-treatment of non-violent demonstrators. Police authorities have noted the problems of accountability that arise because paramilitary and Mobile Unit police officers operate under a different, separate, training and command structure from regular uniformed police officers. According to the commanding officer at the Zambia Police Training College, efforts are being made to phase out the paramilitary and members of existing paramilitary forces are either being retired or retrained.⁴⁶

Amnesty International has noted that in an effort to prevent past problems from recurring, the Mobile Unit recruits are supposed to be deployed to ordinary police posts upon completion of their training, rather than being retained as a separate force. In addition, in-service courses now bring together the regular police constables, sergeants, inspectors and station commanders for training with paramilitary and Mobile Unit officers of the same rank. These changes are a positive step by police authorities. However, the police record shows that police also need to be shielded from political pressure.

Neighbourhood watches

Increasing rates of crime and limited police resources have resulted in concerned residents acting to protect themselves through the establishment of neighbourhood watch groups. There have been reports that these neighbourhood watches at times act like vigilantes and sometimes clash with the police.

Partly because of their informal operations, the Zambia Police Act was amended to establish citizen crime prevention units.⁴⁷ These units are more

formalised than the neighbourhood watches and are supposed to be registered with the Crime Prevention Foundation of Zambia. The Act provides that any community may establish a crime prevention and control association in a residential, commercial or industrial area to complement the police force in the maintenance of law and order. Such an association must be registered in terms of the Societies Act, 1957 (Act 65 of 1957), as amended, and a copy of the certificate of registration must be lodged with the officer in charge of the police station in the area where the association is to operate.

Membership of the association is voluntary and open to any person who is normally resident or operates in the area or community where an association is established. The Inspector General may assign a police officer above the rank of inspector to an association. He may also, on request from the association, provide equipment and other requisites necessary for the prevention and control of crime to the association. The police are thus expected to be involved in capacity building within these units and to acquaint members of crime prevention associations with arrest tactics.

Since the amendments to the Act, the Crime Prevention Foundation of Zambia has been trying to phase out neighbourhood watches which have not been successful in reducing crime in their communities and replacing them with the more sophisticated citizen crime prevention units. These units are managed by civilians. More than ten units have been established in Ndola and recently also in Chifubu township, where a police post has been set up at the Malasha primary school.

Private security

Zambia's private security industry has been active and growing for some time. The money spent on private security is double that of the criminal justice system budget.⁴⁸

Legislation aimed directly at the private security industry is largely absent and the regulation of and means to hold the private security industry accountable are weak. However, the draft constitution under review by the Constitutional Review Commission does contain a proviso on the industry to the effect that 'the Minister responsible for police services shall register, regulate and supervise private security organisations'.⁴⁹ However, while many proposals from the constitutional review processes have been accepted by means of amendments, the numerous constitutional reviews on this issue have yet to come to fruition.

The private security industry is growing at an alarming rate and it is essential that legislation be put in place to regulate this industry.

Accountability

A key area of the governance of policing within a framework of the rule of law in a democracy relates to the effectiveness of mechanisms by which the institution is held accountable.

Parliamentary oversight

The Zambia Police Service falls under civilian authority in the form of the Ministry of Home Affairs and is subject to parliamentary oversight in respect of:

- The organs and structures of the Zambia Police Service
- The recruitment of persons into the Zambia Police Service from every district of Zambia
- Terms and conditions of service of members of the Zambia Police Service
- The regulation generally of the Zambia Police Service

Custody officers

Reforms were introduced in an ongoing effort to improve and professionalise the then Zambia Police Service by transforming it into a police service with the designation of custody officers.⁵⁰ This class of personnel was introduced in an effort to improve the conditions of police detention. It is accordingly a requirement that every person placed in police custody must first be presented to the custody officer before being placed in detention.

The functions of custody officers are to:

- Ensure that a person in police custody is treated in a decent and humane way
- Ensure that a person in police custody who requires medical attention has access to medical facilities
- Ensure that police cells or other places used for the custody of persons are in a clean and habitable condition
- Ensure that facilities used by a person in custody are in a hygienic condition

- Record the name, the offence for which the person is arrested and the state and condition of the person
- Make such recommendations about each person's well-being as are necessary, including the requirement for the person to receive medical attention⁵¹

Police Professional Standards Unit

The Police Professional Standard Unit was established in July 2003 to investigate corruption, arbitrary arrests and detention, and other unprofessional behaviour within the Police Service. The unit has the power to recommend action against any implicated officer(s) and is under the direct authority of the senior police prosecutions officer.⁵²

The Public Police Complaints Authority

The Public Police Complaints Authority (PPCA) was established in 2003. It has the power to investigate complaints from the public against the police as well as injuries or deaths in police custody. The PPCA submits its findings and recommendations to the Director of Public Prosecutions, Inspector General of Police and Anti-Corruption Commission.⁵³

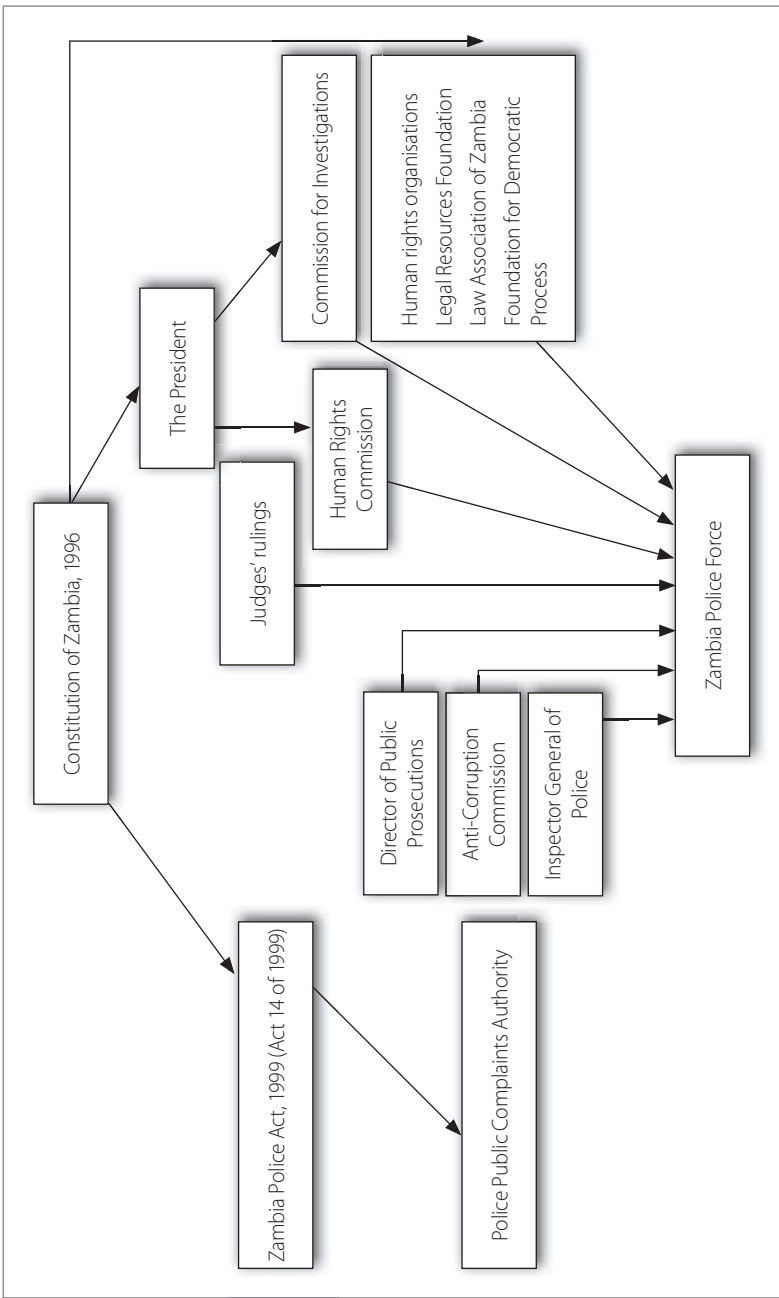
The Commission for Investigators

Article 90 of the Constitution and the Commission for Investigations Act, 1991 (Act 20 of 1991) make provision for a commission to deal with complaints of abuse of power such as arbitrary decisions, omissions, improper use of discretionary powers, decisions made with bad or malicious motives or those influenced by irrelevant considerations, unnecessary or unexplained delays, obviously wrong decisions and misapplication and misinterpretation of laws.⁵⁴ This commission, which is the equivalent of an ombudsman but with less power, reports to an Investigator General, who in turn is answerable to the President. Calls for the commission to be converted to an ombudsman have not been heeded.⁵⁵

Other oversight mechanisms

Other oversight mechanisms include the judiciary, which is able to rule on the legality of police action, the media and civil society, and is also able to set up commissions of inquiry to investigate incidents. For example, after the failed coup in 1998, the President appointed a commission of inquiry into torture allegations and the violation of human rights with regard to the alleged suspects.

Figure 1 Structure of oversight mechanisms for the accountability of the Zambia Police Force



Source: J Berg, Police accountability in Southern African Commonwealth countries, Paper commissioned by the Commonwealth Human Rights Initiative, Institute of Criminology, University of Cape Town, 2005

The findings resulted in the dismissal of three top-ranking officers (including an assistant superintendent and a commissioner of police) while 22 other officers were either demoted, lost some earnings or were transferred to stations lower than their ranks.⁵⁶

Civil society

Civil society also plays an important oversight role. Organisations such as the Legal Resources Foundation (LRF) provide legal aid, promote human rights, and litigate in the public interest. The LRF also supports citizens in challenging the law enforcement system when their rights have been violated, as the case in box 5 illustrates.

Oversight assessment

Despite the many oversight mechanisms the system remains weak. The Police Professional Standards Unit has only dealt with three cases since its inception.

Box 5 LRF takes police officers and the state to court

The LRF has taken three police officers and the state to court on behalf of two soldiers who were allegedly assaulted and injured by ten police officers last year. Maurice Katolo and Eldridge Zyelee are seeking compensation for special damages and the property and cash they lost in the process. Katolo and Zyelee contend that they suffered loss and damage and were deprived of their personal liberties and lost their property because of the inhuman treatment they were subjected to by the named police officers. The two are being represented by the Legal Resources Foundation chambers lawyer Mweetwa of Lusaka. It is alleged that the ten police officers battered Katolo and Zyelee in December 2006 leaving Zyelee with a fractured left arm and leg. This was after the two soldiers picked a quarrel with a minibus conductor from Flush Bus Services in Lusaka on December 2, 2006 over K1 200 change that was owed to them. Katolo contends that the police officers from Libala and Kabwata police stations had continued beating them despite showing them their military identity cards and pleading with them to take them to the police station to be charged. Due to the beatings from the police officers, Zyelee sustained a fractured right leg and arm and a Plaster of Paris (POP) was put on his right leg and left arm while Katolo had a POP on his right leg. Katolo was later detained at Kabwata Police Station while officers continued beating him with a gun butt and iron bar while teasing him to defend himself as he was a soldier. The duo was denied medical forms from Kabwata Police Station until Lusaka district commanding officer intervened in the matter. This case is still in court (*The Legal Resources Foundation News*, 2005).

Since its establishment the PPCA has received 825 complaints, made 45 rulings and dismissed 13 officers for abuse of authority. However, many citizens continue to lack information on their rights and where and how to seek redress.⁵⁷

An investigation by Amnesty International⁵⁸ has revealed that police oversight arrangements are not systematic or effective in ensuring that those responsible will be brought to justice. This failure creates the perception in the minds of the Zambian public and police officers themselves that the police enjoy immunity from investigations that might lead to the punishment of misconduct. Providing more human rights training to police officers, raising the educational requirements for new officers or other reforms cannot make up for the lack of an impartial, systematic and effective investigation into the violation of human rights by police officers.

Key issues

Police brutality

In a question and answer session in Parliament in 2007, the Deputy Minister for Home Affairs noted the government's concern about the high level of police brutality and the abuse of human rights by police officers. The Minister revealed that in 2006, 83 complaints of unlawful detention were received against the police. Three of them had since been finalised while 80 were pending. In the same year, 40 cases of police brutality were recorded, of which two had been finalised and 38 were pending. The Minister told Parliament that in the light of these numbers, government had put in place measures to reduce the cases of brutality and abuse of inmates' human rights by the police.⁵⁹

Promoting human rights

The upholding of human rights is a cornerstone of democratic governance and the rule of law. Nowhere is respect for human rights more critical than in the policing agencies, given their ability to use deadly force and deprive people of their liberty. The police training curriculum has recently been reviewed to include human rights law as a subject and the entry qualification for police officers was increased to a Grade 12 full certificate.⁶⁰

The state-supported human rights training programmes for law enforcement officers are conducted through the Zambia police and prisons service colleges. The Human Rights Commission for Zambia has also conducted workshops

for 8 172 law enforcement officers to train them in human rights.⁶¹ Senior and junior officers are trained separately. Likewise, the ACC and DEC have introduced ethical training for their staff members. The latter trained 442 officers in 2004 and the former has conducted workshops for its staff at all levels, resulting in 208 staff members being trained. The ACC has also drafted a code of ethics for the service.⁶²

Other NGOs have also contributed to the training law of enforcement agency personnel on human rights. The Institute of Human Rights, Intellectual Property and Development has supported advanced training for officers in the police, enabling them to pursue higher diplomas and postgraduate studies in human rights at the University of Zambia. Current plans include the revision of the human rights curriculum so it can be adjusted to suit the needs of different officials, such as interrogation officers and prison wardens. In 2003 the Ministry of Home Affairs issued guidelines on the standards for the interrogation of suspects and the treatment of prisoners in custody.⁶³

Public perception

The acid test for policing in terms of its compliance with human rights standards and rule of law principles lies in the way it is perceived by those being policed. The UNODOC victimisation survey of 2003 revealed that more than 50 per cent of Zambians are dissatisfied with the performance of the police force while 46

Table 6 Complaints received about law enforcement agents, 1998–2002

Year	Complaints received	Complaints completed		Complaints pending	
		Number	Percentage	Number	Percentage
1998	972	345	35,5	627	64,5
1999	986	312	31,6	674	68,4
2000	933	694	74,3	239	25,7
2001	823	684	83,1	139	16,9
2002	1 000	720	65,4	380	34,6
Total	4 814	2 755	57,2	2 059	42,8

Source Anti-Corruption Commission, *Complaints register, 2003*

per cent expressed satisfaction with their services. However, 69,3 per cent were dissatisfied, specifically with how the police handle crimes.⁶⁴

The levels of dissatisfaction are not borne out by complaints received by the Human Rights Commission and are thus possibly indicative of dissatisfaction with institutional capacity and access problems.

An assessment of perceptions on the efficiency and effectiveness of the Zambia Police Service was also undertaken during this study and questions specifically on the police were posed during personal interviews. Police-related issues were also discussed during focus group discussions.

The majority of respondents rated the service as fairly efficient. Respondents based their answers on a number of factors, including lack of a timely response to crime calls, lack of professionalism in handling offenders, use of unnecessary violence in dealing with suspects, and violation of the rights of persons in police custody.

Focus group participants rated the efficiency of the service as almost average. However, they agreed that the environment in which police officers operate was not conducive to good performance and efficiency. Some participants attributed poor performance by police officers to inadequate training, especially lack of knowledge on basic law and the need to protect people's human rights.

Respondents from the general public were also asked to rate the effectiveness of the Police Service and 80 per cent of respondents rated the service as somewhat effective. The respondents attributed their poor rating to the lack of vigour and innovation in the service. Most added that as far as they were concerned, the performance of police officers in the country was below their expectations.

The issue of public perceptions of the effectiveness of the Police Service was discussed by the focus groups, and most participants rated the performance of police officers as below par. They agreed that this could not be blamed only on logistical shortages such as the lack of vehicles. In order to be effective, police officers should plan and execute interventions effectively.

Some respondents blamed the poor rating of the service on a lack of efficiency and effectiveness, stating that the Zambia Police Service failed to protect people's rights and liberties and failed to live up to citizens' expectations. As a result, the public has lost confidence in a service which did not seem to have much credibility and integrity. The performance of the police in the country is generally poor and its public image needs attention.

Respondents also felt that the police presence is largely concentrated in densely populated urban areas, while rural police stations remain understaffed and equipped with obsolete equipment. For example, most police stations lack adequate and operational motor vehicles for responding to emergencies, so that in many instances cases were not investigated. This contributed to low public confidence in the service.

Factors most often cited as having a negative impact on how law enforcement services were assessed were the shortcomings inherent in the service. These include a shortage of police officers, late arrival at crime scenes, the long distances people have to travel to police stations or police centres, perceived corruption in the service, and a lack of protection for whistleblowers in the country.

Despite the overall negative perceptions of the police, it was found that the public image of the Police Service was improving, mainly because of the operationalisation of structures created in accordance with police reform projects, such as the Victim Support Unit and Police Public Complaints Authority.

However, it was established that lack of public awareness on their rights regarding police brutality and violence and the existence of the Victim Support Unit, as well as a limited knowledge of the PPCA, limited the potential benefits of these reforms.

FIGHTING CORRUPTION

The Anti-Corruption Commission

Corruption, like most other types of crime, is a source of concern to the government as well as the general citizenry. The years following the country's entrance into the Second Republic in 1991 saw a rise in the incidence of corrupt activities which led to the creation of the Anti-Corruption Commission (ACC).

The ACC is an autonomous institution. Its duties are set out in the Anti-Corruption Commission Act and include:

- The prevention of corruption in public and private bodies
- The investigation of complaints of alleged and suspected corrupt practices
- The prosecution of offences under the Act
- The investigation of the conduct of any public officer which may be connected to corrupt practices

- The dissemination of information on the dangerous effects of corrupt practices on society
- The enlisting and fostering of public support against corruption

The declaration of zero tolerance of corruption by the late President Levy Mwanawasa's New Deal government and the subsequent appointment of a task force to investigate the plundering of national resources during the previous regime under former President Frederick Chiluba constitute an official acknowledgement, from the highest office in the land, of the high levels of corruption in the country.⁶⁵

However, the level of convictions for corruption remains low, amounting to only 6 per cent of corruption cases investigated in 2005, 5 per cent in 2006 and 7 per cent in 2007.

This situation, among others, points to insufficient investigative capacity on the part of the Anti-Corruption Commission. A factor that has contributed to the low conviction rate is the withdrawal of key witnesses during court proceedings.

It is important to note, however, that the ACC has not carried out a survey to determine whether the corruption situation is improving or worsening. This observation is especially important considering that the ACC sometimes receives reports and complaints that do not relate to corruption issues. Such reports are normally referred to appropriate government institutions such as the Immigration Department or the police. What is certain, however, is that the ACC has dealt with reports involving corruption that cut across the social

Table 7 Reported cases of suspected corruption, 2005 to June 2007

Year	Total number of reports received	Complaints received	Information received	Investigations authorised	Investigations not authorised	Prosecutions registered	Convictions
2005	1 571	861	712	491	384	30	11
2006	1 979	954	1 025	660	1 244	33	10
June 2007	1 048	482	566	249	800	19	4

Source Compiled from Anti-Corruption Commission reports, 2007

and professional divide. The sentiments captured in the interview with the ACC underscore the gravity of the situation.

There have been corruption cases that have involved permanent secretaries, government ministers, and heads of department at both provincial and district levels. Some of these cases were inconclusive as there was insufficient evidence to take the matter to court. In such cases administrative action was recommended. In some of these cases the accused were acquitted, others are still in court and some are still under investigation. Generally speaking, however, we can confidently say the Zambian people - especially the Zambian government - have recognized and acknowledged that corruption is a problem in our country. About 90% loss of government funds is through corruption by those in high places. The outcry from the general public means that the people of Zambia understand that things are not as they should be and that they want things to be better than what they are currently. The fact that the donor community is raising issues of governance whenever they fund developing countries like Zambia and corruption being one of the governance issues raised, has helped the government put emphasis on the need to combat the scourge.⁶⁶

Between 2005 and June 2007 the ACC dealt with a total of 17 cases involving senior government officials, including permanent secretaries, government ministers, a commissioner and deputy commissioner of a government agency, and MPs. Fifteen of these cases are on-going while the other two have since been closed.⁶⁷

A great deal remains to be done in order to clean up the operations of public institutions and ensure effective accountability of public finances. The Secretary to the Cabinet, for example, has noted that the recent revelations of unaccounted for public funds are a clear demonstration of erosion of the foundations of the civil service and government. For example, during a review workshop for controlling officers in Lusaka the Secretary noted:

There have been frequent reports in the press of deep concern by oversight institutions regarding the abuse, misapplication, mismanagement and outright misappropriation of public resources. The oversight institutions which have expressed dismay at our performance in managing public funds include, but are not limited to, the Office of the Auditor

General, the Public Accounts Committee, the Committee on Estimates and the Committee on Government Assurances ... In all these instances of misapplication of funds, there is a controlling officer who authorises a payment to be made for such shoddy work. In all such cases there is a controlling officer who has allowed a situation where work has been certified as complete and having met the stipulated standard for payment to be effected ...⁶⁸

Evidence shows that reports of the Auditor General have persistently raised concerns about ineffective internal control systems in the ministries. The Auditor General has over the years reported many irregular payments made by public institutions.⁶⁹ The Public Accounts Committee of Parliament has also on many occasions called upon the Ministry of Finance and National Planning to improve the internal control mechanisms in the government.

Transparency International - Zambia has catalogued numerous financial irregularities in public institutions and specifically observes:

No one knows exactly how much Zambian public money has been stolen or misappropriated since 1964 when the country gained its independence. Not even the Office of the Auditor General (OAG), which has the constitutional mandate to keep tabs on government expenditure. However, it is established that about K348 244 billion worth of public money is either misappropriated, stolen or grossly mismanaged every year. That translates into K6 964 trillion from 1984 to 2004.⁷⁰

High-profile cases relating to abuse of public office and/or corruption that were or are being investigated and/or heard in the courts of law include those of former President Frederick Chiluba, two former air force commanders and a former commander of the Army and National Service, a director and deputy director (on suspension) of the Drug Enforcement Commission, a former Minister of Lands, and a former commissioner of the Prison Service.⁷¹

Developing the capacity of the ACC

At present the ACC does not have the capacity to deal adequately with corruption. This problem is exacerbated by the lack of ability of other law enforcement

Box 6 Lack of ability of law enforcement agencies to fight corruption

- Corruption is rampant because there are major problems with the enforcement of the law, although Zambia does have the legal framework for combating corruption. The different institutions that are supposed to enforce the law have lamentably been unsuccessful
- The Electoral Commission, for example, lacks the capacity to enforce the electoral regulations and the code of conduct related to electoral malpractice. The commission cannot prosecute anyone for engaging in electoral malpractice, including corruption, and it cannot disqualify candidates engaged in corruption either
- The electoral law does not prohibit the distribution of relief food, agricultural inputs or implements, as well as presidential donations from the presidential discretionary fund. The impact of such actions on the fairness of the electoral process cannot be underestimated
- The ACC and police have not done well as far as prosecuting cases of corruption are concerned either, even though the law has given them broad powers to enforce laws relating to corruption
- Clearly, the ACC has not been effective in combating corruption in Zambia, as the exponential growth in corruption in Zambia illustrates. The Transparency International Corruption Index for 2001 ranks Zambia as the ninth most corrupt country in the world
- Insufficient personnel and finances and the lack of political will combine to adversely affect the commission's ability to fight corruption. The requirement that the Director of Public Prosecutions authorise prosecution for corruption also undercuts the effectiveness of the ACC, not least because it causes delays in prosecutions. Furthermore, it opens the doors for political interference in the operations of the ACC
- The Police Service is mandated to enforce law and order and to detect and prevent crime. This includes enforcement of laws aimed at curbing corruption. Like other institutions, the Police Service has been rather ineffective in this respect. Police officers themselves regularly feature in cases of corruption in the courts of law

Source Transparency International - Zambia, Presentation to the Parliamentary Committee on Legal Affairs, Governance, Human Rights and Gender Matters, 2002.

agencies whose mandate also encompasses corruption prevention. In its presentation to the Parliamentary Committee on Legal Affairs, Governance, Human Rights and Gender Matters in 2002, for example, TI-Z made some observations that painted a dismal picture of the fight against corruption, as shown in box 6.

The Afrobarometer survey undertaken a year later shows that the situation had not improved. According to the results only 38 per cent of the respondents felt the government was handling the fight against corruption 'very well/fairly well'. The majority of the respondents (54 per cent) felt that government was

handling the fight against corruption ‘very badly’ (28 per cent) or ‘fairly badly’ (26 per cent). The remaining 9 per cent ‘didn’t know’. The TI-Z 2005 Bribe Payers Index revealed that 71,9 per cent of the respondents were of the view that government was not doing enough to reduce bribery and corruption. More than half of the respondents (51,9 per cent) felt that the police was the institution with the highest bribe prevalence.⁷²

Until recently, the ACC has focused on investigations and prosecutions. However, the government, through the ACC, has now developed the National Anti-Corruption Policy and Strategy in recognition of the need to harmonise and coordinate the country’s efforts to curb corruption. Among others, this strategy is expected to locate the ACC in the mainstream of governance reforms in the country. It targets corruption in the core business of the public and private sectors. The strategy targets corruption at the point of service delivery to the public, misappropriation and misapplication of state assets, state capture, and corruption in the electoral process. The three components of the public service reform programme - public expenditure management and financial accountability, public service management, and decentralisation - all contain elements aimed at preventing corruption. The mainstreaming of the ACC’s operations in these programmes is critical to the success of efforts aimed at combating corruption.

One strategy that the government is implementing through the ACC is appointing and training focal persons in the various ministries, departments and agencies to form integrity committees (ICs). Members of the ICs are responsible for facilitating the development and internalisation of a code of ethics within their organisations, deciding on measurable steps to be taken to reduce corruption within the institutions and reaching agreement with senior management and the ACC. The ICs are monitored by the ACC. There is also an IC within the ACC where members of the general public can lodge complaints of inefficiency and administrative malpractice. So far pilot ICs have been introduced in a few ministries and local authorities. However, the media has been emphasising that the system can only work if there is enough public scrutiny of the work of the ICs.⁷³

The design of anti-corruption activities and programmes should, however, take into account some of the difficulties that constrain the fight against corruption. Only then can an appropriate and feasible anti-corruption strategy be developed.

The National Baseline Survey, for example, revealed that 1 003 of the 1 500 respondents (66,9 per cent) would not be willing to pay taxes towards eliminating corruption. Of this group 831 (82,9 per cent), representing 55,4 per cent of the sample, cited poverty as the reason for their unwillingness. Except for Central (37,2 per cent), Copperbelt (44,4 per cent), Lusaka (45,7 per cent) and Luapula (49,1 per cent) provinces, the level of unwillingness in the remaining five provinces ranged from 59,3 per cent (Eastern) to 70,6 per cent (North-Western).⁷⁴

In its efforts to curb corruption and reduce the misappropriation of public resources, the ACC has tabled an amendment bill, the Anti-Corruption Commission Amendment Bill, which is aimed at compelling chiefs of defence forces, senior public officers and accounting officers to declare their assets, income and liabilities to the Chief Justice annually.

However, many people clearly regard the current Anti-Corruption Act to be inadequate as an instrument for fighting corruption. The need to include the protection of whistleblowers in anti-corruption legislation, for example, is perceived to be critical in the fight against corruption. A significant level of autonomy in the operations of the ACC is also desirable. There is also a need to enhance the visibility and accessibility of the ACC so as to improve the reporting of corruption cases by members of the general public. The presence of the ACC at provincial level only is clearly insufficient and greatly limits opportunities for public engagement in the fight against corruption. It is also important that community outreach activities of the ACC should be stepped up to engage the citizenry in ways that help to change attitudes.

Role of the media

Both the print and electronic media seem to be living up to the challenge of keeping the citizenry informed about corruption activities in the country regardless of the social standing of the culprits. This is especially the case with the private media, whose autonomy is comparatively greater than that of the public media. The role of the media in curbing corruption is well appreciated by participants in the review who strongly believe that bringing such crimes to light has a salutary effect on would-be offenders and helps to reduce the incidence of the scourge. These sentiments were echoed by one of the focus group participants who lives in Chibuluma:

Criminal activities, of whatever nature, should be exposed. It does not matter who is involved. In fact, if a person of high standing in society is involved in any crime, including corruption, such an act should hit the headlines in the newspapers and radio and television news so that they are disgraced. Media houses and radio stations should be on the lookout so that the people are well informed on the perpetrators of corruption in our country. We are lucky that there are a number of privately owned newspapers and community radio stations. If the government-owned newspapers like the *Times of Zambia* or *Zambia Daily Mail* do not want to report certain cases, we are assured that we get the information from their friends who are more independent.

In recognising the important role the media can play in the fight against corruption, the ACC chairperson noted:

The media should be interested in the ACC integrity committee's activities and the activities of other integrity committees, namely the Zambia Police, Immigration Department, Ministry of Lands, the ZRA, Ndola City Council, Lusaka City Council and Public Service Pensions Fund, because this is one sure way of ensuring that the integrity committees are accountable and the initiative works.⁷⁵

Regional and international cooperation

There is cooperation between the ACC and similar institutions at regional and international level. At regional level Zambia is a member of the Southern Africa Forum Against Corruption, which was founded in 2000. This is an informal group of anti-corruption agencies in the region whose main focus is on combating corruption in the Southern Africa region. Its objectives include strengthening networks among its member organisations; keeping members informed of appropriate legislation and relevant international instruments against corruption; building the capacity of anti-corruption institutions through training; cooperating on and facilitating the investigation and prosecution of corruption cases; identifying and sharing experiences on best practices in combating corruption; and sharing relevant information and intelligence on corruption.⁷⁶

At the international level, the ACC is a member of the International Association of Anti-Corruption Authorities, an organisation made up of a worldwide group of anti-corruption agencies. Its major objective is to create a platform from which members can network and share information on corruption investigations and prosecution of cases. The ACC benefits from this cooperation through training opportunities for its officers and also by collaborating on investigations of corruption cases within the jurisdiction of these countries.

With respect to international conventions and special resolutions on crime, Zambia took the following steps:

- Signed the UN Convention against Corruption on 11 December 2003, but has not yet ratified it
- Ratified the African Union (AU) Convention on Preventing and Combating Corruption in 2005

It is important to note that the Ministry of Justice, which is responsible for domesticating treaties, still has to domesticate these two treaties.

Public perceptions

Most members of the public interviewed about the efficiency and effectiveness of the ACC rated them to be average. However, some respondents argued that ACC officers have not created a presence in the communities and that members of the community who may wish to report suspected cases of corruption have no means of locating or reaching them to make their reports in confidence.

This study found that public access to the ACC is limited largely because of a lack of capacity in terms of human resources at all levels. Most rural districts do not have ACC officers and rely mostly on secondary information on corruption cases from the Office of the President. This has resulted in corruption cases going unreported or taking long to be resolved, which reduces public confidence in the ACC. The establishment of the Task Force against Corruption in 2002 is largely seen as a vote of no confidence in the capacity of the ACC to fight corruption.

Public access has also been hampered by the lack of a legal framework for whistleblowers. On many occasions ‘informers’ have found that they are not

adequately protected by law. There is a need for a legal framework that will not only provide protection but also reward whistleblowers.

One positive step is the creation of the Community Education Department which has enhanced the dissemination of information on anti-corruption activities.

POLICING DRUGS AND MONEY LAUNDERING

Drug Enforcement Commission

The Drug Enforcement Commission (DEC) was established under two Acts, the Narcotic Drugs and Psychotropic Substances Act, 1993 (Act 37 of 1993) and the Prohibition and Prevention of Money Laundering Act, 2001 (Act 14 of 2001). The goal of the DEC is to control and prevent the illegal production of narcotics, combat abuse of narcotic drugs and psychotropic substances and money laundering, and provide rehabilitation services to drug addicts in order to contribute to socio-economic development and the maintenance of internal security.⁷⁷

The DEC, in recognition of the pervasiveness of drug abuse and trafficking, is taking a holistic approach to ensure these are dealt with in an effective manner. Through its specialised wing, the National Education Campaign Division, the commission provides counselling, education and rehabilitation services to drug addicts free of charge. Apart from the use of theatre productions, brochures, posters and T-shirts the division conducts education and sensitisation programmes on drug and substance abuse to communities. Using similar means, the division works with learning institutions including the University of Zambia and Copperbelt University, as well as colleges and other institutions such as Project Concern International, Human Resource Trust, Fountain of Hope, Care International, and Peer Outreach against Drug Abuse.

The sensitisation programmes are aimed at promoting community awareness of the dangers of drug abuse in an effort to reduce the demand for illicit drugs. Through the division the commission is identifying groups at risk of drug abuse and enlightening local communities, institutions of learning and workplaces on the effects of drug abuse.⁷⁸

Other measures being taken include:

- Sensitisation workshops for various stakeholders, including High Court judges, the House of Chiefs and journalists

- Interactive radio programmes targeting farmers, called ‘Radio farm forum’, in conjunction with the National Agricultural Information Services
- Partnerships with traditional leaders and village headmen who have pledged to fight cannabis cultivation in their chiefdoms
- The DEC has acquired at great cost pedigreed sniffer dogs and initiated a sniffer dog breeding and training project that is expected to contribute enormously to the fight against the illicit drug trade across the borders and ports of entry of the country
- Increasing the number of training slots for officers within the country and abroad

Clearly drug abuse and trafficking is receiving attention and there seems to be a reasonable level of commitment on the part of the commission to combat the problem. This commitment is illustrated by the following comments of a DEC official:

The commission has embarked on its expansion programme to ensure its presence at the district level. The commission is trying hard to identify and crush illicit drug syndicates. It seeks to prevent the illegal production and trafficking of narcotics and psychotropic substances in Zambia in order to reduce the supply and preserve the integrity, security, and morals of society. To achieve this, the commission is taking a proactive approach to investigate drug cases, identify illicit drug cartels in the country and their links abroad and exterminate them.

Money laundering

The government, through the Bank of Zambia, has issued anti-money laundering directives to all banks and financial institutions operating in Zambia. The directives require the following, among others, from the regulated institutions:

- Put in place such anti-money laundering measures and adopt such practices as are necessary for the detection and prevention of money laundering
- Require individual customers to produce specified documents when opening an account, establishing business relations or conducting business transactions

- Appoint a money laundering reporting officer responsible for keeping all reports made by employees of the regulated institutions and ensuring effective communication with law enforcement agencies
- Train employees, irrespective of level of seniority, on what money laundering is and why it is important to report any suspicious transactions to the money laundering reporting officer

The directives also provide a lengthy schedule on how to identify suspicious activities and contain information on suspicious customer behaviour, customer identification, cash and credit transaction activities, wire transfer transactions, safe deposit box activity, commercial account activity, trade financing transactions, investment activity, deposits, and miscellaneous suspicious customer and employee activities.⁷⁹

Regional and international cooperation

It was noted that the DEC enjoys good interagency cooperation with other law enforcement agencies locally, including the police and ACC. With respect to relevant international conventions and special resolutions Zambia has:

- Acceded to the 1961 UN Convention on Narcotic Drugs as amended by the 1972 Protocol
- Acceded to the 1971 UN Convention on Psychotropic Substances
- Ratified the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances on 28 May 1993
- Ratified the UN Convention against Transnational Organised Crime and the accompanying protocols
- Ratified the SADC Protocol on the Combating of Illicit Drugs, 24 August 1998
- Signed a bilateral agreement with India on the combating of drug trafficking and related issues in 1993

Public perceptions

The limited capacity of the DEC is viewed as the single greatest impediment to improving public access to the institution. Generally, public knowledge of

the DEC was found to be fair. This can be attributed to numerous educational campaigns that the DEC has conducted over the years and which have led to greater awareness among the general public of the dangers of dealing in illicit drugs and money laundering, and the benefits of getting rid of these evils.

The efficiency of the operations of the DEC was rated at above average by the majority of respondents from the general public, who nevertheless emphasised the need for improvement. However, in the focus group discussions it emerged that the effectiveness of DEC was in fact not above average but was constrained particularly by the long delays in concluding its cases. This has led to some members of the public questioning the capacity of the DEC to deliver services as efficiently as was expected.

A further negative perception about the DEC and its operations stemmed largely from the commission's lack of facilities for the rehabilitation of drug users. Participants argued that the DEC was only interested in securing convictions and not in providing a lasting solution to the problems of drug trafficking and drug abuse. This argument was backed by the high recidivism rate among persons convicted on drug offences.

Delays in concluding investigations, violations of human rights, suspected coercing of witnesses to secure convictions, brutality and abuse of power by law enforcement officers from the DEC and ACC were advanced as the main reasons for a poor public perception and the low rating these institutions received from the public.

RECOMMENDATIONS

Community education to promote awareness

Recent reforms, and particularly the establishment of Victim Support Unit and the PPCA, are to be commended. However, findings about the limited awareness by members of the public of their rights and the functions of the Victim Support Unit and the PPCA show that improvements are needed with regard to public awareness on police misconduct. To maximise their benefits and reduce police victimisation and violation of people's rights it is recommended that a public awareness campaign be developed and implemented.

It is further recommended that the DEC undertake increased sensitisation of the general public on the gravity of drug cultivation, use and trafficking.

Improving policing capacity

Police training

A lack of or limited capacity in many key areas was found to be one of the major weaknesses of all the public law enforcement agencies that formed part of the review. This undermines efficient service delivery. There is a particular need to strengthen capacity in the areas of policing and human rights. Professional training of police officers should include modules on accountability and public trust, while induction programmes should focus on what it means to be a police officer in a democratic society, with special emphasis on policing by consent. Training can be provided through existing institutions such as National Institute of Public Administration.

Combating the impact of HIV/AIDS

To offset the impact of HIV/AIDS, appropriate measures should be taken, for example:

- Re-training and training to replace officers who have died from AIDS and planning for those who are infected by the HIV virus
- Embarking on effective HIV/AIDS awareness programmes
- Conducting a baseline study on HIV/AIDS in the institutions in order to establish 'the realities on the ground'
- Mainstreaming HIV/AIDS in the operations of these security organisations to protect the staff and the communities they serve, in order to bring about sustainable, efficient performance in service delivery

Improving the resources for policing

An aspect that goes hand in hand with improving the police and their agencies' capacity to fulfil their functions optimally is that the resources they have for carrying out their jobs need to be improved too.

Establishment of a resource centre

The ACC lacks adequate research and information resource facilities on corruption. This makes it difficult to investigate cases and keep records of them. The current practice of relying on secondary information that comes from the Office of the President can lead to inaccuracies, inefficiencies and delays. In

order to improve the professionalism of the ACC it is recommended that the ACC acquire a modern resource and research centre on corruption.

Development of a research programme

It is recommended that a research facility or criminal justice inspectorate be established to provide regular reports to Parliament on the state of policing and criminal justice system in the country.

Establishment of a forensics laboratory

It is recommended that a reliable and modern laboratory for forensic analysis be constructed. Such a laboratory is critical to the effective functioning of the Zambia Police Service and the DEC.

Strengthening the legal framework

It is recommended that an inspector general be appointed to the Zambia Police Service and that he or she should be appointed by an independent body, such as a parliamentary committee or service commission, which should be ratified by Parliament. The same recommendation is made with respect to the ACC and DEC. In each case this will ensure that the body in question is autonomous and thus prevent political interference in the functioning of these three law enforcement bodies.

The Anti-Corruption Act and other relevant legislation should be amended to include a mechanism for whistleblowers with regard to all forms of misconduct – be it police violations, corruption or drug-related activities. Corruption prevention reforms should also be introduced.

Promotion of oversight and transparency in law enforcement

The Public Police Complaints Authority, which is the current oversight mechanism, needs to be strengthened. The principle of transparency should be strengthened throughout the criminal justice system to promote accountability and good governance.

A complaints authority should be established for the ACC as well as for the DEC. This will provide checks and balances and may serve as a deterrent to

abuse of power and violation of people's rights. This role could be played by the PCCA.

Zambia is definitely not short of policing legislation. The major problem is in making it clear, through public demonstrations, that violations of human rights by the police will not be tolerated. Furthermore, it is only through the exercise of political will at the top of the political hierarchy that this can be achieved.

In this regard torture, cruelty and inhuman treatment should be criminalised. The study has shown that despite the implementation of police reforms and the subsequent establishment of victim support units and the PCCA, cruelty, torture and degrading treatment of suspects and offenders by officers of the Zambia Police Service continue to occur. Domestication of the ratified Convention Against Torture is essential. Evidence shown to have resulted from torture should be made inadmissible in a court of law. This can be done partly by criminalising acts of torture by government law enforcement officers and other security personnel. The integrity of investigations and the safety of witnesses must be protected at all times.

Penalties and sanctions

The current penalties for convicted offenders in corruption, money laundering and trafficking in drugs are inadequate and can therefore not be regarded as a satisfactory deterrent. It is recommended that existing penalties for these offences be reviewed. Stiffer sanctions should be offset by increasing the capacity of rehabilitation facilities for drug addiction.

Accountability

This study concurs with Amnesty International recommendations that an independent police complaints authority be established to ensure proper investigation of human rights violations by members of the Police Service. An independent authority would receive citizens' complaints, investigate them and take criminal and/or disciplinary action against police officers found to have perpetrated human rights violations. To be truly effective, such an authority should have full powers under law to deal effectively with complaints, including enabling powers to order the release of persons held unlawfully and powers to

ensure immediate access to police dockets, statements and post mortem examination reports.

We concur with the view of the present Human Rights Commission and the one made in 1998, that the establishment of an independent tribunal to handle complaints against police, immigration and prison officers would ensure proper community involvement in such a body.⁸⁰ The Human Rights Commission proposed that membership of such a body be drawn from members of the commission, representatives of the prison, police and immigration services at senior command levels, representatives from the Law Association of Zambia and other NGOs, church organisations, the Medical Association of Zambia, the Nursing Association of Zambia, as well as other civil society organisations concerned with police and prison issues.

It is essential that the Human Rights Commission be empowered to assist in oversight of the police. The Human Rights Commission should have the necessary powers to pursue its own independent investigations, including the power to access police records, interview witnesses and take corrective action in cases of torture or unlawful shootings. The paramilitary police should be encouraged to be more accountable, too.

It is imperative that victims of police abuse not be required to obtain police medical reports or forms as proof of their experience. This discourages victims from speaking out against police brutality.

CONCLUSION

The principle of transparency should be introduced into the policing component of the criminal justice system. Such transparency demands that public sector institutions perform openly and in policing, it requires that the officials record their discussions and produce reports that the public can access and scrutinise. If the performance of public officers is not scrutinised, they are more likely to act in their own interest or in the interests of the small members of the privileged elites, thereby abusing the public's trust and contravening the rule of law. It is thus recommended that a mechanism to enhance transparency be developed for the Zambia Police Service, Anti-Corruption Commission, and Drug Enforcement Commission.