

The Role of the Court and the Constitution on Police Oversight in Zimbabwe: Prospects and Challenges

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Abstract

The wide discretionary powers that are bestowed on the police necessitate the need for some mechanisms to curb abuse of these powers. The court, as an accountability institution, plays an important role in curtailing police abuse of power. This study explored the role of the court in police oversight in Zimbabwe, as well as examining the effectiveness of this important oversight institution in Zimbabwe. A total of 126 respondents drawn from institutions of accountability, were invited to participate through questionnaires and in-depth interviews. The study revealed that the court is an effective institution of police accountability, whose police oversight role is performed through: deciding on the propriety of police actions; presiding over criminal cases in which police officers are implicated; and presiding over civil suits against the police. However, despite the court's effectiveness, the limited number of judicial officers and absence of a mechanism to implement court judgements against the police seem to militate against the court's effectiveness. The constitution was widely viewed to be an effective legal document for enhancing police accountability, though its effectiveness largely depends on willingness of state institutions to adhere to constitutional provisions. Despite some obstacles, the court and the constitution are key independent mechanisms for curbing police abuse of power in the Republic of Zimbabwe.

Keywords

police accountability, legal control, civil suits

1. Introduction

Much of the parameters of what should be done and not done by the police are determined by the law (Harris, 2013, p. 37) and this makes legal control a key mechanism for police accountability. The court, as an institution for legal control, constitutes one of the most important external mechanisms of ensuring police accountability (Biswas, 2012, p. 2). Citizens can directly sue police officers for harms

caused to them by police officers (Haberfield & Cerrah, 2008; Shinar, 2009; Feltoe, 2012), resulting in monetary damages and injunctive relief (Bobb, 2010). In the English-Speaking democracies, legal control through statutory regulation of police powers, as well as case law pertaining to civil litigation against police abuse, has taken centre stage (Jones, 2008). While the main purpose of civil litigation is to enable individuals to seek redress for wrongs committed against them, trends in the numbers and types of cases being brought can indicate organisational failures in procedures, training, and supervision, and also provide a way for individuals to seek accountability for police misconduct (Ransley, Anderson, & Prenzler, 2007). Criminal law, civil and administrative laws are important tools in the control of police (Roberg et al., 2009) and it is the duty of the courts to interpret these laws.

At the heart of legal accountability stands the principle that the police are subordinate to the law, just as other citizens are subordinate to the law (Harris, 2013). It is thus important to highlight that where a police officer commits misconduct which amounts to a criminal offence, the Judge or Magistrate will still have to adjudicate over the matter. Biswas (2012) highlights that any aggrieved person can file a criminal case at a police station or to a judicial magistrate against a police officer accused of any offence, such as: brutality, harassment, and any abuse of power. It is also important to highlight the constitution as a key legal control instrument. The bill of rights is one of the major features of the constitution and any citizen whose constitutional rights have been violated by the police can approach the courts for recourse (Feltoe, 2012).

Courts have long been known to give judgements which have a direct bearing on police accountability. Judges and magistrates can also refuse to convict persons if the evidence is obtained illegally (Shinar, 2009) and this also acts as a control measure. In the case of *Mapp v Ohio (1961) 367 U.S 643*, the court banned the use of illegally seized evidence in criminal cases and such an important decision was even co-opted into the Zimbabwean Criminal Procedure and Evidence Act [Chapter 11:09]. In another leading case of *Miranda V Arizona (1966) 384 U.S 436*, the court ruled that before questioning suspects, police officers should inform the suspects of their constitutional right to remain silent and their right to have an attorney. Courts can also oversee police accountability through judicial review of police disciplinary processes (Bronitt & Stenning, 2011). While judicial review has the potential to render police decision-making transparent and accountable, it is important to recognise its limitations. Bronitt and Stenning (2011, p. 329) argue that courts exercising judicial review are remote from the action in the streets, with many judges understandably reluctant to exercise close supervision over police decisions of operational nature.

There are however potential problems with legal control. Though criminal prosecutions send powerful messages about police misconduct, they are relatively rare (Ransley, Anderson, & Prenzler, 2007). Reasons for this include: difficulties in collecting evidence, the criminal standard of proof necessary for conviction, and the reluctance by other police and prosecutors to take action (Ransley, Anderson, & Prenzler, 2007, p. 144). Consequently, Smith, in Ransley, Anderson and Prenzler (2007) suggests that police unlawfulness is much more widespread than the criminal statistics suggest and that a person

suffering from police misconduct has a far greater chance of achieving a remedy in the courts than through criminal prosecution or by using the complaints process.

In light of the above background, this study sought to explore the effectiveness of the court as an institution for police accountability. Amongst others, the study sought to address the following objectives: to explore the role of the court in police accountability; to evaluate the effectiveness of the court as an institution for police accountability; and to identify the obstacles to the court's police oversight role. The paper also explores some decided court cases that have implications on police accountability.

1.1 The Zimbabwe Republic Police

The Z.R.P, which is headquartered in the capital Harare, is a centrally controlled police organisation and is headed by a Commissioner General of Police. The organisation was formed at independence in 1980 after the amalgamation of the colonial British South African Police (B.S.A.P) and two liberation movements namely; The Zimbabwe African National Liberation Army (ZANLA) and the Zimbabwe People's Revolutionary Army (ZIPRA). At its inception, the organisation was created in terms of section 93 (1) of the then Lancaster House Constitution of 1980, which provided that: "There shall be a police force which, together with such other bodies as may be established by law for the purpose, shall have the function of preserving the internal security of and maintaining law and order in Zimbabwe". The current Constitution of Zimbabwe, which was promulgated in 2013 provides for the creation of a police service on Section 219. Section 219 of the Constitution of Zimbabwe provides that; "There is a Police Service which is responsible for: Detecting, investigating and preventing crime; preserving the internal security of Zimbabwe; protecting and securing the lives and property of the people; maintaining law and order; and upholding the constitution and enforcing the law without fear or favour".

1.2 The Court System in Zimbabwe

The law courts in Zimbabwe fall under the Judicial Service Commission, which is created in terms of section 189 of the Constitution. The courts, from the lowest to the highest include; the Magistrate Court, the High Court, The Supreme Court and the Constitutional Court. Civil cases are however filed with the High Court, whilst the Supreme Court acts as an appellate Court. The Constitutional Court handles any matters pertaining to violation of the Constitution. In relation to policing, the Constitutional Court mainly handles issues to do with the violation of the declaration of human rights. However, the researchers were only permitted to gather data from the Magistrate Courts.

2. Methodology

A total of 126 respondents were invited to participate in this study. The respondents, who were selected using stratified random and purposive sampling, were drawn from five institutions of police accountability namely: The Courts; the Zimbabwe Human Rights Commission; The Parliament; The media and human rights based NGOs. The study was mainly confined to Harare Metropolitan area,

where majority of these institutions operate. The study adopted an explanatory sequential mixed methods design, wherein quantitative data was obtained before qualitative data. To this end, quantitative data analysis informed the nature of questions that were asked during in-depth interviews. The questionnaire and in-depth interviews were thus the major methods of gathering data. Quantitative data was analysed using the Software Package for Social Sciences (SPSS), while qualitative data was analysed using summative content analysis and was used to support quantitative data. In addition, a documentary survey was conducted on case law relating to police accountability, regardless of the place where the case was heard.

3. Results and Findings

3.1 The Court's Police Oversight Roles

Since much of the parameters of what should be done and not done by the police are determined by the law (Harris, 2013), the court plays an important role in dealing with issues of police accountability. As regards police accountability, the role of the courts will thus be to interpret the legal provisions where the police act contrary to legal parameters. First, it is important to emphasise that, just as the court presides over all criminal matters wherein citizens are implicated, the court also presides over criminal law violations by police officers. To this end, the court passes the appropriate punishment on all cases where police officers are convicted of various criminal offences. In Zimbabwe, the courts fall under the Judicial Service Commission, from where authority was sought to gather data. Whilst there are seven courts in Zimbabwe, only four of these courts have a role in enhancing police accountability. These are; the Magistrate Court, the High Court, the Supreme Court and the Constitutional Court.

The role of the court in police accountability is multi-pronged, according to the judicial officers who were interviewed. One of the major roles is to adjudicate over civil suits against the police and to pass appropriate judgement. This role is mainly played by the High Court, which is empowered by section 13 of the High Court Act [Chapter 7:06] to have full original civil jurisdiction over all persons and over all matters within Zimbabwe. Similarly, the Constitutional Court hears all cases involving infringement of fundamental human rights. Consequently, all cases involving human rights violation by police officers will be referred to the Constitutional Court. Moreover, if an issue about violation of human rights by police officers is raised during trial, the trial process will be stopped pending determination by the Constitutional Court.

Judicial officers who were interviewed highlighted the tendency of suspects to complain about police brutality during their initial attendance at court. This could possibly point to the fact that suspects are comfortable with complaining to judicial officers than police officers. Ironic though, the judicial officer will have to refer the case back to the police to investigate the alleged incidents of police brutality. One judicial officer remarked, "the irony of it is that the judicial officer will have to refer the matter back to the alleged abusers...I know it sounds awkward but that's how the system operates". This then boils down to the same question, "will the police objectively investigate their own", especially if they are

acting on allegations from the suspects.

Interview respondents also had different opinion when they were asked about the role of the Courts in enhancing police accountability. The following were some of the responses.

“The court is a key player in the justice delivery system. In addition to passing appropriate sentences for criminals, the court also considers the appropriateness of police action during the whole criminal justice process. When the police act outside the confines of their powers, it is the role of the courts to take a correct position...” (R4).

“The role of the court is simple- to interpret laws. Whereas the police are there to enforce laws, the courts also consider the appropriateness of police behaviour during law enforcement. We often have situations in which police officers are accused of using inappropriate methods of gathering evidence, and the court has to take that into account during the trial proceedings” (R6).

“The court ensures that the police are not a law unto themselves” (R7).

“The court, specifically the High Court, presides over all the civil suits against the police especially on cases of police abuse of power. The court has been known to award necessary damages to victims of police abuse of power” (R12).

“Just as they preside over cases committed by criminals, they also preside over offences committed by police officers” (R13).

The above findings clearly show the importance of the court as a key institution for police accountability. The court is thus an important oversight arm of the government, amongst other arms such as the Executive and Legislature. As some of the respondents correctly pointed out, the role of the Court is to interpret laws. Similarly, the police, as an important arm of the Executive, have a major role of enforcing laws. Consequently, in the process of interpretation, the courts also judge the appropriateness of police behaviour. This way, the court acts as an accountability institution for the police. The position of the court as a key police accountability institution has been reiterated in several studies (Harris, 2013; Biswas, 2012; Bronnit & Stenning, n.d.). The findings also resonate with Swanson’s (2008) argument that courts have long been known to give judgements which have a direct bearing on police accountability.

The opinion by Respondent 6 above supports findings by Shinah (2009) that judges and magistrates can also refuse to convict persons if the evidence is obtained illegally. To this end, any improper conduct by the police during the enforcement of the law will be reviewed by the courts during criminal proceedings. Also, some important court decisions have been widely accepted as standard operating procedure by police establishments across the globe. In the leading case of *Miranda V Arizona (1966)* 384 U.S. 436, the court ruled that before questioning suspects, police officers should inform the suspects of their constitutional rights to remain silent and their right to have an attorney. The court’s decision, which is now widely known as the Miranda warning, has also been adopted as a standard operating procedure by the ZRP.

Respondent 13 also raised a salient point in highlighting that judicial officers preside over criminal

cases that are committed by police officers. This resonates with Harris's (2013) observation that at the heart of legal accountability stands the principle that the police are subordinate to the law, just as other citizens are subordinate to the law. However, the question of who should investigate the police will remain unanswered. Another important observation on criminal prosecution is highlighted by Ransley et al. (2007) when they remark, "though criminal prosecutions send powerful messages about police misconduct, they are relatively rare".

Another respondent (R14) brought in an important dimension of the court's police oversight role when he opined that, "*the court also has the power to review all the police internal disciplinary processes*". This important role is also noted by Bronitt and Stenning (2011) who assert that courts can also oversee police accountability through judicial review of police disciplinary processes. Though this system is important, it only works to the extent that parties to the police disciplinary trial challenge the police board's decision.

3.2 Effectiveness of the Courts

An overwhelming majority trust the Court as a police accountability institution. As depicted on Figure 1, three quarters of the respondents from external accountability institutions considered the courts to be either effective (48.4%) or very effective (27.0%). Whilst 16.7% of the respondents considered the courts to be somewhat effective, only 6.3% and 1.6% considered the courts to be less effective and not effective respectively.

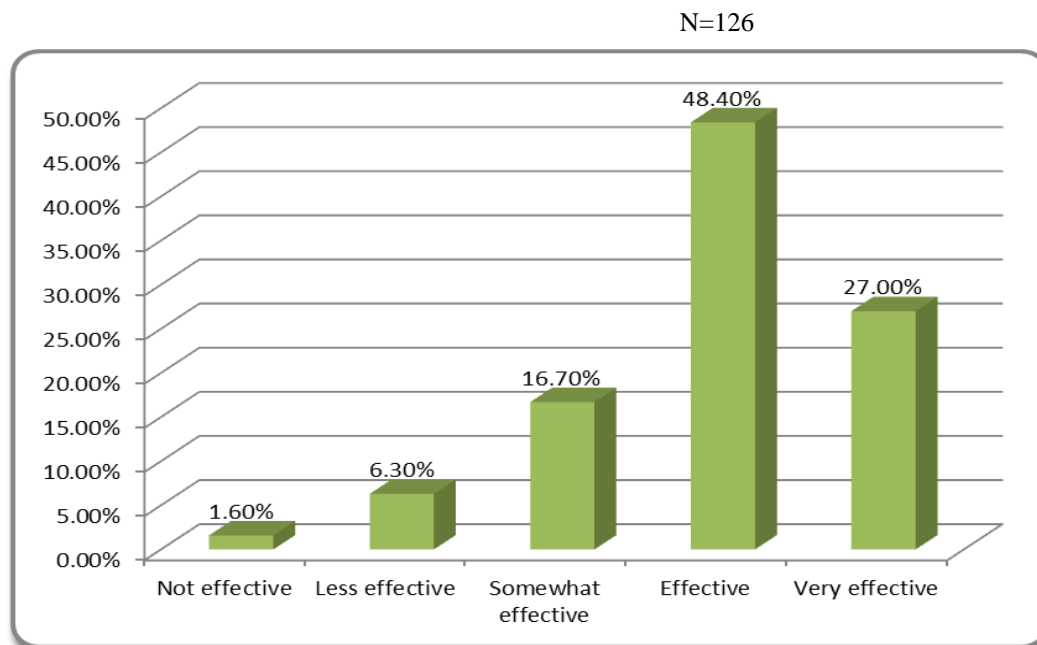


Figure 1. Respondents' Opinion on the Effectiveness of the Courts in Holding the Police to Account

A further analysis of the statistics on Table 1 reveals a mean statistic of 3.9286, a Standard Deviation of

0.91371, a variance of 0.835 and a -0.880 level of skewness. The statistics clearly reveal gravitation towards effectiveness of the courts.

Table 1. Statistics on the Effectiveness of the Courts

1	2	3	4	5	Mean	SD	Variance	Sp
1.6%	6.3%	16.7%	48.4%	27.0%	3.9286	0.91371	0.835	-0.880

Note. 1-not effective; 2-less effective; 3-somewhat effective; 4-effective; 5-very effective; SD-standard deviation; Sp-Skewness.

Majority of the interviewees also indicated that currently, the court is the most effective police accountability institution. Interview respondents were asked to comment on the effectiveness of the courts in enhancing police accountability and the following were some of the views.

“In the absence of an effective independent body to deal with cases of police abuse of power, we have to put our trust in the courts” (R2).

“I tell you, among all the accountability institutions that you can think of- the court is the most effective. They understand the law, which puts them in a better position to judge the appropriateness of some of police actions” (R6).

“There has been a great improvement in the manner in which the courts handle cases in which the police are implicated. Previously the courts were known to show bias in favour of the police, especially on public gatherings. We were finding it difficult to hold rallies and the police would just deny us our constitutional right. But I tell you, it’s now a different ball game. Even if the police deny us our freedom of assembly and gathering, the courts, in the interest of justice are always on our side” (R4).

Most of the interviewees commented the professionalism and impartiality that is currently being exhibited by the courts. This is in sharp contrast with the situation that obtained some years back when the courts were being accused of passing judgements which were politically biased. Other respondents cited several judgements by the High Court in 2016 in which political parties approached the courts after the police had denied them authority to conduct their rallies. The police cited lack of manpower as the reason for denying the political parties their constitutional rights. All the judgements were passed in favour of political parties. If the police were left to decide on who should be allowed to conduct rallies, then citizens’ constitutional freedom of assembly would be arbitrarily violated by the police. To this end, the court also has an enforcement mechanism to prevent the police from violating citizens’ rights. However, the respondents had mixed reactions on the capacity of the courts to handle cases of police abuse. Despite the majority’s opinion on the effectiveness of the courts, 53.1% were inclined to agree with the fact that courts have the capacity and are independent enough to deal with incidents of police abuse of power (Table 2). Those who were inclined to disagree constituted 30.2% whilst 16.7% were neutral.

Table 2. Response on Whether the Courts Have Capacity and are Independent Enough with Incidents of Police Abuse of Power

Response	Frequency	Percent
Strongly disagree	15	11.9
Disagree	23	18.3
Neutral	21	16.7
Agree	43	34.1
Strongly agree	24	19.0
Total	126	100.0

As a follow up, interview respondents were also asked to comment on the capacity and independence of the court to handle incidents of police abuse of power. Majority of the interviewees highlighted the need to differentiate the two terms, capacity and independence. Below are some of the responses that were given;

“The answer is no and yes. As regards the capacity, I don’t think they have the capacity, considering the backlog that characterises court cases. But for independence, they have that independence. The court is one institution in which politicians have found it difficult to interfere with” (R6).

“Whilst the issue of capacity is subject to debate, I think the independence of the court is not questionable. In fact, independence is the hallmark of any effective judiciary. The court has on several occasions passed judgements against government policy and that on its own shows the independence of the judiciary” (R8).

“I don’t believe they have the capacity, considering the limited number of courts and trial officers. However for independence, I think the court is the most independent institution amongst all institutions of accountability” (R9).

Whilst the Court, as a police accountability institution is credited for its independence, the issue of limited capacity seems to militate against the court’s effectiveness. Currently the High Court is located in Harare and Bulawayo and this creates a depressed capacity for the courts to effectively deal with cases throughout the whole country. However, despite the opening of the High Courts in two cities Masvingo and Mutare, the two courts were not yet operational at the time of writing this article. A different scenario exists in the neighbouring Republic of South Africa, where there are High Courts in all the country’s provinces. The fact that the courts do not have the capacity to speedily deal with criminal cases also implies that the court’s role of monitoring police behaviour will also be delayed.

3.3 Civil Suits and the Courts

Feltoe (2012, p. 127), commenting on the State Liabilities Act [Chapter 8:14] says, “...the state can be sued vicariously for delictual and contractual wrongs committed by State employees in the course of

their employment”. This therefore implies that the state will bear the burden for civil wrongs done by individual police officers. To this end, citizens can directly sue police officers for harm caused to them by police officers (Haberfield & Cerrah, 2008; Shinar, 2009; Feltoe, 2012). This way, the courts also enhance police accountability. Judgements that have been made against police officers are contained in various law reports and cyclostyled judgements, an indication that the courts are holding the police to account.

Most civil suits are filed based on allegations of false arrests/imprisonment, excessive use of force, negligence, constitutional violations and unlawful invasion of privacy (Mugari, 2014). McCulloch and Palmer, in Mugari (2014) also highlight the trend towards greater resort to civil litigation against the police, combined with a definite trend to substantially larger judgements in favour of plaintiffs. To this end, citizens no longer hesitate to sue the police due to the large sums of money involved. To highlight the importance of the Court as a police oversight institution, Table 3 shows selected judgements on civil suits against the police.

Table 3. Selected Civil Suits against the Zimbabwe Republic Police

Case	Reason for civil suit	Quantum of damages
Botha V Zvada 1997 (1) ZLR 415 (S)	Unlawful arrest and detention Facts: A 71 year old man was arrested on allegations of murder by the police though there was no strong evidence linking him to the crime. He was detained in custody for 6 days under squalid conditions.	Z\$20,000
Karimazondo and Another V Minister of Home Affairs and Others 2001 (2) ZLR 363 (H)	Unlawful arrest, detention and torture Facts: The plaintiffs were both arrested on allegations of murder but the charges were subsequently dropped. The plaintiffs were subjected to torture whilst in custody and suffered long lasting physical and psychological effects.	Z\$1,500,000
Mugwagwa V Minister of Home Affairs and Another HH-183-2004	Assault by police officers Facts: The plaintiff who was a member of the opposition MDC was arrested on allegations of arson. He was assaulted on the way to the station and on arrival at the station.	Z\$300,000
Chituku V Minister of Home Affairs and Others HH-6-2004	Inhuman treatment by police whilst in police custody Facts: The plaintiff was arrested on a warrant of	Z\$100,000

	arrest and was detained under inhuman conditions. The cell was overcrowded with a mal- functioning flushing system and he was denied supper.	
Mukumba V Minister of Home Affairs and Another HH-84-2009	Assault by police Facts: The plaintiff was assaulted by members of the police riot squad during disturbances that had occurred in Harare’s Budiriro suburb. Police officers forced their entry into her house, threw tear smoke and assaulted everyone in the house.	US\$300
Nyandoro V Minister of Home Affairs and Another HH-196-2010	Assault by police officers Facts: The plaintiff had been arrested for taking part in a peaceful demonstration. The police broke up the demonstration, arresting the plaintiff in the process. He was assaulted by about 10 police officers on the way to the police station and on arrival at the station.	US\$5000
Muskwe V Minister of Home Affairs and Others HH-83-2013	Unlawful arrest and detention Facts: Plaintiff, a 65 year old was unlawfully arrested. He was taken to a police cell and handcuffed to a metal pipe, first by hanging from the pipe and then latter in a stooping position.	US\$1500

Source: Selected cases from Zimbabwe Law Reports and Cyclostyled judgements.

As depicted on Table 3, citizens have been able to successfully sue the police for incidence of police abuse of power. This stresses the court’s oversight role over the police. What is even more important is that most of these judgements are found online; hence citizens can refer to the cases for guidance whenever they intend to sue the police. Civil suits against the police also have a deterrent effect on police abuse of power, as the police will try by all means to avoid these costly civil suits through enlightening police officers.

However, most of the respondents bemoaned the limited number of judicial officers to preside over civil suits against the police, especially given the fact that civil suits cannot be filed at the magistrates’ courts. With only the High Court as the court of first instance for civil suits against police and the Supreme Court as an appeal court, the courts may find it difficult to handle cases in time. Currently, the High Court is located in Harare and Bulawayo, whilst another High Court which was recently opened in Masvingo is yet to commence operations. To this end, majority of the respondents indicated that the court often takes long to pass judgements on civil suits against the police (Figure 2).

As depicted on Figure 2, slightly above half (52.4%) of the respondents were inclined to agree with the fact that courts often take long to pass judgements on civil suits against the police. The 22.2% proportion of those who indicated neutral could have been by respondents who were not well conversant with the courts. Only a quarter of the respondents were inclined to disagree with the opinion.

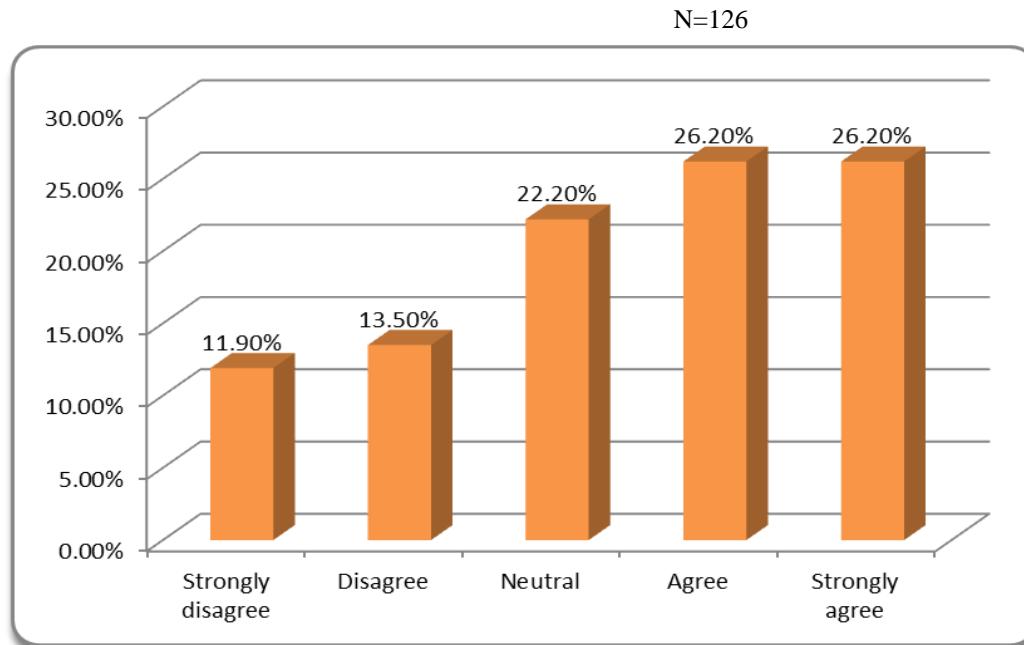


Figure 2. Response on Whether the Court Takes Long to Pass Judgements on Civil Suits against the Police

One human rights lawyer who was interviewed noted three incidents in which he had represented victims of police abuse of power, whereby the cases had to be finalised after three years. The old adage which goes “justice delayed is justice denied” seems to be a true reflection of the current state of affairs. However most of the interview respondents noted that the delay was not only common with civil cases but criminal cases as well.

Another barrier that was highlighted by five respondents (R2, R4, R7, R12 and R16) was lack of mechanisms to enforce the court’s decision when the court orders the police to pay damages. The respondents highlighted several cases in which the police were ordered to pay damages and they just chose not to comply with the court judgements. In one of the case cited (*Muskwe V Minister of home Affairs and Others HH-83-2013*), the Human Rights NGO Forum (2014), reports that the plaintiff died in 2014, a year after he had been awarded damages, but the damages had not yet been paid.

The delay in the payment of damages can also be due to the loopholes in the statutes governing civil liability. Whilst the State Liabilities Act [Chapter 8:14] imposes liabilities upon the State in respect of its employees, section 5 of the Act outlaws attachment of State property. Consequently a plaintiff can

win the civil suit against the police, but can have a hard time to receive payment given the fact that the plaintiff is not permitted by law to attach police property.

3.4 The Constitution-Effective or Mere Legal Document

Whilst the court has been viewed as an effective police oversight institution, its effectiveness hinges on a supportive legal framework. This part therefore explores the effectiveness of the constitution, as a key legal document for police accountability. The constitution, as the supreme law of the land has important provisions for curtailing police abuse of power. To this end, respondents were asked to indicate the effectiveness of the current constitution in curbing police abuse of power and their responses are indicated on Table 4.

A total of 54% of the respondents from external accountability institutions considered the constitution to be either effective (35.7%) or very effective (18.3%). Slightly above a quarter considered the constitution to be somewhat effective, whilst 19.9% considered it to be either less effective (18.3%) or not effective (1.6%). The mean statistic of 3.5079 shows gravitation towards effectiveness.

Table 4. Statistics on the Effectiveness of the Constitution

1	2	3	4	5	Mean	SD	Variance	Sp
1.6%	18.3%	26.2%	35.7%	18.30%	3.9286	1.04112	1.084	-0.238

Note. 1-not effective; 2-less effective; 3-somewhat effective; 4-effective; 5-very effective; SD-standard deviation; Sp-skewness.

The above statistics show that respondents had faith in the constitution as a key legal accountability measure. However, in comparison with the effectiveness of the courts, the statistics seem to suggest that the court is more effective as an institution of police accountability. It also has to be understood that the effectiveness of the constitution thrives on the effectiveness of the court. This was supported by one respondent who remarked that, “*we can have an effective constitution but if we do not have an effective court system, the constitution will loose its effectiveness*”.

Interview respondents also reiterated the importance of the constitution, with some of them comparing the current constitution to the now defunct Lancaster House Constitution. The following were some of the responses on the question, how effective is the constitution in curbing police abuse of power?

“*If you are to compare our current constitution with the previous constitution, you will notice a great improvement, especially on the declaration of rights. The chapter on the declaration of human rights is well articulated to meet international standards*” (R5).

“*...the provisions on the powers of arrest and detention are well articulated. For example, once the police arrest a suspect, they have to bring him before a trial officer within a time of not more than forty-hours, and if they fail to meet that time the constitution provides that the police have to unconditionally release the suspect. This section will go a long way in preventing unlawful arrest and*

detention. Also, previously Sundays and public holidays were not considered as court days but with the current constitution, Sundays and public holidays are court days and are counted in the forty-eight hour detention time limit” (R8).

“...other than just stating the Bill of Rights, the constitution provides a way of enforcing violation of human rights, for example, the provision that anyone can approach the High Court if they have reasonable grounds to believe that a suspect is being unlawfully detained by the police. Again there is a provision that any person who is unlawfully detained can claim compensation from the person who is responsible for the detention. Such provisions were conspicuously absent in the Lancaster House constitution” (R10).

“As a document, I think it is good, but it’s not enough to have a good document. We need various institutions, including the police to make sure that the document is effective. We also need an effective judicial sector to make sure that the provisions of the constitution are adhered to... so it is only effective to the extent that institutions are willing to comply with it” (R11).

Most of the views from the above respondents (R5; R8; R10) seem to point to the fact that the current constitution is effective, at least to the extent that it has important provisions to curb police abuse of power. A comparison of the current constitution to the Lancaster House constitution clearly shows an improvement, especially on the declaration of rights. Moreover, the current constitution also reiterates the need for the police service to uphold the constitution on Section 219 (1) (e). However, an interesting fact was highlighted by Respondent 11, when he asserted that the constitution is effective to the extent that the police uphold it. This leaves the court as an important institution which ensures compliance with constitutional provisions.

To further gauge their views on the effectiveness of the constitution as a key legal instrument for enhancing police accountability, respondents were also asked to indicate their response on the adequacy of constitutional provisions which curtail police abuse of power. Their responses are presented on Table 5.

Table 5. Response on Adequacy of Constitutional Provisions Which Curtail Police Abuse of Power

Response	Frequency	Percent
1. Not adequate	12	9.5
2. Less than adequate	11	8.7
3. Somewhat adequate	32	25.4
4. Adequate	69	54.8
5. More than adequate	2	1.6
Total	126	100.0

Note. Mean-3.3016; SD-0.99816; Variance-0.996; Sp-1.129.

Slightly above half (56.4%) of the respondents considered the constitutional provisions to be adequate. Approximately a quarter considered the provisions to be somewhat adequate, whilst only 18.2% considered the provisions to be either less than adequate (8.7%) or not adequate (9.5%). Further the mean statistic of 3.3016 point to the opinion that the constitutional provisions are somewhat adequate.

Commenting on the adequacy of the constitutional provisions, one respondent (R5) noted that that the constitution alone should not be enough. He argued,

“... remember, the constitution has to address all the issues of governance, not only issues to do with policing. We cannot expect the constitution to give every minute detail on how the police should operate. Therefore, the constitutional provisions are only adequate to the extent of laying the foundation for other relevant laws”.

To this end, while the constitution lays the solid foundation for enhancing police accountability in Zimbabwe, we also have to rely on other pieces of legislation for detailed laws which curtail police abuse of power. The Criminal Procedure and Evidence Act, as well as the Police Act, which have been already discussed, are other relevant statutes which have to be read with the important constitutional provisions. Guided by the constitutional provisions, the Criminal Procedure and Evidence Act, as well as the Police Act, subsequently lay down the detailed procedure which should be followed by the police in exercising their powers.

4. Conclusions

The role of the Court is multi pronged; reviewing police actions during criminal trials, presiding over criminal cases in which police officers are accused of criminal offences and presiding over civil suits against the police. The findings have revealed that the Court is an effective institution for police accountability. Amongst other institutions of police accountability, the Court in Zimbabwe is viewed to be an independent institution, which oftentimes has issued critical judgements against police abuse of powers and functions. This is an important development, especially given the fact that the success of any legal accountability mechanisms rest on the will power of the court. The major obstacles to the effectiveness of the courts are; the limited number of judicial officers, and lack of mechanisms to enforce judgements against the police. Also, the Constitution is widely viewed to be an effective legal document for police accountability. However the effectiveness of the Constitution can only be realised if there is an effective and independent judiciary to enforce compliance with the constitutional provisions.

References

- Biswas, Z. I. (2012). Police accountability and the role of politics. *Forum*, 6(7).
- BOBB, M. (2010). *Internal and External Police Oversight in the United States*. Retrieved May 18, 2015, from <http://www.prearesourcescentre.org/sites/default/files/library/internalandexternanlpoliceoversightintheunitedstates.pdf>

- Bronitt, S., & Stenning, P. (2011). Understanding discretion in modern policing. *Crim LJ*, 35, 319-332.
- Feltoe, G. (2012). *A Guide to Administrative and Local Government law in Zimbabwe*. Harare: University of Zimbabwe.
- Haberfield, M. R., & Cerrah, I. (Eds.). (2008). *Comparative Policing. The Struggle for Democratization*. Los Angeles: SAGE.
- Harris, F. C. (2013). *Holding police accountability theory to account*. Institute of Criminal Justice Studies: University of Portsmouth.
- Jones, T. (2008). The accountability of policing. In T. Newburn (Ed.), *Handbook of Policing* (pp. 693-723). Cullompton: Willan Publishing.
- Mugari, I. (2014). *Perspectives on Execution of Powers and Functions by the Zimbabwe Republic Police. A Case Study of Bindura and Mt Darwin Police Districts* (Masters Dissertation). Pretoria: Tshwane University of Technology, Department of Safety and Security Management.
- Ransley, J., Anderson, J., & Prenzler, J. (2007). Civil Litigation Against police in Australia: Exploring its Extent, Nature and Implications for Accountability. *The Australian and New Zealand Journal of Criminology*, 40(2), 143-160. <https://doi.org/10.1375/acri.40.2.143>
- Republic of Zimbabwe. (1980). *State Liabilities Act [Chapter 14]*. Harare: Government Printers.
- Republic of Zimbabwe. (1980). *The Constitution of Zimbabwe*. Harare: Government Printers.
- Republic of Zimbabwe. (1980). *The Criminal Procedure and Evidence Act [Chapter 9:07]*. Harare: Government Printers.
- Republic of Zimbabwe. (1980). *The High Court Act [Chapter 7:06]*. Harare: Government Printers.
- Republic of Zimbabwe. (2013). *The Constitution of Zimbabwe*. Amendment. Harare: Government Printers.
- Roberg, R., Novak, K., & Cordner, G. (2009). *Police and Society* (4th ed.). New York: Oxford University Press.