

Holding police officials accountable

The Constitution of Zambia binds all persons, and State organs/institutions in Zambia. Article 193(2)(e) of the Constitution expressly imposes an obligation on the Police Service to uphold the Bill of Rights in the enforcement of their duties. The Constitution of Zambia expressly imposes an obligation on police officials to respect the dignity of all persons and to uphold their rights and freedoms.

In addition, article 2 of the UN General Assembly Code of Conduct for Law Enforcement Officials¹¹⁷ provides that “in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.”

The Human Rights Commission has emphasised that government has a duty to protect its citizens from abuses that are perpetrated by law-enforcement officers while they conduct their duties. Laws that protect persons should be emphasised as a way of reminding officers to restrain themselves from abusing their positions of power.¹¹⁸ They have advocated a strict adherence to the 24-hour period, within which a person has to be charged or else released. Importantly, the Human Rights Commission recommends that police officials who maliciously detain people should be punished and held accountable.¹¹⁹

*Sex Worker Education and Advocacy Taskforce v Minister of Safety and Security and Others*¹²⁰

In this case, the applicants sought to interdict the police from unlawfully arresting sex workers – in particular arresting sex workers only to harass, punish or intimidate them or for any ulterior purpose. The case arose out of a frustration experienced by the applicants with the high incidence of unlawful police arrests and abuse of sex workers, despite frequent intervention by the applicants to authorities to try to prevent this practice. The case focused on the legal issue of whether sex workers are arrested in circumstances where the arresting officers know with a high degree of probability that no prosecution will result, and, if so, whether this renders the arrests unlawful. The respondents’ own evidence indicated that police dockets are seldom opened when sex workers are arrested.

¹¹⁷ Article 2 of the United Nations General Assembly Code of Conduct for Law Enforcement Officials, Resolution 34/169, 1979.

¹¹⁸ Zambia Human Rights Commission *State of Human Rights Report*, 2014 at p 20, available at <http://www.hrc.org.zm/index.php/publications/state-of-human-rights/file/59-2014-state-of-human-rights-report> (accessed 22 July 2016).

¹¹⁹ Zambia Human Rights Commission *State of Human Rights Report*, 2014 at p 20, available at <http://www.hrc.org.zm/index.php/publications/state-of-human-rights/file/59-2014-state-of-human-rights-report> (accessed 22 July 2016).

¹²⁰ *Sex Worker Education and Advocacy Taskforce v Minister of Safety and Security and Others* (3378/07) [2009] ZAWCHC 64; 2009 (6) SA 513 (WCC) (20 April 2009).

The South African High Court noted that the general method for dealing with sex workers seems to be that sex workers are arrested and detained overnight in police cells, whereafter they are taken to the magistrates' court cells, detained for a few hours, and then released. The judge concluded that in the circumstances, *"the peace officers, who effected the arrests of the sex workers during the relevant period, did not do so with the required object or purpose of having the sex workers prosecuted. This is so because they knew with a high degree of probability that no prosecutions would follow"*. Fourie J concluded that *"a peace officer who arrests a person, knowing with a high degree of probability that there will not be a prosecution, acts unlawfully even if he or she would have preferred a prosecution to have followed the arrest"*. The judge granted an interdict on the basis that *"the reasonable inference to be drawn from the evidence before the court, is that arrests of sex workers by the SAPS and the City Police, without the required lawful object or purpose, namely to ensure the prosecution of the sex workers, will probably continue in the future"*.

A sex worker in Zambia, who is a victim of assault, abuse, unlawful arrest and detention, or any misconduct by the police, can hold police accountable and has several avenues available for recourse.

Complaints at police-station level

*"They are not helpful because of what I am."*¹²¹

*"Most of the time when you have a complaint about a police officer they claim they are the government and above the law."*¹²²

*"They can be the most useless people when you have a problem and you don't have money. The law is usually good to those who have money, we need help from elsewhere."*¹²³

*"They don't take us seriously when we go with complaints or need assistance from them. They don't listen or respect us."*¹²⁴

*"We are told mostly that we bring it on ourselves when we try to complain."*¹²⁵

The finding that participants are reluctant to complain to police about police abuse, suggests that reporting at police-station level is not the preferred complaints option. It is, however, the most

¹²¹ Anonymous participant, Lusaka, Zambia.

¹²² Anonymous participant, Lusaka, Zambia.

¹²³ Anonymous participant, Lusaka, Zambia.

¹²⁴ Anonymous participant, Lusaka, Zambia.

¹²⁵ Anonymous participant, Lusaka, Zambia.

accessible complaints process and, accordingly, requires reform to ensure that all persons who have been victims of crime, including physical and sexual assault, can report such cases to the local police station – even if the perpetrator is a police officer.

The European Court of Human Rights has held that the failure by police to investigate cases of police abuse perpetrated against sex workers, amounts to a violation of the right to freedom from discrimination and freedom from inhuman and degrading treatment.¹²⁶

It is worth exploring whether specific units within the police would be more appropriate avenues for the complaints that sex workers have about police abuse. Victim-support units are mandated to focus on rape, domestic violence, sexual abuse, and trafficking. They are based at police stations and their staff have often received more training on handling victims of abuse than police officers at the charge offices. These units might be an appropriate place where sex workers can complain about police abuse and report cases of rape – provided the units are sensitised to deal with sex workers in a respectful and non-discriminatory manner.

The Police Public Complaints Authority of Zambia (PPCA)

The PPCA is a mechanism through which sex workers can hold police officials accountable for the violation of their constitutional rights. The PPCA was established to lodge complaints against the police when there is misconduct, neglect, or behaviour resulting in death or injury. A person has up to two years after the occurrence of an incident to lodge a complaint. The PPCA can hear complaints from individuals, a person acting on behalf of an aggrieved person, or an association acting in the interest of its members.¹²⁷ After a complaint has been lodged, the offending officer must respond in writing, and then, if resources allow, there is a hearing. The hearing operates like a court trial with witnesses and cross examination. Both parties may be represented by legal counsel. If the PPCA finds misconduct by the officer – the case is referred to the Inspector General of Police, who may proceed with disciplinary or other administrative action.¹²⁸

The Gender Equity and Equality Commission

The Gender Equity and Equality Commission is established by article 231 of the Constitution, and is mandated to have offices in the provinces and progressively in districts.¹²⁹ Its purpose is to investigate issues concerning gender equality and to take steps to secure redress for complaints relating to gender equality.¹³⁰

Complaints can relate to any act which is in violation of the Gender Equity and Equality Act, including discrimination from a public body or institution, and discrimination relating to

¹²⁶ *BS v Spain*, 47159/08, 24 July 2012, ECHR.

¹²⁷ Available at http://www.homeaffairs.gov.zm/?q=police_public_complaints_authority (accessed 22 July 2016).

¹²⁸ Available at http://www.homeaffairs.gov.zm/?q=police_public_complaints_authority (accessed 22 July 2016).

¹²⁹ Article 231(1) of the Constitution, as amended by Act 2 of 2016.

¹³⁰ Article 231(3).

gender-based violence. Complaints must be lodged with the Commission within two years of the incident.¹³¹ The complainant is entitled to written reasons, if the Commission decides not to investigate the complaint.¹³² A complaint may be lodged by a complainant acting in her own interest; by an association acting in the interests of its members; by a person acting on behalf of the complainant; and by a person acting on behalf of, and in the interest of, a group or class of persons.¹³³ The Commission may not investigate matters that are before court.¹³⁴ The Commission's proceedings are flexible, and it can direct that certain persons are not present at proceedings, and that its documents remain confidential.¹³⁵

Human Rights Commission (HRC)

The Human Rights Commission (HRC) is established under article 230 of the Constitution of Zambia, as amended. It is mandated to have offices in the provinces, and progressively in districts.¹³⁶ The HRC shall investigate and report on the observance of human rights, and conduct civic education on rights.¹³⁷

An aggrieved person, organisations representing the interests of sex workers, or any civil society organisation or a person acting on behalf of the aggrieved person, can lodge a complaint at the HRC.

The HRC is a useful mechanism to publicly hold police officials accountable for violation of the human rights of sex workers, and is in a position to propose effective measures to stop and prevent further human rights violations of sex workers.

Whether the HRC is willing to take on complaints of sex workers, remains to be seen.

Civil claim for damages

The Zambian Constitution protects the rights of all people in Zambia. In particular, it protects the rights of all persons to equal protection under the law, freedom from arbitrary arrest and detention, and to be free from cruel, inhuman and degrading treatment.

Arbitrary arrest or detention is the arrest or detention of an individual in circumstances in which there is no likelihood or evidence they have committed a crime, or in which the proper procedure was not followed. The proper procedure includes informing the accused of their rights, the reason for the arrest, and to detain and charge the accused within a reasonable amount of time.

Article 13(4) of the Constitution of Zambia expressly provides any person who is unlawfully

¹³¹ Section 41 of the Gender Equity and Equality Act, 2015.

¹³² Section 42(3).

¹³³ Section 43(1)(b).

¹³⁴ Section 43(4).

¹³⁵ Section 43.

¹³⁶ Article 230(1) of the Constitution, as amended by Act 2 of 2016.

¹³⁷ Article 230(2).

arrested or detained by any other person to be entitled to compensation. Where police arrest a sex worker without proof of an offence having been committed they effect an unlawful arrest. In those circumstances, a sex worker is entitled to lodge a complaint at the PPCA and HRC and to institute a claim for compensation against the police official and the government.

Article 118(2) of the Constitution provides that, in exercising judicial authority, the courts shall ensure that justice is done without discrimination. In practice, however, courts are often an inaccessible option for persons who seek redress when their rights have been violated.