

Enhancing Police Accountability through the Malawi Independent Police Complaints Commission: Prospects and Challenges That Lie Ahead

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Abstract : The police play a critical role in society and are an integral aspect of the rule of law. Equally, respect for human rights is an integral part of professional policing. In view of the vast powers that the police enjoy and the attendant risk of abuse and resulting human rights violations, the need for police accountability and civilian police oversight is internationally and regionally recognised. Policing oversight springs from the duty to investigate human rights violations. Those implicated in perpetrating or covering up violations must be disciplined or prosecuted to ensure effective accountability. Police accountability is particularly important in Malawi given the dark history of policing in the country during the 30-year dictatorial era under President Kamuzu Banda. Described as one of the most repressive regimes in Africa, the Banda administration was characterised by gross state-sponsored violence, repressive policing and human rights violations. Indeed, the police were involved in various forms of human rights abuse including arbitrary arrests and unlawful detentions, torture, and excessive use of force in conducting arrests and public order policing. This situation flourished within a culture of police impunity bolstered in part by the absence of clear oversight mechanisms for police accountability. In turn, there was immense public mistrust of the police. Unsurprisingly, the criminal justice system was one of the priority areas for reform when Malawi adopted its first democratic Constitution in 1994. Section 153 of the Constitution envisions a police service that is, for all intents and purposes, there to provide for the protection of public safety and the rights of persons in Malawi according to the prescriptions of the Constitution and any other law. This position reflects the view that the duty to protect and promote human rights is not incompatible with effective policing. Despite this, the police continue to engage in questionable behaviour in public order policing, excessive use of force, deaths in police custody, ill-treatment, torture and other forms of abuse including sexual abuse. Perpetrators of abuses are occasionally punished, but investigations are often delayed, abandoned, or remain inconclusive. Police accountability remains largely elusive. Commendably, the law does subject the police to significant oversight both internally and externally. However, until 2010, Malawi lacked a wholly independent civilian oversight mechanism specifically mandated to monitor the activities of the Malawi Police Service and held it accountable. This void has since been filled by the Independent Complaints Commission established under the Police Act. This is a positive development that reiterates Malawi's commitment to the investigation of human rights violations by the police and to ending police impunity. This contribution examines the legal framework for this Commission to project the effectiveness of the Commission. While the framework looks promising on various fronts, there are potential challenges that lie ahead. Malawi must preemptively deal with these challenges carefully if the Commission is to have any practical significance in transforming police accountability in the country. Drawing on lessons from other jurisdictions like South Africa, the paper makes recommendations for legislative reform to strengthen the Commission's framework.

Keywords : civilian policing oversight, Malawi, police, police accountability, policing, policing oversight

Conference Title : ICCLCPS 2017 : International Conference on Criminal Law, Criminology and Police Science

Conference Location : Paris, France

Conference Dates : November 20-21, 2017