

HOLDING THE ZIMBABWE POLICE TO ACCOUNT: THE ROLE OF PARLIAMENTARY OVERSIGHT

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Abstract

Parliamentary accountability has been long regarded as the bedrock of good governance in democratic systems. In most jurisdictions, Parliament has an oversight role over most state institutions, including the police. This paper explores the role played by Parliament and its effectiveness as a police oversight institution in Zimbabwe. Primary data was obtained from 126 respondents who were purposefully selected from institutions of police accountability in Zimbabwe. Secondary data was also obtained from relevant constitutional and statutory provisions. Enactment of laws which curtail police abuse of power, control through Portfolio Committees and the question and answer session were regarded as the prominent roles of Parliament on police oversight. Majority of the respondents considered Parliament to be somewhat effective in holding police to account and a weak opposition in Parliament was considered to be militating against Parliament's effectiveness.

Keywords: Police accountability, parliamentary oversight

INTRODUCTION

Given their immense powers and their important role as gatekeepers of the criminal justice system (Doherty, 2013), the importance of accountability in policing should never be underestimated. As Karimu and Foluke (2012) correctly point out, accountability is not intended to eliminate or undermine police power but rather control it from becoming an instrument of repression and exploitation and to ensure that power is exercised in a transparent manner, and according to rules. As such, police misconduct and lack of accountability serves to undermine the police service itself, the wider criminal justice system and the legitimacy of the state in which they operate (Seneviratne, in Doherty, 2013: 32). There is therefore need for accountability mechanisms to ensure that the policing function is not left to the whims of police officers.

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The need for accountability in policing should be understood in the context of democratic policing, which according to Haberfield and Cerrah, (2008) is a form of policing in which police are accountable to the law and community, at the same time respecting the rights and guaranteeing the security of all citizens. Similarly, Harberfield and Gedion (2008: 8) assert that the term democratic policing is one where the police are accountable to the rule of law and the community, respect the rights and guarantee the security of all citizens in a non- discriminatory manner. There is a general consensus that police must operate according to the basic tenets of democratic governance, which includes the principles of accountability and transparency (Abiri, 2011; Walker, 2007). Public accountability, being an essential precondition for the democratic processes to work, provides citizens and their representatives with the information needed for judging the propriety and effectiveness of government conduct (Bovens, Schillemans & Hart, 2008). Accountability is an inherent feature of the police in a democratic society; one of the hallmarks of democratic policing vital for promoting the rule of law, ensuring respect for human rights and encouraging transparency (Abiri, 2011). In the same vein, the legitimacy of the police and the ability of citizens to hold the police accountable for their actions is an important factor in democratic society (Bayley, 2006: 145).

Another ideal model of policing in a democracy is the involvement of the community in all the aspects of policing. Matara (2010) correctly points out that “the police are subordinate to the community, as the community employs them through the paying of tax, and secondly, they are subordinate to the rule of law, and should therefore uphold the rule of law in the course of their duties”. To this end, as they render their service to the community, they are required to give account of their conduct when performing their work (Eijkman, 2006). This will ensure that the police organisation provides a responsive, effective and respectful service to the society.

Whilst it is imperative that the whole community should be involved in all the aspects of policing, it may not be feasible to engage them directly. To this end, someone or some other institution has to represent the community. Parliament, as an institution of representative democracy can thus represent the community on all matters that affect the community, even policing issues. To this end, this study sought to evaluate the effectiveness of the Parliament of Zimbabwe, as an institution of police accountability. Obstacles to this important institution of accountability institution are also evaluated.

METHODS AND MATERIALS

Primary data was obtained from five institutions of police accountability namely: the Court, the Zimbabwe Human Rights Commission, the Media, NGOs and importantly the Parliament. The study was mainly confined to Harare where most of the institutions of accountability are headquartered. A questionnaire survey, comprising of mainly closed ended questions, was conducted with 126 respondents whilst in-depth interviews were conducted with 12 respondents. Quantitative responses were pre-coded and after collection, data was fed into Software Package for Social Sciences (SPSS) for analysis. Qualitative data was collected after analysis of quantitative data and interview questions were guided by the quantitative responses. The researchers also reviewed two important legal instruments namely; the Constitution of Zimbabwe and the Privileges, Immunities and Powers of Parliament Act [Chapter 2:08].

BRIEF LITERATURE REVIEW

Conceptualising accountability

Accountability as a term is commonly used to denote bureaucratic control, transparency or responsiveness to popular demands and the term has also been conflated with related concepts of responsibility, accessibility and answerability (Doherty, 2013). To Bovens, accountability is, “The relationship between an actor and a forum, in which an actor has an obligation to explain and justify his or her conduct” (2006: 6). Accountability or, more precisely, ‘being accountable’, is seen as a virtue, and as a positive quality of organisations or officials (Bovens, Schillemans & Hart, 2006).

Perhaps a clearer definition of accountability is provided by Hall et al in Waring (2011) when he views accountability as the real or perceived likelihood that an individual, group or organisation’s judgements, decisions and actions will be evaluated by an audience with power to exact consequences based on appraisals. To this end, police conduct should be judged or evaluated by someone or some institution with an independent view. Similarly, Karimu and Foluke (2012) assert that the term accountability explains the continuing concern for checks and oversight, as well as for surveillance and institutional constraints on the exercise of power and authority. In this way, accountability may be viewed as a process that binds the police to society, ensuring conformity to social expectations and regulating behaviour (Walker, 2007). Given the complexities of police work, the difficult conditions in which police officers have to work (Payne, 2012) and huge powers which they wield, it is necessary to have both internal and external accountability systems

(Walker, 2007). The accountability of the police to democratic processes has been and continues to be one of the central issues confronting the police throughout modern times (McMullan, as cited by Roberg, Novak & Cordner, 2009). Consequently, Parliament comes in as one of the important institutions for holding the police to account.

Parliament oversight of the police

Parliament accountability is said to be the bedrock of good governance in democratic systems (Rahaman, 2008:39). One of the most important functions of contemporary Parliaments in liberal democratic states is to hold the executive to account (Mcleay, 2006). More so, international best practice supports an independent role for Parliament in keeping the police under scrutiny (Commonwealth Human Rights Initiative (CHRI), 2006). Also, under the doctrine of Separation of Powers, the role of the Parliament is to enact laws, which the police have to enforce. It goes without argument that the Parliament can enact laws which can help in curbing police abuse of power. Supporting this assertion CHRI (2006) provides that parliament has the power to correct systemic faults by passing new laws to seek accounts of police performance, and to keep policing under constant review.

Rahaman clearly notes the oversight function of parliament as follows;

“The philosophy behind parliamentary accountability is that in a democratic system, people are the main source of power and it is the moral obligation and occupational responsibility of people’s representatives to watch whether public’s opinion and desires are being reflected on the day to day activities of the government” (2008:41).

To this end, parliamentarians, as representatives of ordinary citizens, play an important role of monitoring police actions on behalf of the citizens. Moreover, police officers are public servants and it is the citizens’ right to demand democratic control of the police through their elected representatives (Rahaman, 2008).

Obstacles to the parliament’s oversight role

Despite extensive literature on the importance of the parliament role on police oversight, the institution has also received its fair share of criticism. Mcleay (2006) notes the reluctance by members of parliament to criticise their own ministers or the government departments over which they have authority. This is usually the norm where the ruling party has an absolute majority in parliament. Moreover, there is an assumption that individual parliamentarians are primarily motivated to retain their elected positions (Mcleay, 2006) and this possibly justifies their reluctance to criticise ministers from their respective political parties. In his study on parliamentary oversight of the security sector, Born (2003:20) also puts forward the following three challenges for parliamentary oversight of the security sector;

“Secrecy laws may hinder efforts to enhance transparency in the security sector: especially in emerging democracies or conflict-torn countries, secrecy laws may limit or jeopardize parliamentary oversight of the security sector.

The security sector is a highly complex field, in which parliaments have to oversee issues such as weapons procurement, arms control and the readiness of military units. Not all parliamentarians have sufficient knowledge and expertise to deal with these issues in an efficient manner.

The emphasis on international security cooperation may affect the transparency and democratic legitimacy of a country’s security policy if it leads to parliament being left out of the process”.

Legal framework for parliamentary oversight

The Parliament of Zimbabwe, which consists of the National Assembly and the Senate, is provided for under Section 118 of the Constitution. The Constitution also provides for eighty members of the Senate, who are elected on proportional representation and two hundred and ten members of the National Assembly, who are directly elected by the electorate. Section 119 of the Constitution provides for the roles of Parliament in the following provisions;

Parliament must protect this Constitution and promote democratic governance in Zimbabwe.

Parliament has power to ensure that the provisions of this constitution are upheld and that the State and all institutions and agencies of government at every level act constitutionally and in the national interest.

For the purposes of subsection (2), all institutions and agencies of the State and government at every level are accountable to Parliament.

From the above provisions, it can be argued that the role of Parliament is to promote accountability in all government institutions and agencies. Consequently, the police, as a key government agency, should also be answerable to Parliament. More importantly section 130 of the Constitution provides for Parliament’s power to initiate, prepare, consider or reject any legislation. To this end, it is the Parliament which can pass either repugnant laws or democratic laws. Lastly, the Privileges, Immunities and Powers of Parliament Act [Chapter 2:08], which will be later reviewed in this paper also provides for the operational framework for the Parliament of Zimbabwe.

FINDINGS AND DISCUSSION

Role of Parliament on police oversight

The respondents were asked to indicate their views about the role of Parliament on police accountability. Majority (60.3%) of the respondents indicated holding police to account through portfolio committees as the major police oversight role by Parliament (Table 1). This was followed by 18.3% of the respondents who indicated that the Parliament’s major role is to advise on police policy. Another 7.1 % were of the opinion that the major role of Parliament is to institute commissions of enquiry on major incidents of police misconduct. However, 14.3% were of the opinion that Parliament does not have any role to play on police accountability.

Table 1 Response on the major role played by parliament on police accountability

	Response	Frequency	Percent
	No role	18	14.3
	Advising on policy	23	18.3
	Holding police to account through portfolio committees	76	60.3
	Instituting commission of enquiries on major incidents of police misconduct	9	7.1
	Total	126	100.0

Though they had diverse opinion on the role of the Parliament, at least the respondents indicated that the Parliament has a role to play- one way or another. Further, a follow up was made with interview respondents. Some of the interview respondents were asked to comment on the role played by Parliament in enhancing police accountability. The following were some of their responses;

“The legislature is responsible for passing laws and it can pass laws which can curb police abuse of power. All the laws that have a bearing on the police have been passed by parliament. Where we notice incidents of police abuse of power, we can as well pass laws to prevent such abuse” (R4).

“Of course the major role of parliament is to make laws. But we have mechanisms where parliament can directly hold the police to account. For example, we have a Portfolio Committee on Defence and Security which can summon the minister responsible for police to explain some of the police actions. We also have a Thematic Committee on Human Rights and the committee can address issues of human rights violations by the police” (R9).

“To make laws which limit police powers and in the process curbing police abuse of power through arbitrariness” (R12).

The above findings clearly show the importance of the Parliament as an institution of police accountability. First, Parliament is the sole law-making branch of government (Stapenhurst & Pelizzo, 2012) and this explains why several interview respondents (R4; R9; R12) highlighted law making as one of the major Parliament roles on police accountability. Consequently, as noted by the respondents, Parliament is responsible for passing laws which curtail police abuse of power. In support of these views, CHRI (2006) correctly provides that Parliament has the power to correct systemic faults by passing new laws to seek accounts of police performance, and to keep policing under constant review.

The control of police through portfolio committees seems to be the major role played by Parliament in enhancing police accountability. The important role played by portfolio committees was also reiterated by several other previous researchers (CHRI, 2006; McLeay, 2006; Rahman, 2008; Stapenhurst, 2012). To this end, the Parliament of Zimbabwe has two portfolio committees which deal with police accountability. These are Defence, Home Affairs and Security Services portfolio and the Justice Legal and Parliamentary Affairs portfolio. Among the two, the former seems to be the one which directly deals with the police. Whilst Portfolio Committees are for members of the National Assembly, thematic committees are in place for Senators. The Thematic Committee on human rights is responsible for all human rights issues, including human rights violations by police officers. To this end, these portfolio committees and thematic committees play an oversight role though scrutinising actions by police.

Furthermore, some issues that were raised by the respondents (R10; R11; R12) bordered around democratic governance. To promote democratic governance and in the spirit of the democratic theory, all public institutions (including the police) should be held accountable and the Parliament has an important role to play in enhancing accountability. In support of the respondents' views, Bovens et al (2008) correctly point out that public accountability is extremely important from a democracy theory perspective and it enables citizens and their representatives to make those holding public office answer for their deeds.

Perceptions on Parliament's powers and capacity to hold the police to account

The oversight role of Parliament can only materialise if the Parliament has the necessary powers and capacity to hold public institutions to account. McLeay (2006) points out those parliamentary committees must be able to summon Ministers, witnesses and documents in order to perform their legislative scrutiny. Further, committees must be able to question civil servants and the police also form part of the civil servants. To this end, questionnaire respondents were asked to indicate their response on whether the Parliament has the necessary powers and capacity to hold the police to account, and responses are presented on Figure 1.

N=126

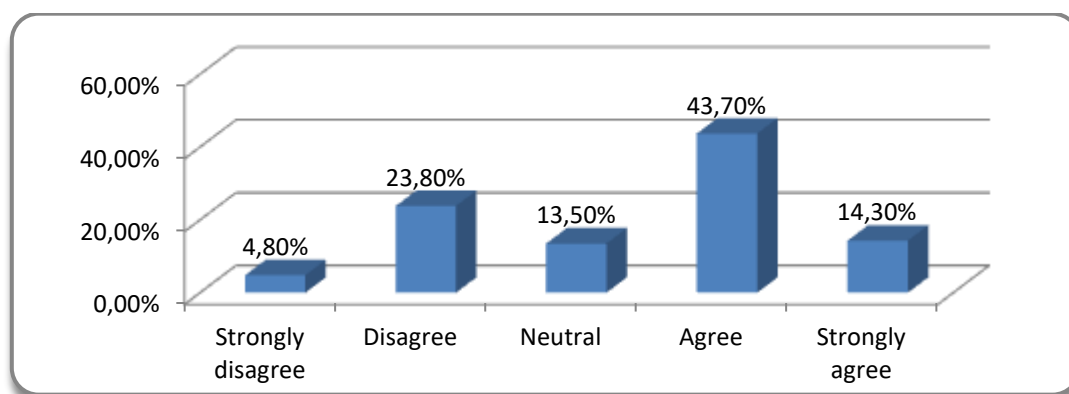


Figure 1 Response on whether the Parliament has the necessary powers and capacity to hold the police to account.

As depicted on Figure 1, majority (58%) of the respondents were inclined to agree with the fact that the Parliament has the necessary powers and capacity to hold the police to account. Barely a third (28.6%) were inclined to disagree whilst the other 13.5% was undecided.

In addition, some interview respondents were asked to comment on the powers of Parliament and the institution's capacity to hold the police to account. The respondents had the following views;

"The parliament has the necessary powers. Most of these are contained in the Privileges, Immunities and Powers of Parliament Act. That's where we have the powers to summon any employee of the state, the police included" (R10).

"The constitution has granted the parliamentarians power over all institutions of governance in Zimbabwe. In terms of capacity, I think they have the capacity. Where they see malpractice on the part of the police, they can simply pass law to deal with such malpractice" (R11).

Like I have already highlighted, they have the power to make relevant laws to curtail police abuse of power. I think that is the most important power that is at their disposal. But I don't think making laws alone is adequate, they don't have mechanisms to force the police to comply with the relevant laws- meaning their

capacity is only limited to the extent of making laws” (R12).

The findings suggest that the Parliament has the necessary powers to hold the police to account. As earlier indicated, the constitution provides for the generic powers of Parliament. More detail on these powers is given under the Privileges, Immunities and Powers of Parliament Act [Chapter 2:08]. Section 9 of the Act provides that;

Parliament or a committee—

(a) may by way of a summons issued in terms of section ten—

(i) order any person to attend before it;

(ii) require the production of any document or thing which is in the possession of or under the control of any person;

(b) may require any person attending before it, whether or not he is summoned in terms of section ten—

(i) to give evidence;

(ii) to be examined upon oath which the Speaker, the chairman of the committee or any other person appointed by the Speaker, may administer for the purpose.

To this end, Parliament can therefore summon any public official, including police officers to appear before it. Also, section 12 provides that a person who is summoned to appear before Parliament is bound to give evidence. More importantly, the Act also provides for certain offences in relation to appearance before Parliament. For example, section 19 provides for a charge of perjury on a person who gives false evidence before a Parliament or a Committee of Parliament. A person who has been summoned to appear before Parliament but fails to appear will be guilty of contempt and according to Section 23, the Speaker may issue a warrant for the arrest and imprisonment of any person who has been adjudged by Parliament to be guilty of contempt. From the above statutory provisions, it is evident that the Parliament has all the necessary powers at its disposal to deal with issues such as police abuse of power. The mere presence of these powers within the country’s statutes is a major milestone. Commenting on the mere presence of powers, Mcleay (2006) argues that, “It is not that committees generally have to exercise their powers. Rather, the potential power of the committees to do this is very important”. However, as one respondent (R9) correctly pointed out, exercising of those powers is a different issue. The question to ask here is, “Is the Parliament really exercising these powers”. The question of effectiveness then comes to the fore.

Effectiveness of the parliament on police oversight

Whilst the importance of Parliament as a police oversight institution has been emphasised in the preceding discussion, the current effectiveness of Parliament also needs to be assessed. As will be observed, a number of factors should be considered in determining the effectiveness of the Parliament as a police oversight institution. To this end, respondents from external accountability institutions were asked to indicate their opinion on the current effectiveness of Parliament as a police oversight institution.

As depicted on Table 2, slightly above a third (38.1%) of the respondents considered the Parliament to be effective, with only 1.6% considering it to be very effective. About a quarter of the respondents (26.2%) considered the Parliament to be somewhat effective. The remainder considered the Parliament to be either less effective (24.6%) or not effective (9.5%). Further, the mean statistic of 2.9762 seems to suggest that on average, most of the respondents considered the Parliament to be somewhat effective as a police oversight institution.

Table 2 Response on the current effectiveness of parliament in holding the police to account

	Response	Frequency	Percent
	1 Not effective	12	9.5
	2 Less effective	31	24.6
	3 Somewhat effective	33	26.2
	4 Effective	48	38.1
	5 Very effective	2	1.6
	Total	126	100.0

Mean 2.9762 SD 1.03896 Variance 1.079 Sp -0.387

Whilst majority of the respondents concurred that the Parliament has the necessary powers and capacity, they seemed to have a different opinion on its effectiveness. The possible explanation for the state of affairs could be that the Parliament is not fully exercising its oversight powers. The composition of the Parliament also has a bearing on the effectiveness of Parliament.

A follow up was also done with the interview respondents and the researcher posed the question “Currently how effective is the Parliament as an institution for police accountability?”

Two of the respondents were of the opinion that Parliament is effective and they provided the following responses;

“I think the Parliament is effective, not only for the police but for all other state institutions. We hear of public officials appearing before portfolio committees almost on a daily basis. During the question and answer sessions, we have also had questions on police operations, specifically on the increased number of road blocks and the responsible minister has been called to respond” (R4).

“I think the Parliament is effective, considering the fact that all political parties are represented...we even have some portfolio committees that are chaired by opposition MPs. We have even witnessed situations where ruling party MPs have criticised policies by ministers from their party. I am of the view that our Parliament is independent and it's this independence that promotes effectiveness” (R10).

However, two respondents had different views, and they had reservations on the composition of parliament. They raised the following important points;

“Whilst the parliament has wider powers to whip government institutions into line, I think they are sitting on those powers. Maybe it's because of political polarisation- MPs fearing to criticise ministers from their political parties” (R11).

“The parliament can only be effective to the extent that opposition political parties are adequately represented. The previous parliament- yes, it could have been effective because there was almost an equal representation of both ruling party and opposition party legislators. Currently opposition legislators are not even a third of the parliament and it becomes difficult to push for a bill to deal with police abuse...” (R12).

The divergent views from the respondents possibly justify the mean statistic of 2.9762, indicating that Parliament is somewhat effective. On the positive side, the question and answer session presents the Parliament with one of the best opportunities to raise questions about police policy. The issue of corruption and excess police roadblocks on the country's highway received much attention during the question and answer sessions in 2016. Responding to questions raised by Parliamentarians, the Minister of Home Affairs, who is also responsible for the police had this to say,

“I want to inform this august House that there is a paper circulating in government whereby roadblocks will be manned by satellite so that from an office in Harare, you can see what is happening at a roadblock in Tsholotsho and you can pay using methods such as plastic money or mobile transfers. There will not be any cash that will be exchanged. Therefore we will be reducing the temptation for police officers to be corrupt” (Gumbo, 2016).

The above response from the Minister shows that the Parliament had been able to influence police policy on roadblocks, though the policy had not yet come into effect at the time of writing this thesis. In another headline in a local daily newspaper, the Speaker of Parliament is quoted saying, “We have observed as Parliament that there is no law concerning roadblocks and they are just being erected willy-nilly” (Majaka, 2016). This was highlighted after concerns had been raised by Parliamentarians on the negative impacts of numerous police road blocks on the tourism sector (Majaka). The response by the minister and subsequent comments by the Speaker of Parliament show that the Parliament is taking action on police excesses. It can also be argued that the Parliamentarians have been able to influence police policy by frequently raising the issue of corruption in Parliament.

Another positive aspect on the effectiveness of Parliament pertains to the composition of portfolio committees. Stapenhurst and Pelizzo (2012) opine that appointments to committees should not be arbitrarily made by political parties or the speaker but should rather be influenced by a combination of factors such as background, education, leadership potential, and party affiliation amongst others. The researchers noted that the majority of the members for the portfolio committee on Defence, Home Affairs and Security Services had a background on security; hence they can articulate issues pertaining to policing. The committee also has representatives from all political parties, though on a proportional basis. Moreover, most of the members for the Justice Legal and Parliamentary Affairs Portfolio have legal background.

However, the current composition of the Parliament also seems to militate against the effectiveness of this important institution, as was noted by two respondents (R11; R12). Currently the ruling party ZANU PF has about two thirds majority. This gives them the power to override on all important discussions, including those pertaining to police accountability. The negative effects of having a Parliament dominated by the ruling party is also noted by McLeay (2006), who asserts that government will pursue their own policy objectives unless constrained by legislative rules. It is also important to note that a Bill needs a two thirds majority to be passed into law in Zimbabwe. The domination of Parliament by a single party possibly explains why the Parliament is taking longer to align laws such as POSA, AIPPA and the Criminal Law Code to the Constitution.

CONCLUSION

The Parliament's primary role is to enact laws, and in the process of enacting laws, Parliament can pass laws which curtail police abuse of power. One of the constitutional mandates of Parliament is to promote good governance and the Parliament's oversight role of the police will promote good governance. The control of police through portfolio committees seems to be the major role played by Parliament in enhancing police accountability. Moreover, the Parliament is empowered to summon the minister responsible for police, and even police officers to question them about police operations. The question and answer time also presents legislators with the opportunity to scrutinise some of the police actions. Importantly, the Zimbabwean Parliament has legal mechanisms to enforce some of their powers and these powers are enunciated in the Privileges, Immunities and Powers of Parliament Act [Chapter 2:08]. However, a minority opposition in Parliament militates against the effectiveness of the current Zimbabwean Parliament.

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